Tentative Rulings for October 1, 2025
Department 403

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.

24CECG02097 ***Antonio Cuevas v. Stairway Fabricators, Inc*. is continued to Tuesday, October 7, 2025, at 3:30 p.m. in Department 403.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

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(34)

Tentative Ruling

Re: ***Grandhe, M.D. v. Quintero, et al.***
Superior Court Case No. 24CECG05461

Hearing Date: October 1, 2025 (Dept. 403)

Motion: Defendants Carter Law Group and Daniel L. Carter's Demurrer to Complaint

Tentative Ruling:

To overrule the general and special demurrers to each cause of action. (Code Civ. Proc. §430.10, subd. (e), (f).) To overrule the demurrers on the basis of public policy and judicial estoppel. Defendants Carter Law Group and Daniel L. Carter are granted 10 days leave to file their answer to the complaint, with time to fun from service by the clerk of the minute order.

Explanation:

Plaintiff Janardhan Grandhe, M.D., individually and as a medical corporation, alleges she entered into written medical lien agreements with defendants Sonia Quintero-Perez, Braulia Gonzalez, Ismael Gonzalez and Vena Novella (collectively "Patient Defendants") whereby each defendant agreed that medical services provided by plaintiffs would be paid for from the proceeds of their respective personal injury claim settlements. (Complaint, ¶¶ 8-9.) Plaintiffs allege agreements obligated both the patient and their attorney Jeffrey Bohn to pay for the services rendered. (*Id*. at ¶ 9.) Defendants Carter Law Group and Daniel L. Carter (collectively "Carter Defendants") are alleged to be the patients' subsequent counsel and have expressly assumed the obligations under the lien agreements. (*Ibid*.) The written agreements at issue are not attached to the complaint, rather the essential terms of the agreement are alleged in the complaint.

Patient Defendants are alleged to be in breach of the agreement in failing to pay for the medical services rendered. (Complaint, ¶ 10.) Carter Defendants are alleged to be in breach of the agreements by failing to pay the liens upon resolution of the personal injury actions for the Patient Defendants. (*Ibid*.)

In addition to alleging breach of the lien agreements, plaintiffs allege a cause of action for declaratory relief as to the dispute between the parties with respect to the parties' obligations under the agreements. (Complaint, ¶13.)

Carter Defendants demur generally and specially to each of the two causes of action on the basis that neither the Carter Defendants nor the plaintiffs are parties to the written lien agreements that are the subject of the complaint. Defendants assert the lien agreements at issue were made between Central Valley Pain Management, Inc., the Patient Defendants, and attorney Jeffrey Bohn. In support of their argument, defendants request judicial notice of Fresno County Superior Court case no. 23CECG03954, *Central Valley Pain Management, Inc. v. Sonia G. Quintero, et al.,* filed September 25, 2023 also

alleging claims for breach of contract and declaratory relief based on the nonpayment of medical lien agreements. (RJN No 1.) Although the existence of the lawsuit is appropriately given judicial notice, its existence does not preclude the existence of the agreements alleged between the parties in this action as alleged.

In testing a pleading against a demurrer, the facts alleged are deemed to be true, "however improbable they may be" (*Del E. Webb Corp. v. Structural Materials* Co. (1981) 123 Cal.App.3d 593, 604) as it is "not the ordinary function of a demurrer to test the truth of the plaintiff's allegations or the accuracy with which [plaintiff] describes the defendant's conduct. A demurrer tests only the legal sufficiency of the pleading. [Citation.]" (*Quelimane Co. v. Stewart Title Guaranty Co*. (1998) 19 Cal.4th 26, 47.)

Taking the allegations of the complaint as true, the allegations of the complaint are sufficient to state a cause of action with respect to the written medical lien agreements alleged. Defendants' arguments regarding the proper parties to the written agreements will not support the general or special demurrers as argued. (See Demurrer 1a, 1b, 2a, 3 a, 3b, 4, 5.) The general and special demurrers on this basis are challenges to the truth if the factual allegations of the complaint and not a basis for demurrer. The general and special demurrers on this basis are overruled. Defendants' demurrers on the basis of public policy and judicial estoppel likewise are premised on challenging the truth of the allegations of the complaint as to the identity of the parties to the agreements at issue and, as such, are overruled.

Defendants demur specially to each cause of action on the basis each is made uncertain by the failure to attach the written agreements at issue to the complaint. (See Demurrer 2c.) 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*.)

The absence of the written lien agreements at issue does not support finding the complaint is so vague or ambiguous the defendants cannot reasonably respond. Moreover, the documents are appropriately the subject of discovery requests. The special demurrer for uncertainty on this basis is denied.

Defendants additionally argue the complaint is subject to general demurrer and special demurrer for uncertainty for the absence of "essential facts" regarding the allegation that the Carter Defendants expressly assumed contractual obligations of Jeffrey Bohn. (See Demurrer 1c, 2b.) Defendants have provided no authority to support requiring a higher pleading standard with respect to the issue of whether these defendants assumed the contractual obligations as alleged. A plaintiff is not required to plead evidentiary facts supporting the allegation of ultimate fact; the pleading is adequate if it apprises defendant of the factual basis for plaintiff's claim. (*Perkins v.*

Superior Court (1981) 117 Cal.App.3d 1, 6; see *Fundin v. Chicago Pneumatic Tool Co.* (1984)152 Cal.App. 3d 951, 955 ["All that is necessary as against a general demurrer is to plead facts showing that the plaintiff may be entitled to some relief."].) The allegations of assumption of contractual obligations are sufficient to apprise the defendants of the basis for plaintiffs' claim. The general and special demurrers on this basis are overruled.

Defendants demur generally to the first cause of action for breach of contract on the basis that it is barred by the statute of limitations. Plaintiffs allege the written agreement with Patient Defendant Sonia Quintero-Perez was entered into on or about January 18, 2018. (Complaint, ¶ 8.) There are no other dates alleged in the complaint as to when the other Patient Defendants entered into the respective agreement or when the breach of contract is alleged to have occurred.

Where the dates alleged in the complaint, or facts judicially noticeable together with facts alleged in the complaint, show the action is barred by the statute of limitations, a general demurrer lies. (See *Saliter v. Pierce Bros. Mortuaries* (1978) 81 Cal.App.3d 292, 300; *Vaca v. Wachovia Mortgage Corp.* (2011) 198 Cal.App.4th 737, 746 ["When a ground for objection to a complaint, such as the statute of limitations, appears on its face or from matters of which the court may or must take judicial notice, a demurrer on that ground is proper."].) However, the running of the statute must appear "clearly and affirmatively" from the face of the complaint. It is not enough that the complaint <u>*might*</u> be time-barred. (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42.)

A breach of contract claim does not accrue until there has been a breach of the contract. (Church v. Jamison (2006) 143 Cal.App.4th 1568, 1583.) The facts alleged in the complaint do not conclusively demonstrate that plaintiffs' claims are time-barred as there are no allegations with respect to when the breach of the lien agreements occurred. The general demurrer on this basis is overruled.

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

Tentative Ruling
Issued By: <u>lmg</u> on <u>9-29-25</u>.
(Judge's initials) (Date)

(47)

Tentative Ruling

Re: ***Avidwater, LLC v Benjamin Arroyo, JR***
Superior Court Case No. 25CECG01451

Hearing Date: October 1, 2025 (Dept. 403)

Motion: Default Prove-Up

Tentative Ruling:

To deny without prejudice.

Explanation

Relief sought by plaintiff is denied for the following reasons:

a) Improper Filing:

First, Plaintiff has not filed the required "Request for Court Judgment" form (Judicial Council Form CIV-100). This is a dual-purpose form, used for requesting both entry of default and court judgment.

Plaintiff used the form, on July 24, 2025 for "Entry of Default." As such, Plaintiff still needs file a "Request for Court Judgment."

Plaintiff should also complete Section 2 of the Judicial Council Form CIV-100.

b) Relief Sought Exceeds Amount Initially Sought in Complaint:

Plaintiff initially filed its Civil Complaint on March 27, 2025. The complaint initially sought damages of $24,434.18, which comprised of an initial principal of $20,137.56 as well as damages service charges of $4,296.62.

Plaintiff now seeks a total of $27,455.35 in damages. The additional service charges of $3,021.17 are damages, which exceed the amount initially sought in the complaint.

Simke, Chodos, Silberfeld & Anteau, Inc. v. Athans (2011) 195 Cal.App.4th 1275, 1287–1288 provides reasoning that late fees should have been included as part of the damages sought:

> Further, if the plaintiff seeks a default judgment where an answer is not timely filed, he or she must first submit a "Request for Entry of Default," a Judicial Council form, specifically, form CIV–100. The use of that form is mandatory. (See Cal. Rules of Court, rule 1.31(a)-(c); Gov.Code, § 68511; 23 pt. 4 West's Ann.Code, Court Rules (2006 ed.) appen. A, pp. 477, 479; the form may be found online at

> http://www.courts.ca.gov/forms.htm? filter=CIV [as of May 26, 2011].) Section 2 of the form, entitled "Judgment to be entered," lists five categories, with corresponding blank lines, from which the judgment will be calculated, namely: (1) "Demand of complaint "; (2) "Statement of damages," with a citation to Code of Civil Procedure section 425.11, which governs cases for personal injury and wrongful death; (3) "Interest"; (4) "Costs"; and (5) "Attorney fees." (Italics added.) Because Code of Civil Procedure section 580 prevents a default judgment from exceeding the amount demanded in the complaint or, in personal injury or wrongful death cases, the amount set forth in the statement of damages, the Judicial Council's "Request for Entry of Default" form recognizes that attorney fees do not constitute "relief" for purposes of the statute. The form distinguishes between the "relief" permitted by section 580—"Demand of complaint" or "Statement of damages"—on the one hand, and items not governed by section 580—"Interest," "Costs," and "Attorney fees"—on the other hand, indicating that "relief," as used in section 580, means "damages."

No authority exists demonstrating"late fees" are NOT damages. No authority exists that "late fees" are "interest, costs, or attorney fees."

Furthermore, a default judgment is limited to the amount demanded in the complaint. (*Janssen v. Luu* (1997) 57 Cal.App.4th 272, 279.) General demands in the prayer do not provide adequate notice of the relief sought to support a default judgment. Thus, if no specific damages, in terms of a dollar amount, is prayed for, a general prayer for "such other and further relief as the court deems just" will not support a default judgment for any specific sum. (Code of Civ. Proc. §585)

As such, the additional service charges are in excess of what was sought in the complaint.

c) Failure to Dismiss all Parties:

Plaintiff did not dismiss parties Does 1-25 provided for in its civil complaint as per California Rules of Court section 3.1800(a)(7).

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

Tentative Ruling
Issued By: lmg on 9-29-25.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***California Department of Public Health v. Prestige Biotech, Inc.***
Superior Court Case No. 24CECG02431

Hearing Date: October 1, 2025 (Dept. 403)

Motion: By Petitioner California Department of Public Health for Judgment of Condemnation

Tentative Ruling:

To continue to Tuesday, October 28, 2025 at 3:30 p.m. in Department 403. Petitioner is to submit a supplemental brief regarding procedures relevant in condemnation proceedings and a supplemental declaration addressing whether any agency pursuing criminal charges regarding these devices will need them as evidence. The supplemental briefing and declaration are to be filed no later than October 14, 2025.

Explanation:

Petitioner has not sufficiently addressed the relevant law in its motion. The Court is continuing the matter so that Petitioner may address the procedures for moving a Petition for Condemnation and Destruction of Embargoed Articles to judgment. The Court would note that Health and Safety Code section 111885 provides for destruction of medical devices which are adulterated, misbranded, falsely advertised, or otherwise in violation of the Sherman Food, Drug, and Cosmetic Laws. However, it provides for this "after entry of the judgment". (Ibid.) Here, the Court would request that Petitioner provide supplemental briefing, not to exceed five pages, regarding the procedures for obtaining a judgment under the circumstances of an unanswered petition for condemnation. Also, the Court would note that no proposed judgment was filed in conjunction with the moving papers.

The Court is also ordering Petitioner to provide a supplemental declaration regarding whether any agency may need the devices to remain until any relevant criminal proceedings are completed. This should include the status of any related criminal proceedings.

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

Tentative Ruling
Issued By: lmg on 9-29-25.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Grayson v. County of Fresno***
Case No. 22CECG01628

Hearing Date: October 1, 2025 (Dept. 403)

Motion: Plaintiff's Motion for Order Directing Sheriff-Coroner Margaret Mims to Release Autopsy Photos and Other Items

Tentative Ruling:

To deny the plaintiff's motion for an order directing Sheriff Mims to release the autopsy photos, videos, and other images taken of plaintiff's decedent, without prejudice.

Explanation:

Plaintiff moves to release the autopsy photos of decedent under Code of Civil Procedure section 129, subdivision (a)(2), which provides that, "Notwithstanding any other law, a copy, reproduction, or facsimile of any kind of a photograph, negative, or print, including instant photographs and video recordings, of the body, or any portion of the body, of a deceased person, taken by or for the coroner at the scene of death or in the course of a post mortem examination or autopsy, shall not be made or disseminated except as follows: ... (2) As a court of this state permits, by order after good cause has been shown and **after written notification of the request for the court order has been served, at least five days before the order is made, upon the district attorney of the county in which the post mortem examination or autopsy has been made or caused to be made**." (Emphasis added.)

Here, plaintiff's counsel served the motion to release the photos on former Sheriff Mims, the County of Fresno, and Wellpath. However, there is no evidence showing that plaintiff ever served the District Attorney's office with the motion. The District Attorney is located at a different address than the Sheriff or the County. The notice of motion also lists the wrong department for the hearing, as it lists Department 503 rather than Department 403. Therefore, plaintiff has failed to comply with the notice requirements of section 129(a)(2), and the court cannot grant the motion.

In addition, former Sheriff Mims has retired and no longer works for the County. Therefore, to the extent that plaintiff seeks an order compelling Mims to produce the photos, she is no longer in a position to release them. Plaintiff needs to move for an order directed at the current Sheriff or Coroner to release the photos, not to former Sheriff Mims. As a result, the court intends to deny the motion for release of the photos, without prejudice.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order

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

Tentative Ruling
Issued By: lmg on 9-29-25.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Ernest McKinney v. Ameris Bank***
Superior Court Case No. 25CECG02832

Hearing Date: October 1, 2025 (Dept. 403)

Motion: Demurrer

Tentative Ruling:

To sustain the demurrer to each cause of action. (Code Civ. Proc. § 430.10, subd. (e).) Plaintiff is granted 15 days leave to file a First Amended Complaint. The time in which the complaint may be amended will run from service of the order by the clerk.

Explanation:

Defendant Ameris Bank ("defendant") demurs to the complaint filed by plaintiff Ernest R. McKinney ("plaintiff") on June 26, 2025, on the grounds that the complaint fails to state a cause of action, pursuant to Code of Civil Procedure section 430.10 subdivision (e).

In his complaint, plaintiff alleges four "causes of action" for wrongful foreclosure, breach of contract, commercial dishonor under the Uniform Commercial Code ("UCC"), and declaratory and injunctive relief. Plaintiff alleges that he entered into a mortgage agreement with defendant. On or about April 24, 2025, he tendered a promissory note of $509,112.11 "for the full discharge of the mortgage debt." (Compl., ¶ 6.) Plaintiff asserts that since defendant did not respond to the promissory note within ten days, defendant "defaulted" under the UCC. (*Id*., ¶ 9.) As such, plaintiff alleges that subsequent foreclosure would be wrongful and deprive him of his home, equity, and property rights.

Legal Standard for Demurrers

On a demurrer, a court's function is limited to testing the legal sufficiency of the complaint. A demurrer is simply not the appropriate procedure for determining the truth of disputed facts. (*Fremont Indemnity Co. v. Fremont General Corp*. (2007) 148 Cal.App.4th 97, 113-114.) In determining a demurrer, the court assumes the truth of the facts alleged in the complaint and the reasonable inferences that may be drawn from those facts. (*Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 883.) The demurrer does not admit mere contentions, deductions or conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) On general demurrer, the court determines if the essential facts of any valid cause of action have been stated. (*Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 572; Code Civ. Proc. § 430.10 subd. (e).) Leave to amend should be granted if there is a reasonable possibility that plaintiff could state a cause of action. (*Blank v. Kirwan*, supra, 39 Cal.3d at 318.)

Wrongful Foreclosure

Plaintiff alleges that defendant has "no lawful right to foreclose" because defendant failed to respond to his promissory note, which he believes to be "a valid discharge of debt." (Compl., ¶ 13.) These are mere conclusions. Plaintiff fails to assert any legal elements of this cause of action, and fails to plead any facts to support this contention. Additionally, as defendant points out, a foreclosure sale has not yet occurred; therefore, there cannot be a wrongful foreclosure on which to base this claim.

Breach of Contract

Plaintiff alleges that he complied with his contractual obligations by tendering a "lawful satisfaction of debt." (Compl., ¶ 15.) Defendant then purportedly breached the mortgage agreement by failing to respond to the promissory note tendered. (*Id*., ¶ 16.) Plaintiff fails to introduce the mortgage agreement between the parties, or point to any provision breached by defendant. Plaintiff has not established the existence of the "contract" between the parties nor the obligations of each in order to determine whether the obligations have been respectively met and/or breached.

Commercial Dishonor Under UCC

Plaintiff in his complaint cites to UCC section 3-501(b)(2) to assert that defendant was required to respond to his "presentment of a negotiable instrument" and its failure to do so "constitutes commercial dishonor and relinquishment of enforcement rights." (Compl., ¶¶ 17-18.) Plaintiff views the promissory note that he sent as the "presentment" and since defendant did not respond, the obligation is "dishonored." Plaintiff has not demonstrated that he was entitled to make a "presentment" here, as he is the party owing on the mortgage agreement. Further, the court is unaware of any law that would allow a debtor to unilaterally change the terms of the contract or otherwise discharge his debt.

Declaratory and Injunctive Relief

Plaintiff seeks a determination that his debt was discharged and that defendant cannot proceed with foreclosure. (Compl., ¶ 19.) As such a declaration would rely on the first three causes of action, which have failed, the court cannot make such a declaration.

The court intends to sustain the demurrer to the complaint. Leave to amend is granted.

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

Tentative Ruling
Issued By: lmg on 9-29-25.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Alcala v. Certified Meat Products, Inc.***
Case No. 22CECG03628

Hearing Date: October 1, 2025 (Dept. 403)

Motion: Plaintiffs' Motion for Final Approval of Class Action Settlement

Tentative Ruling:

To grant plaintiffs' motion for final approval of the class settlement.

Explanation:

1. Class Certification

The court has already granted preliminary certification of the class for the purpose of settlement. Nothing has happened since the court granted its last order that would cause the court to change its determination that the class should be certified. Therefore, the court intends to grant certification of the class for the purpose of settlement.

2. Fairness and Reasonableness of the Settlement

The court has already granted preliminary approval of the settlement, including finding that the amount of the settlement is fair, adequate and reasonable. Nothing has happened since the court made its order that would cause it to change its determination. In fact, the class members' lack of objections and the sole request for exclusion by one class member tend to show that the class agrees that the settlement is reasonable. Therefore, the court intends to grant final approval of the settlement amount.

3. Class Notice and Lack of Objections

The class administrator sent out notices to the class as ordered, and received no objections. There was only one request for exclusion. Thus, the lack of objections and the minimal number of requests for exclusion indicate that the class members do not object to the settlement, which tends to support the court's determination that the settlement is fair, adequate, and reasonable.

4. Attorney's Fees and Costs

The court has already determined that the requested attorney's fees of $63,333.33 are reasonable. There have been no objections by the class to the requested fees, so the court intends to grant final approval of the requested fees.

***5.* Payment to Class Representative**

The court has already granted preliminary approval of a $15,000 service award to the named plaintiffs/class representatives, with Mr. Alcala and Mr. Alvarado each receiving a payment of $7,500. No class members have objected to the service awards. Therefore, the court intends to grant final approval of the service awards to the named plaintiffs.

6. Payment to Class Administrator

The court has already granted preliminary approval of the class administrator's fee of $7,000 to the class administrator, Apex Class Action Administration. No class members have objected to the fee. Therefore, the court therefore intends to grant final approval of the class administrator's fee.

7. PAGA Settlement

The court has already granted approval of the $15,000 PAGA settlement. The class members are not allowed to object to the PAGA settlement, as it is separate from the class settlement. As a result, the court does not have to revisit the issue of whether the PAGA settlement is fair, adequate, or reasonable.

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

Tentative Ruling
Issued By: lmg on 9-29-25.
(Judge's initials) (Date)

(20) **Tentative Ruling**

Re: ***Martinez v. Arredondo et al.***
Superior Court Case No. 25CECG01772

Hearing Date: October 1, 2025 (Dept. 403)

Motion: By Defendants to Compel Arbitration

Tentative Ruling:

To deny.

Explanation:

A trial court is required to grant a motion to compel arbitration "if it determines that an agreement to arbitrate the controversy exists." (Code Civ. Proc., § 1281.2) However, there is "no public policy in favor of forcing arbitration of issues the parties have not agreed to arbitrate." (*Garlach v. Sports Club Co.* (2012) 209 Cal.App.4th 1497, 1505.) Thus, when a motion to compel arbitration is filed and accompanied by prima facie evidence of a written agreement to arbitrate the controversy, the court itself must determine: (1) whether the agreement exists, and (2) if any defense to its enforcement is raised, whether it is enforceable. The moving party bears the burden of proving the existence of an arbitration agreement by a preponderance of the evidence. The party claiming a defense bears the same burden as to the defense. (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413-414.)

There is no dispute as to the existence of an agreement to arbitrate. Consistent with California law, the arbitration agreement states that plaintiff does not waive his right to bring a representative Private Attorney General Act ("PAGA") action. (Taylor Decl., Ex. A, Applicant Statement and Agreement.) Plaintiff explicitly brings this action for penalties under the PAGA, as a representative action only, with no individual PAGA claims.

Defendants rely on *Leeper v. Shipt, Inc.* (2024) 107 Cal.App.5th 1001, where the Second District Court of Appeals held that PAGA actions necessarily include an individual component. The complaint asserted multiple Labor Code violations and, on that basis, alleged a single count under PAGA. (*Id.* at pp. 1005–1006.) The plaintiff alleged she brought her PAGA action " 'on a representative, non-individual basis.' " (*Id*. at p. 1006.) She sought " 'non-individual' " remedies, including " 'non-individual civil penalties.' " (*Ibid*.) She went so far as to assert in her complaint that " '[b]ecause [she] alleges only non-individual PAGA claims ... [the employer] cannot compel them to arbitrat[ion].' " (*Ibid*.) The employer's motion to compel arbitration was denied because plaintiff alleged no individual claims. The court of appeal held that "any PAGA action" therefore "necessarily includes ... an individual PAGA claim." (*Id*. at p. 1009.) The California Supreme Court has granted review of *Leeper*.

Plaintiff, on the other hand, relies on *Balderas v. Fresh Start Harvesting, Inc.* (2024) 101 Cal.App.5th 533, which supports the notion that an aggrieved employee may bring a solely representative PAGA claim. "The statutory goal [to benefit the public and deter

violations] is furthered by extending broad standing to aggrieved employees *who do not depend on the viability or strength of a plaintiff's individual PAGA claim*." (*Id.* at p. 537.) The court held that "an employee who does not bring an individual claim against her employer may nevertheless bring a PAGA action for herself and other employees of the company." (*Id.* at p. 536.)

It is noted that the *Leeper* court's holding has been criticized in *Rodriguez v. Packers Sanitation Services LTD., LLC* (2025) 109 Cal.App.5th 69, where the court found *Leeper* unpersuasive and concluded a plaintiff cannot be compelled to arbitrate an individual PAGA claim when the complaint does not contain such a claim. (*Rodriguez*, 109 Cal. App. 5th at pp. 80-81.) However, the *Rodriguez* court noted that the only issue before it was whether the complaint contained an individual PAGA claim, "not whether it *should* include such a claim." (*Id.* at p. 81.) The court noted that "plaintiff's failure to assert an individual PAGA claim may mean the complaint fails to comply with section 2699, subdivision (a)." (*Id.*) Essentially, the *Rodriguez* court concluded that the plaintiff defines the scope of the lawsuit, and if the plaintiff says there is no individual PAGA claim, there is no individual PAGA claim. The Supreme Court has also granted review of *Rodriguez*, but noted that further action on the appeal is deferred pending the review of *Leeper*.

These are clearly issues ripe to be resolved by the California Supreme Court.

This year our own Fifth District Court of Appeals issued a ruling pertinent to this issue, though it did not involve a motion to compel arbitration. In *CRST Expedited, Inc. v. Superior Court of Fresno County* (2025) 112 Cal.App.5th 872, the trial court granted the employer's motion to compel arbitration of the individual PAGA claims and to dismiss the nonindividual PAGA claims. After the Cal. Supreme Court's decision in *Adolph v. Uber Technologies, Inc*. (2023) 14 Cal.5th 1104, the court granted the plaintiff's ex parte motion to reconsider, and implemented the holding in *Adolph* by reinstating the nonindividual PAGA claims it had previously dismissed. After the representative plaintiff moved to dismiss his individual claims to avoid arbitration the employer brought a motion for judgment on the pleadings, asserting the plaintiff no longer had standing to pursue the nonindividual PAGA claims because he had dismissed his individual PAGA claims.

The trial court denied the motion for judgment on the pleadings, finding "that plaintiff's dismissal of his individual PAGA claims did not strip his standing to pursue PAGA remedies in a representative capacity." The employer challenged this decision by way of writ of mandate. The Fifth District Court of Appeal agreed and denied the writ:

> "We conclude PAGA is not an ordinary statute, the problems it attempts to remedy are unusual, and *Viking River* drastically altered the legal landscape in which PAGA is applied. These exceptional circumstances and the PAGA's underlying purpose support the following legal conclusions. First, the *and* in former subdivision (a) of section 2699 is ambiguous. Second, PAGA's purpose of encouraging enforcement of California's labor laws is best served by interpreting the ambiguous *and* liberally to include both *and* and *or*. Thus, the subdivision permitted the employee, as a representative of the Labor and Workforce Development Agency (LWDA), to bring a PAGA action seeking the recovery of civil penalties (1) for the Labor Code

> violations suffered only by the employee, (2) for the Labor Code violations suffered only by other employees, or (3) both. In short, headless PAGA actions were among the choices allowed the LWDA's representatives."

(*Id.* at p. 883.)

The court requested supplemental briefing on the above cases and the impact of the 2024 amendments to the PAGA Labor Code sections. Section 2699, subdivision (a), was amended as follows:

> (a) Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of ~~himself or herself~~ *the employee* and other current or former employees *against whom a violation of the same provision was committed* pursuant to the procedures specified in Section 2699.3.

It was subdivision (a) that the *CRST* court focused on in concluding that a headless PAGA action is permissible. Subdivision (a) makes no alteration that would change that result.

Subdivision (c)(1) was also amended, as follows:

> For purposes of this part, "aggrieved employee" means any person who was employed by the alleged violator and ~~against whom one or more of the alleged violations was committed.~~ *personally suffered each of the violations alleged during the period prescribed under Section 340 of the Code of Civil Procedure, except that for purposes of actions brought pursuant to paragraph (2), "aggrieved employee" means any person who was employed by the alleged violator against whom one or more of the alleged violations was committed within the period prescribed under Section 340 of the Code of Civil Procedure.*

This amendment does not substantively change *CRST*'s analysis either. The definition of "aggrieved employee" became a bit stricter, from "any person who was employed by the alleged violator and against whom *one or more of the alleged violations was committed*" to one who "personally suffered *each* of the violations …" (Emphasis added.)

Here, plaintiff alleges that he "is an 'aggrieved employee' with standing to bring an action under PAGA, as he was employed by Defendants during the applicable statutory period and suffered the Labor Code violations alleged herein." (Complaint ¶ 16.) As plaintiff alleges that he is an aggrieved employee, the amendments to section 2699 do not appear to change *CRST*'s conclusion that a PAGA action brought by an aggrieved employee may be brought in a representative capacity only, with no "individual" PAGA claims.

The curt concludes that in this case, based on plaintiff's delineation of his claims, there is no individual PAGA claim to arbitrate, and the motion to compel arbitration is therefore denied.

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

Tentative Ruling
Issued By: lmg on 9-30-25 .
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Tranquilino v. Almeida et al.***
Superior Court Case No. 23CECG00841

Armando Flores Cruz, by and through his successor in interest, Matias Flores Crisostomo v. Muniz Trucking et al.
Consolidated Action

Tut v. Western Grain & Milling, Inc. et al.
Consolidated Action

Hearing Date: October 1, 2025 (Dept. 403)

Motion: By Defendant Green Valley Dairy LLC for Summary Judgment or, in the Alternative, Summary Adjudication

Tentative Ruling:

To deny summary judgment. To grant the alternative motion for summary adjudication as to the cause of action for general negligence.

Explanation:

Several parties filed separate actions regarding a motor vehicle collision that occurred on December 3, 2021. The Complaint and consolidated actions generally allege two causes of action as to defendant Green Valley Dairy LLC ("Defendant"): for a motor vehicle collision on the basis of vicarious liability, and for general negligence in a form of direct liability. Defendant now moves for summary judgment or, in the alternative, summary adjudication as to all consolidated plaintiffs Armando Flores Cruz, by and through his successor in interest, Matias Flores Crisostomo, Matias Flores Crisostomo, and Josephina Cruz; Celso Dionicio Tranquilino and Herlinda Yat Tut.

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(c); *Schacter v. Citigroup* (2009) 47 Cal.4th 610, 618.) The issue to be determined by the trial court in consideration of a motion for summary judgment is whether or not any facts have been presented which give rise to a triable issue, and not to pass upon or determine the true facts in the case. (*Petersen v. City of Vallejo* (1968) 259 Cal.App.2d 757, 775.)

The moving party bears the initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he or she carries this burden, the burden shifts to plaintiff to make a prima facie showing of the existence of a triable issue. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849.) A defendant has met his burden of showing that a cause of action has no merit if he has shown that one or more elements of the cause of action cannot be established, or that there is a complete defense to that cause of action. (*Ibid.*) Once the defendant has met that

burden, the burden shifts to the plaintiff to show a triable issue of one or more material facts exists as to the cause of action or a defense thereto. (*Ibid.*)

The pleadings are not entirely consistent with each other as to vicarious liability. Only the action filed by plaintiff Tranquilino states an action against Defendant as part of his first cause of action on the basis of vicarious liability, Defendant's motion does not address the first cause of action. The motion for summary judgment is therefore denied.

Defendant seeks in the alternative, summary adjudication. The two primary bases upon which the motion is predicated, that there is no triable issue of material fact as to the condition of the property and that there is no duty owed to post signage on public roads, would appear to dispose of the entirety of the second cause of action for general negligence. This appears to address the common cause of action amongst the consolidated pleadings on the theory of general negligence. The court proceeds.[1]

Defendant submits as to the second cause of action that it held no duty to Plaintiff. Defendant argues that merely as the landowner, its duty is to act reasonably in the management of the property. (*Rowland v. Christian* (1968) 69 Cal.2d 108, 119.) To depart from the general rule of ordinary care, factors include the foreseeability of the risk, the degree of certainty of injury, and the burden on the landowner is outweighed by the risk to the party who may suffer injury. (*Id.* at p. 113.)

Defendant argues that California law imposes no duty on landowners to provide warnings at intersections entering or exiting of weather or traffic conditions. Specifically, Defendant submits that a landowner has no requirement to protect the driving public from commercial vehicles leaving a private driveway. Defendant relies on *A. Teichert & Son, Inc. v. Superior Court*, which is instructive. (*A. Teichert & Son, Inc. v. Superior Court* (1986) 179 Cal.App.3d 657 ["*Teichert*"].)

In *Teichert*, a cyclist was fatally injured by a driver turning off of a state highway into the defendant's private property. (*Teichert*, *supra*, 179 Cal.App3d. at p. 660.) Two theories were alleged on the grounds of vicarious liability and direct liability because the defendant "negligently, recklessly, and wantonly owned, maintained, controlled, and operated" the road. (*Ibid.*) The defendant moved for summary judgment on the grounds that, among other things, it could not be held directly liable for negligence because it owed no duty to the decedent to control traffic off of its premises. (*Ibid.*) The plaintiff opposed, arguing that the law imposed a duty to manage its property so as to avoid unreasonable risks of harm to persons on or off the premises who might foreseeably be injured by a lack of due care, and that compliance with that duty required the

[1] Plaintiffs Armando Flores Cruz, by and through his successor in interest, Matias Flores Crisostomo, Matias Flores Crisostomo, and Josephina Cruz note that though Defendant's motion for summary judgment indicates seeking summary adjudication in the alternative, Defendant's Statement of Undisputed Material Facts is not structured for summary adjudication of any specific issue. (Cal. Rules of Ct., rule 3.1350(c)(2), (d).) The failure to comply with the requirements for the Statement, may, in the court's discretion, constitute a sufficient ground for denial of the motion. (Code Civ. Proc., § 437c, subd. (b)(1).) While Plaintiffs are correct, this does not appear to have caused Plaintiff any confusion or inability to respond to the assertions therein. Accordingly, the court proceeds. (*See also San Diego Watercrafts, Inc. v. Wells Fargo Bank* (2002) 102 Cal.App.4th 308, 315-316.)

defendant to post warning signs of a device cautioning passersby on the state highway of frequent truck traffic in and out of the premises. (*Id.* at p. 662.)

The Court of Appeals in *Teichert* concluded that the defendant was entitled to summary judgment. The *Teichert* court restated that an owner or possessor of land may be liable for injuries incurred by persons off the premises as a result of natural or artificial conditions of the land. (*Teichert*, *supra*, 179 Cal.App.3d at p. 663 *citing Sprecher v. Adamson Companies* (1981) 30 Cal.3d 358, 371.) The *Teichert* court further restated that activities on the land that give rise to a hazardous condition off the premises may also result in a duty being imposed on the landowner to remedy that hazard. (*Teichert*, *supra*, 179 Cal.App.3d at p. 663 *citing Kopfinger v. Grand Central Pub. Market* (1964) 60 Cal.2d 852, 857.) The *Teichert* court found that the plaintiff failed to make a showing that the accident was attributable to any specific condition, natural or artificial, on the defendant's property. (*Teichert*, *supra*, 179 Cal.App.3d at p. 663.) The *Teichert* court rejected the assertion that a property owner has a duty to erect signs for the purpose of controlling or regulating traffic on adjacent public roads because the property owner is actually prohibited by law from doing so. (*Id.* at pp. 663-664.) Those powers belong only to the local authorities or the state. (*Ibid.*) The prohibition extends to posting of signs, signals, or other devices displayed "upon, or in view of, any highway." (*Id.* at p. 664, *citing* Veh. Code, § 21465.)

Here, Defendant submits that defendant Antonio Muniz Almeida ("Almeida") left Defendant's driveway to turn left onto State Route 145. (Defendant's Undisputed Material Facts ["UMF"] No. 4.) While Almeida was completing his turn, Almeida's trailer was struck by a van. (UMF No. 7.) Up until the moment of impact, Almeida felt he was making the turn safely. (*See id.*; Hoppe Decl., Ex. A, Almeida Deop., p. 108:1-3.)[2]

Plaintiffs Armando Flores Cruz, by and through his successor in interest, Matias Flores Crisostomo, Matias Flores Crisostomo, and Josephina Cruz (together "Plaintiffs") opposes. Plaintiffs submit that other cases have imposed a duty onto landowners. Plaintiffs cite to *Annocki v. Peterson Enterprises, LLC*. There, the court imposed a duty to warn patrons that only a right turn could be made onto the highway. (*Annocki v. Peterson Enterprises, LLC* (2024) 232 Cal.App.4th 32, 38.) However, the facts are distinguishable. The court there premised the finding on facts that showed that traffic dividers on the highway made a left turn out of the parking lot an impossibility. (*Ibid.*) This was considered after acknowledging the foundation that a landowner otherwise has no duty to control the condition of the adjacent roadway and cannot place signs. (*Id.* at p. 38.) Here, there are no similar showing that a permanent divider, or other conditions, make a left turn off of the property an impossibility. (*See generally* Plaintiffs' Additional Material Facts ["AMF"].)[3] Nor do Plaintiffs identify an aspect of the land, natural or artificial, as opposed to the fog, that would form the basis of liability.

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[2] Plaintiff's Objections to the Declaration of Steven Campos are overruled as to No. 1 and 2, and sustained as to No. 3 for lack of foundation. The court notes that contradiction of testimony is a challenge to the assertion, and not an objection.

[3] Defendant's Objections to the declaration of V. Paul Herbert are sustained in their entirety on the grounds of improper opinion testimony. Plaintiff fails to establish Herbert as an expert for the purposes of submitting opinion testimony. (*See generally* Herbert Decl.) While Herbert may have knowledge and experience, Plaintiff fails to establish that the subject, upon which Herbert is

Plaintiffs next rely on a California Division of Occupational Safety and Health ("Cal/OSHA") standard. As Defendant notes on reply, Cal/OSHA operates for the purpose of assuring safe and healthful working conditions. (Lab. Code, § 6300 *et seq.*) Plaintiff does not articulate how Cal/OSHA standards operate to create a duty imposed on Defendant owed to Plaintiffs. Plaintiffs cite to Title 8 of the California Code of Regulations, sections 1598 and 1599. Plaintiffs suggest that the subchapter title of "Construction Safety Orders" can be ignored. It cannot. The subchapter specifically defines its application, to "establish minimum safety standards whenever employment exists in connection with the construction, alteration, painting, repairing, construction maintenance, renovation, removal, or wrecking of any fixed structure or its parts." (8 Cal. Code Regs., § 1502, subd. (a) [emphasis added].) Plaintiffs do not suggest that any of these scenarios are applicable. (*See generally* Plaintiffs' AMF.) Nor do Plaintiffs suggest that Plaintiffs were employed within the meaning of Labor Code section 6303, subdivision (b).

Based on the above, the court finds that Defendant meets its burden as the moving party to show it did not owe a duty to Plaintiffs based on Defendant's ownership of the driveway. Plaintiffs' opposition fails to raise any triable issues of material fact. Plaintiff Tranquilino did not oppose. Plaintiff Tut filed a notice of joinder to the opposition filed by Plaintiffs in all aspects. Plaintiff Tut cites no statutory basis upon which she asserts a joinder. Moreover, it does not appear from the proof of service of the joinder notice that the opposition would have been timely based on the methods of service. However, the would-be joinder does not appear to materially change the outcome. The court issues no findings as to the validity of the joinder in light of the immateriality of the outcome. The court finds that Defendant sufficiently negates an element of the common cause of action for negligence, and the alternative motion for summary adjudication is granted as to the causes of action for general negligence.

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
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offered, is sufficiently beyond common experience. (Evid. Code, § 801, subd. (a).) Neither does Herbert identify any quantifiable standard, or something "of a type that reasonably may be relied upon by an expert." (*Id.*, § 801, subd. (b).)