**Tentative Rulings for October 7, 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)**

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

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

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**(Tentative Rulings begin at the next page)**

# Tentative Rulings for Department 403

Begin at the next page

(47)

**Tentative Ruling**

Re: ***City of Fresno v Kiavi Properties, LLC***
Case No. 25CECG03632

Hearing Date: October 7, 2025 (Dept. 403)

Motion: City of Fresno's Petitions to Abate Substandard Buildings and for Appointment of Receiver

**Tentative Ruling:**

To grant the City's petitions to abate substandard buildings and for appointment of a receiver as to the respondents' property located at 611 E. Kearney Blvd., in the City of Fresno, California, Assessor Parcel Number 467-181-03) (Health & Safety Code § 17980.7, subd. (c).)

**Explanation:**

Under Health and Safety Code section 17980.6, subdivision (a), "If any building is maintained in a manner that violates any provisions of this part, the building standards published in the State Building Standards Code relating to the provisions of this part, any other rule or regulation adopted pursuant to the provisions of this part, or any provision in a local ordinance that is similar to a provision in this part, and the violations are so extensive and of such a nature that the health and safety of residents or the public is substantially endangered, the enforcement agency may issue an order or notice to repair or abate pursuant to this part."

Also, "Any order or notice pursuant to this subdivision shall be provided either by both posting a copy of the order or notice in a conspicuous place on the property and by first-class mail to each affected residential unit, or by posting a copy of the order or notice in a conspicuous place on the property and in a prominent place on each affected residential unit." (Health & Safety Code § 17980.6, subd. (a).)

"The order or notice shall include, but is not limited to, all of the following: (a) The name, address, and telephone number of the agency that issued the notice or order. (b) The date, time, and location of any public hearing or proceeding concerning the order or notice. (c) Information that the lessor cannot retaliate against a lessee pursuant to Section 1942.5 of the Civil Code." (*Ibid*.)

In addition, under Health and Safety Code section 17980.7, subdivision (c), "The enforcement agency, tenant, or tenant association or organization may seek and the court may order, the appointment of a receiver for the substandard building pursuant to this subdivision."

Furthermore, "In its petition to the court, the enforcement agency, tenant, or tenant association or organization shall include proof that notice of the petition was served not less than three days prior to filing the petition, pursuant to Article 3

(commencing with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure, to all persons with a recorded interest in the real property upon which the substandard building exists." (Health & Safety Code § 17980.7, subd. (c).)

"The Supreme Court considered the appointment of a receiver under section 17980.7 in *City of Santa Monica v. Gonzalez* (2008) 43 Cal.4th 905, 76 Cal.Rptr.3d 483, 182 P.3d 1027 (*Gonzalez* ). As explained in *Gonzalez*, when a building is maintained in a manner that violates state or local building maintenance regulations and 'the violations are so extensive and of such a nature that the health and safety of residents or the public is substantially endangered' (Health & Saf. Code, § 17980.6), the local enforcement agency may issue a notice and order requiring repair or abatement of the unlawful conditions. (*Gonzalez*, *supra*, 43 Cal.4th at pp. 919–920, 76 Cal.Rptr.3d 483, 182 P.3d 1027.) If the owner of the building thereafter fails to comply with the notice and order in a reasonable period of time, the enforcement agency can seek an order from the trial court appointing a receiver to oversee compliance. (*Id*. at p. 921, 76 Cal.Rptr.3d 483, 182 P.3d 1027.)" (*City of Crescent City v. Reddy* (2017) 9 Cal.App.5th 458, 465–466.)

Here, the City has complied with the requirements of Health and Safety Code sections 17980.6 and 17980.7. The property has multiple code violations, such as insect and rodent infestation; inoperable roof-mounted heating, ventilation, and air conditioning systems; window screens missing throughout the property; an accumulation of junk, debris, combustible materials, and other similar items located through the property that constitute fire, health, and safety hazards; the electrical outlet located at the north wall is improperly installed; and missing carbon monoxide alarms.

The violations are serious enough to pose a significant health and safety risk to the neighboring properties, as well as anyone who might be living illegally on the property.

Also, the City has complied with the notice provisions of the statute. The City has posted notices of violations on the property, and has given at least three days' notice to the occupants, owners, and those with an interest in the property. The owners have been given multiple chances to cure the violations, and have failed to do so. It does not appear that the owners are going to correct the violations on their own, as they have not done so despite multiple citations. Therefore, the City has met the requirements of Health and Safety Code sections 17980.6 and 17980.7 and the court intends to approve the appointment of a receiver to abate the nuisances on the property.

The receiver the City has nominated, Richardson C. Griswold of Griswold Law, APC, who appears to be qualified, as he has managed many other distressed properties in the past. The court intends to grant the requested relief and appoint the receiver to manage the property.

The court also intends to grant the request to allow the receiver to issue receiver's certificates to finance any improvements or repairs to the property, and to grant super priority lien status to the Receiver's lien at the conclusion of the proposed receivership. (Health & Safety Code § 17980.7, subd. (c)(4)(G).)

Finally, the City is also entitled to an award of its attorney's fees and costs from respondents, although this is an order that can only be made after a judgment is entered finding that the property is in a dangerous condition. (Health & Safety Code § 17980.7, subd. (d)(1).)

Pursuant to CRC 3.1312 and CCP §1019.5(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 _____10-6-25_____.**

(Judge's Initials) (Date)

(46)

**Tentative Ruling**

Re: ***Antonio Cuevas v. Stairway Fabricators, Inc.***
Superior Court Case No. 24CECG02097

Hearing Date: October 7, 2025 (Dept. 403)

Motion: Demurrer and Motion to Strike Punitive Damages

**Tentative Ruling:**

To sustain the demurrer to the Second Amended Complaint, and to grant the motion to strike punitive damages. Plaintiff is 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*

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; *Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) 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).) 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.) 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.)

Defendant Stairway Fabricators, Inc. ("defendant") first argues that the Second Amended Complaint ("SAC") is a sham pleading. A plaintiff may not avoid a subsequent demurrer by pleading facts or positions in an amended complaint that contradict the facts pleaded in the prior complaint or by suppressing facts that prove the pleaded facts false without explanation. (*JPMorgan Chase Bank, N.A. v. Ward* (2009) 33 Cal.App.5th 678, 690.)

Here, defendant states that the original complaint[1] alleged plaintiff Antonio Cuevas ("plaintiff") "was placed on a leave of absence for approximately five weeks and then, when he was cleared to return to work, had restrictions imposed on his job

[1] Defendant's request for judicial notice is granted.

duties[.]" (Compl., ¶ 12.) Then in the First Amended Complaint ("FAC"), it was stated plaintiff's "medical provider placed him under physical restrictions" without mentioning being placed on leave at work. (FAC, ¶ 12.) The operative SAC submits that "[d]ue to these limitations to his daily life activities, including his ability to work, Plaintiff was placed on medical leave for five weeks as these the aforementioned limitations persisted" prior to notifying his employer of his restrictions. (SAC, ¶¶ 12, 13.)

The court is not inclined to find that the aforementioned factual adjustments between the pleadings are sufficiently contradictory or harmful to indicate a sham pleading. The court finds that the SAC is not subject to sham pleading doctrine.

Defendant then argues that the complaint fails to allege an actionable disability for which plaintiff was discriminated. To assert a prima facie case of disability discrimination, including perceived disability discrimination, under the Fair Employment and Housing Act ("FEHA"), an employee must plead facts establishing that (1) he has a disability or medical condition; (2) he is qualified to perform the essential duties of his position, with or without reasonable accommodation; (3) he suffered an adverse employment action; and (4) the employer subjected him to the adverse action because of his disability or perceived disability. (*Jensen v. Wells Fargo Bank* (2000) 85 Cal.App.4th 245, 254.)

Plaintiff alleged that he was diagnosed with an injury to his back and lumbar muscle. (SAC, ¶ 12.) The "touchstone of a qualifying [physical] disability is an actual or perceived physiological disorder which affects a major body system and limits the individual's ability to participate in one or more major life activities." (*Avila v. Continental Airlines, Inc.* (2008) 165 Cal.App.4th 1237, 1248.) Plaintiff amended his complaint to describe the injury as limiting his ability to stand for long periods of time, driving, walking long distances, and bending over. (SAC, ¶ 12.) However, while plaintiff elaborated on how the injury affected some aspects of his day-to-day life, the injury remains insufficiently described. Those physical limitations listed (e.g. standing and walking but qualified by "long" periods of time) can be attributable to nothing more than mild muscle ache and soreness, which are excluded from the definition of actionable disability.

Additionally, plaintiff must allege he is qualified to perform the essential duties of his position. Plaintiff detailed in the SAC that his position as a "general physical laborer" means that he primarily constructed stairs and participated in welding. But, this description is broad and general, and does not specify the physical labor involved whereby it can be ascertained that the injury pled affected (or did not affect) his ability to perform his job duties. Plaintiff does not allege that he would have been qualified to perform the essential duties of his position with or without accommodation. (*Green v. State of California* (2007) 42 Cal.4th 254, 262.)

The facts of the SAC pled in support of disability discrimination must be tightened up to sufficiently allege the necessary elements. However, both parties are reminded that the requirement is *not* to plead evidentiary facts, but rather 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.) The court intends to sustain the demurrer to the first cause of action with leave to amend.

Plaintiff then argues that he only needed to amend his complaint by resolving the specified deficiencies identified by the previous judge ruling on this matter and therefore the demurrers to those other causes of action cannot be sustained. That is not an accurate reading of the court's ruling. Plaintiff's failure to adequately plead an actionable disability affected the viability of his other causes of action. When receiving leave to amend, plaintiff has the opportunity and responsibility to review his entire pleading for deficiencies.

Again, the determination that the allegations of disability and qualification are inadequate undermines the second thru fourth and seventh causes of action, which also seek relief under FEHA. Plaintiff should ensure that each of these causes of action comply with the language and elements of the statute. As for the eighth and ninth causes of action, plaintiff either did not amend the pleading as to these causes of action or added in minimal language that does not cure the court's previous determination that the pleading fails to allege specific complaints or conduct sufficient to implicate the Labor Code statutes alleged in the eighth and ninth causes of action. Similarly, plaintiff has not resolved the deficiencies of the tenth cause of action. The demurrer to the Second Amended Complaint is sustained with leave to amend.

*Motion to Strike*

"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.)

Vague and conclusory allegations are not enough to justify a prayer for punitive damages. The plaintiffs must allege facts showing fraud, malice or oppression. (*G.D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 29-30.) The plaintiff must also allege that defendant acted despicably. (*College Hospital, Inc. v. Superior Court* (1994) 8 Cal.4th 704, 719-720.)

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.

Civil Code section 3294 was amended in 1987 to require a showing of despicable conduct as a predicate to the recovery of punitive damages. "Despicable conduct" is defined as conduct that is so vile, base or contemptible that it would be looked down on and despised by reasonable people."

> Used in its ordinary sense, the adjective "despicable" is a powerful term that refers to circumstances that are "base," "vile," or "contemptible." (4 Oxford English Diet. (2d ed. 1989) p. 529.) As amended to include this word, the statute plainly indicates that absent an intent to injure the plaintiff, "malice" requires more than a "willful and conscious" disregard of the plaintiffs' interests. The additional component of "despicable conduct" must be found. (Accord, BAJJ No. 14.72.1 (1992 Re-Rev.)); *Mock v. Michigan Miliers Mutual ins. Co.* (1992) 4 Cal.App.4th 306, 331.)

(*College Hospital, Inc., v. Superior Court of Orange County*, *supra,* 8 Cal.4th at p. 725.)

The addition of the criterial adjective "despicable" was a significant substantive limitation on the recovery of punitive damages (along with the elevation of the burden of proof), as it is a "powerful term." (*College Hospital, Inc. v. Superior Court, supra,* 8 Cal.4th 725.) On the continuum of conduct, it is toward the extreme, eliciting adjectives such as vile or base and rousing the contempt or outrage of reasonable people. (*American Airlines, Inc. v. Sheppard, Mullin, Richter & Hampton* (2002) 96 Cal.App.4th 1017, 1050-1051.)

The SAC does not set forth sufficient facts that defendant acted with "willful" and "despicable" conduct as is required by statute. None of the allegations contained in the SAC demonstrate specific conduct that is base, vile or contemptible. The use of the term "malicious" with nothing more is conclusory and does not prove or disprove a material fact, and a prayer for punitive damages cannot be sustained on conclusory allegations. Plaintiff has not met his evidentiary burden of clear and convincing evidence and fails to support the claim for punitive damages. Therefore, the court intends to grant the motion to strike the items set forth in the Notice of Motion to Strike. The court grants leave to amend.

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

**Tentative Ruling**
**Issued By: lmg on 10-6-25.**
(Judge's initials) (Date)

(34)

**Tentative Ruling**

Re: ***Ramey v. Chavez-Avina, et al.***
Superior Court Case No. 24CECG04611

Hearing Date: October 7, 2025 (Dept. 403)

Motion: Defendant Ramon Chavez-Avina's Demurrer and Motion to Strike Complaint

**Tentative Ruling:**

To sustain the general demurrer to the breach of contract and intentional tort causes of action. (Code Civ. Proc., § 430.10, subd. (e).) To sustain the special demurrer for uncertainty to the breach of contract and intentional tort causes of action. (Code. Civ. Proc., § 430.10, subd. (f).) Leave to amend is granted.

To grant the motion to strike the punitive damage allegations. Leave to amend is granted.

Plaintiff is granted 20 days leave to file the First Amended Complaint, which will run from service by the clerk of the minute order. New allegations/language must be set in **boldface** type.

**Explanation:**

Defendant Ramon Chavez-Avina demurs to the Complaint on the basis that it fails to state a cause of action and is uncertain. (Code Civ. Proc. § 430.10, subds. (e), (g).) The court intends to sustain the general and special demurrers.

Plaintiff Alicia Ann Ramey filed the complaint using the Judicial Form complaint for contract disputes. The Complaint alleges the parties entered into a contract and indicates at paragraph 8 the that plaintiff is alleging causes of action for breach of contract, bad faith in breaching the "standard of insurance contract, [sic] when failing to compensate for property loss." (Complaint, ¶ 8.) The causes of action attached to the complaint include the form attachments for intentional tort, exemplary damages, and general negligence. The cause of action attachments for both intentional tort and general negligence reference the attached 18-page narrative. Within the narrative, plaintiff alleges her vehicle was parked on State Route 99 with hazard lights flashing when it was struck by a vehicle driven by defendant Chavez-Avina. Defendant is alleged to have been intoxicated at the time of the collision and arrested at the scene of the accident. Plaintiff alleges she presented the claim for property damage to Chavez-Avina's automobile insurance where she was offered a sum she describes as a "low ball offer." Plaintiff alleges she suffered emotional distress as a result of the destruction of her property. All allegations with respect to the existence of an insurance contract describe defendants Viking Insurance Company and its named employees, who are no longer parties to this action following the judgment of dismissal entered on September 12, 2025.

In ruling on a demurrer, the trial court is obligated to look past the form of the pleading to its substance; erroneous or confusing labels attached by the inept pleader are to be ignored if complaint pleads facts that would entitle plaintiff to relief. (*Saunders v. Cariss* (1990) 224 Cal.App.3d 905, 908.) Here, it cannot be said that plaintiff has pleaded a cause of action for breach of contract or intentional tort against defendant Chavez-Avina. The cause of action for general negligence is not the subject of the demurrer.

A cause of action for damages for breach of contract is comprised of the following elements: (1) the existence of a contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff. (*Careau & Co.* v. *Security Pacific Business Center* (1990) 222 Cal.App.3d 1371, 1388.) Where plaintiff alleges breach of contract, "the terms must be set out verbatim in the body of the complaint or a copy of the written agreement must be attached and incorporated by reference." (*Harris v. Rudin, Richman & Appel* (1999) 74 Cal.App.4th 299, 307). Although the form complaint suggests there exists a contract between the parties, the terms of the contract are not pleaded and no breach of contract is pleaded. The only contract alleged is an insurance contract between plaintiff's insurer and herself. Accordingly, the demurrer of Chavez-Avina to the cause of action for breach of contract is sustained, with leave to amend. (Code Civ. Proc. §430.10, subd. (e).)

Plaintiff alleges a cause of action for intentional tort and within her narrative describes a claims for "wonton infliction of emotional distress as a result of destruction of property." The court interprets the cause of action for intentional tort to be for 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.)

Here, there are no allegations to support defendant Chavez-Avina's actions were intended to cause emotional distress to plaintiff as there are no allegations that plaintiff was present to witness the acts causing property damage or that such acts were directed toward plaintiff. Accordingly, the demurer is sustained with leave to amend. (Code Civ. Proc. § 430.10, subd. (e).)

Defendant additionally argues the cause of action is subject to demurrer as there is no recovery for emotional distress damages in connection with property damage. However, the case authority relied upon is with respect to property damages arising from a breach of contract rather than negligence as alleged here. (See *Erlich v. Menezes* (1999) 21 Cal.4th 543, 558.)

Additionally, a party may object by demurrer to any pleading on the ground that it is uncertain. (Code Civ. Proc., § 430.10, subd. (f).) 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*.)

Here, there is no distinction as to which causes of action are alleged against which defendants. As such the defendant is left to speculate what issues must be admitted or denied. Accordingly, the complaint is uncertain and the special demurrer is sustained, with leave to amend. (Code Civ. Proc. §430.10, subd. (f).)

**Motion to Strike**

Defendant Ramon Chavez-Avina moves to strike the claim for exemplary damages.

"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 appears to seek punitive damages in connection with all causes of action premised in part upon defendant's operation of his motor vehicle while under the influence of alcohol. Inasmuch as the general demurrer to the causes of action for breach of contract and intentional infliction of emotional distress claims are sustained, the claim for exemplary damages in connection with these claims is stricken as well.

The general negligence cause of action remains, however plaintiff's damage allegations are limited to property damage. No physical injuries to plaintiff are alleged. A plaintiff may recover punitive damages against a defendant where the defendant's conduct in driving while intoxicated caused the plaintiff's injuries. (*Taylor v. Superior Court* (1979) 24 Cal.3d 890, 896-897.) As no personal injuries are alleged by plaintiff, the motion to strike the claims for punitive damages is granted with leave to amend.

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

**Tentative Ruling**
**Issued By: lmg on 10-6-25.**
(Judge's initials) (Date)

(37)

**Tentative Ruling**

Re: ***Cartozian Air Conditioning & Heating, Inc. v. Gonzalez***
Superior Court Case No. 22CECG03931

Hearing Date: October 7, 2025 (Dept. 403)

Motion: By Defendant for Sanctions

**Tentative Ruling:**

To deny.

**Explanation:**

Under Code of Civil Procedure section 128.7, subdivision (b),

By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met:

(1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

(3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

"If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation. In determining what sanctions, if any, should be ordered, the court shall consider whether a party seeking sanctions has exercised due diligence." (Code Civ. Proc., § 128.7, subd. (c).)

"A motion for sanctions under this section shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). Notice of motion shall be served as provided in Section 1010, but shall not be filed with or presented to the court unless, within 21 days after service of the motion, or any

other period as the court may prescribe, the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion." (Code Civ. Proc., § 128.7, subd. (c)(1).)

"A sanction imposed for violation of subdivision (b) shall be limited to what is sufficient to deter repetition of this conduct or comparable conduct by others similarly situated. Subject to the limitations in paragraphs (1) and (2), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation." (Code Civ. Proc., § 128.7, subd. (d).)

"Code of Civil Procedure section 128.7 was adopted to apply rule 11 of the Federal Rules of Civil Procedure (28 U.S.C.) (hereinafter rule 11), as amended in 1993, to cases brought on or after January 1, 1995. Because of this intent and the fact that the wording of Code of Civil Procedure section 128.7, subdivisions (b)(2) and (c) is almost identical to that found in rule 11(b)(2) and (c), federal case law construing rule 11 is persuasive authority with regard to the meaning of Code of Civil Procedure section 128.7."(*Guillemin v. Stein* (2002) 104 Cal.App.4th 156, 167, internal citation omitted.)

"Under both Code of Civil Procedure section 128.7 and rule 11, there are basically three types of submitted papers that warrant sanctions: factually frivolous (not well grounded in fact); legally frivolous (not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law); and papers interposed for an improper purpose." (*Ibid,* internal citation omitted.) A pleading or motion is "frivolous" under section 128.7 if any reasonable attorney would agree that it is totally and completely without merit. (*Id.* at p. 168, citing *In re Marriage of Flaherty* (1982) 31 Cal.3d 637, 650.)

While a complaint may initially appear to be supported by the evidence at the time of filing, if subsequent discovery reveals information that tends to show that the complaint is unsupported by the facts, the plaintiff's attorney is under an obligation to conduct a further investigation into the facts, or potentially face sanctions for pursuing a frivolous action. (*Childs v. State Farm Mutual Auto Ins. Co*. (1994) 29 F.3d 1018, 1024-1025.) When conducting the investigation, the plaintiff's attorney cannot simply bury his head in the sand, and must take into account the defendant's evidence indicating that the complaint is unfounded in fact. (*Ibid*.)

"Code of Civil Procedure section 128.7 provides for a 21-day period during which the opposing party may avoid sanctions by withdrawing the offending pleading or other document. By providing this safe harbor period, the Legislature designed the statute to be 'remedial, not punitive.' When a party does not take advantage of the safe harbor period, the 'statute enables courts to deter or punish frivolous filings which disrupt matters, waste time, and burden courts' and parties' resources.'" (*Peake v. Underwood* (2014) 227 Cal.App.4th 428, 441, internal citations omitted.)

"A court has broad discretion to impose sanctions if the moving party satisfies the elements of the sanctions statute. However, the sanctions statute '"must not be construed so as to conflict with the primary duty of an attorney to represent his or her client zealously. Forceful representation often requires that an attorney attempt to read a case or an agreement in an innovative though sensible way. Our law is constantly evolving, and effective representation sometimes compels attorneys to take the lead in that evolution."' Moreover, a sanction 'shall be limited to what is sufficient to deter repetition of [the improper] conduct or comparable conduct by others similarly situated.'" (*Ibid,* internal citations omitted.)

"As with Rule 11 (28 U.S.C.) sanctions, Code of Civil Procedure section 128.7 sanctions should be 'made with restraint', and are not mandatory even if a claim is frivolous. Further, when determining whether sanctions should be imposed, the issue is not merely whether the party would prevail on the underlying factual or legal argument. Instead, courts should apply an objective test of reasonableness, including whether 'any reasonable attorney would agree that [the claim] is totally and completely without merit.' Thus, the fact that a plaintiff fails to provide a sufficient showing to overcome a demurrer or to survive summary judgment is not, in itself, enough to warrant the imposition of sanctions. [¶] Because our adversary system requires that attorneys and litigants be provided substantial breathing room to develop and assert factual and legal arguments, sanctions should not be routinely or easily awarded even for a claim that is arguably frivolous. Courts must carefully consider the circumstances before awarding sanctions." (*Id.* at p. 448, internal citations omitted.) Also, "[s]ection 128.7, subdivision (c) does not require the imposition of monetary sanctions upon the finding of a violation of section 128.7, subdivision (b); rather, it gives the trial court discretion to impose sanctions based on such a finding." (*Kojababian v. Genuine Home Loans, Inc.* (2009) 174 Cal.App.4th 408, 422.)

In the present case, Defendant argues that Plaintiff's complaint is meritless because it lacks legal and evidentiary support. Defendant asserts that Exhibit 1 attached to the Second Amended Complaint ("SAC") forms the basis of Plaintiff's breach of contract claim and that 1) Plaintiff has disavowed the document, 2) the claim is time barred, 3) there is no evidence to support an implied term with regard to the contract, and 4) Plaintiff's damages are a result of an employee's misuse and Plaintiff's own negligence. The crux of Defendant's arguments hinge on Plaintiff and the Court's prior treatment of Exhibit 1 of the SAC, particularly the portion of which was allegedly signed in 2009. Here, the Court would note that it does have some concerns regarding Plaintiff's pleading and former arguments in reliance on the 2009 portion of SAC Exhibit 1. However, the Court is not inclined to exercise its discretion to either dismiss the breach of contract claim in the SAC or to award monetary sanctions at this time.

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 10-6-25.**
(Judge's initials) (Date)

(37)

**Tentative Ruling**

Re: ***Karbassi v. Soria***
Superior Court Case No. 22CECG01710

Hearing Date: October 7, 2025 (Dept. 403)

Motion: By Defendants for Leave to File a Cross-Complaint

**Tentative Ruling:**

To deny.

**Explanation:**

On September 2, 2025, Defendants filed their Notice of Motion for Leave to File a Cross-Complaint **with a hearing date of October 7, 2025**. They also filed a request for an order shortening time. On September 2, 2025, the Court denied the request for an order shortening time. (Minute Order, September 2, 2025.) As a result, the motion noticed for October 7, 2025 remained on calendar for October 7, 2025 and the Notice, Declaration, Request for Judicial Notice, and Memorandum of Points and Authorities remained as filed for the hearing on October 7, 2025. The only result of the denial was the request for an earlier court hearing on the motion for leave to file a cross-complaint was not shortened. As such, the Court is not inclined to continue this matter for Plaintiff to more thoroughly address the merits of Defendants' request in a supplemental opposition.

Code of Civil Procedure section 426.50 allows a party to move for leave to file a cross-complaint where failure to file such was by "oversight, inadvertence, mistake, neglect, or other cause." It articulates, "The court, after notice to the adverse party, shall grant, upon such terms as may be just to the parties, leave to amend the pleading, or to file the cross-complaint, to assert such cause if the party who failed to plead the cause of action acted in good faith." (Ibid.) Such leave "shall be liberally construed to avoid forfeiture of causes of action." (Ibid.) Once a trial date has been set, leave of court is required prior to filing a cross-complaint. (Code Civ. Proc., § 428.50.) "Leave may be granted in the interest of justice at any time during the course of the action." (Code Civ. Proc., § 428.50, subd. (c).)

Here, Defendant asserts that she delayed in seeking leave to file a cross-complaint because of 1) the appellate decision with regards to Plaintiff's defamation claim against Defendant and 2) the need for additional discovery. These are not compelling. First, the appellate opinion was filed January 30, 2024. A petition for rehearing was denied on February 21, 2024. Remittitur was issued May 3, 2024. This motion was not filed until September 2, 2025. Thus, Defendant knew for well over a year the appellate court's position on defamation in the context of campaign mailers. Second, while the Court is certainly aware of discovery disputes in this matter, Defendant knew the content of the campaign mailers targeting her without such discovery. As such, delaying well over a year in pursuing a defamation cross-complaint against Plaintiff demonstrates bad faith. The Court denies Defendant's motion.

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 10-6-25.**
(Judge's initials) (Date)

(35)

**Tentative Ruling**

Re: ***Diaz v. Sun-Maid Growers of California***
Superior Court Case No. 18CECG04501

Hearing Date: October 7, 2025 (Dept. 403)

Motion: By Plaintiff for Final Approval of Class Settlement

**Tentative Ruling:**

To deny, without prejudice.

**Explanation:**

This case comes with mired history. On June 12, 2024, plaintiff David Diaz ("Plaintiff") sought and obtained preliminary approval of a settlement by himself and between all persons similarly situated and defendant Sun-Maid Growers of California ("Defendant"). Plaintiff thereafter sought final approval. On October 1, 2024, based on the moving papers, the court found significant issues with notice to the class regarding the settlement, and therefore whether the class had a reasonable opportunity to object or seek exclusion from the class. The approved class settlement administrator, Phoenix Settlement Administrators ("Phoenix") reported a class list of 6,953 individuals, of which 2,137 lacked contact information, and separately, 4,243 lacked social security numbers. Initially, Separately still, 10 notices of the 4,816 individuals that had contact information were returned, of which, six remained undeliverable. As to the original motion, notice of the settlement was made to a mere 69.2 percent of the class. Accordingly, the motion was continued and Plaintiff was directed to make further efforts to provide notice to the remaining 30 percent of the class.

Thereafter, efforts were made to obtain further contact information from the twelve independent staffing agencies that provided temporary workers to Defendant. On April 30, 2025, Phoenix reported having obtained contact information for an additional 1,381 individuals, and 992 social security numbers. As of the filing of the instant renewed motion, Phoenix reports having contact information for 1,685 total additional individuals, and the same 992 social security numbers. Phoenix also reports that the class list now comprises 7,054 individuals. On July 21, 2025, Phoenix mailed out a first notice to the new 1,685 individuals, none of which were returned as undeliverable.

Based on the above, it would appear that only 452 class members were lacking in contact information. Yet, Phoenix reports having contact information for 6,298 class members, resulting in 756 class members lacking contact information.[1] The court is unable to ascertain the reason for the discrepancy in the figures. It was previously reported that 2,137 class members lacked contact information. Subsequently, contact information for

[1] Counsel reports yet a different number, that 6,953 class members received direct notice. (Crist Decl., ¶ 50.) Phoenix stated that this figure, reported more than a year ago on July 15, 2024, was a typographical error. (Mitzner Decl., ¶ 13.)

1,685 members were obtained, leaving 452 class members without information. Even assuming that the 101 new class members that increased the class size from 6,953 up to 7,054 had no contact information, there should only be 553 class members that lack contact information. Even with the inclusion of the original six undeliverable notices, that number increases only to 559. In spite of this, at 6,298 of the 7,054 class members receiving direct notice, comprising 89 percent of the class, the remaining 11 percent 756 are without notice. Though Phoenix ran publication of the matter, they did so without court order or approval. (Cal. Rules of Ct., rule 3.766(f).) No party formally requested, in writing, notification by publication, addressing the factors necessary for consideration for such an order. (*Id.*, rule 3.766(e).) Neither does the purported publication, which lacks any sort of proof of publication, conform with the content requirements to constitute class notice. (*Id.*, rule 3.766(d); Mitzner Decl., ¶ 30 and Ex. A thereto.) Consequently, the court does not find that notice has been sufficiently provided to the class, and the motion is denied, without prejudice.

Even had notice been sufficient, as to the issue of tax identification, Phoenix reports a remaining deficit of 3,178 of the 7,054 class members, 45 percent of the class, without information. Phoenix proposes to recalculate and remit payments via 1099 tax forms, and indicates that doing so would convert the settlement from a wage classification to a penalty classification. Neither Phoenix nor counsel provide any authority that would support such a reclassification, nor how the settlement reached between the parties, upon which notice to the class was given, reflected those intentions. Rather, the terms of the settlement contemplated that each class member's distribution will be allocated as 33 percent to wages, for which a W-2 shall issue, with traditional payroll taxes and withholdings made. (Crist Decl., Ex. A, Settlement Agreement, ¶ 44.) Phoenix's proposal to re-characterize a portion of the settlement allocation calls into question whether the settlement as to nearly half of the class reflects the wage and hour claims asserted.

Moreover, Phoenix's proposal creates an imbalance among the class members. 55 percent of the class presently, in addition to being responsible for personal income tax consequences, are responsible for payroll taxes and withholdings. The 45 percent without tax information are no longer subject to payroll taxes and withholdings, and the 1099 reporting, without tax information, might never be attributed to the class member for the purposes of personal income tax consequences. The court can no longer conclude that the settlement is fair and reasonable for the entire class that Plaintiff purports to represent. (*E.g.*, *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130 [finding that although there is usually an initial presumption of fairness, the court should not give a rubber-stamp approval, and that to protect the interest of absent class members, the court must independently and objectively analyze the evidence and circumstances before it to determine whether the settlement is in the best interest of those whose claims will be extinguished].)

Finally, neither Phoenix nor Plaintiff provide any authority that would support the contemplated re-characterization as a matter of law. Plaintiff refers to *Loehr v. Ventura County Community College District*, 147 Cal.App.3d 1071, for the truism that unpaid wages are vested property rights. Plaintiff refers to the Labor Code for the general premise that all individuals are guaranteed these property rights, regardless of immigration status. Plaintiff cites no authority for the conclusion that guaranteeing this

right may be accomplished by treating unpaid wages as penalties. Plaintiff then cites to the *cy pres* doctrine and Code of Civil Procedure section 384 for the uncontroverted position that distribution is to be favored over reversion or non-reversion contingencies. Plaintiff cites to *Villacres v. ABM Industries, Inc.*, 189 Cal.App.4th 562, for the general premise that a settlement may refer to potential and actual claims released in a pending action. Finally Plaintiff cites to *Dunk v. Ford Motor Company*, 48 Cal.App.4th 1794, for the premise that the form of payment is irrelevant. The court cannot find where in the pincite, or in the opinion generally, the *Dunk* court made this conclusion. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) As counsel on the resume submitted knows, the absence of reference to the form of payment as a consideration is not equivalent to the conclusion that the form of payment is irrelevant. The court is tasked with consideration of all relevant factors to a full and fair independent assessment. (*Id.* at pp. 1801-1802; *see also Kullar v. Foot Locker Retail, Inc.*, *supra*, 168 Cal.App.4th at p. 130, *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 802-804.)

For the above reasons, the court additionally finds a lack of substantiated explanation to deviate from the terms of the settlement that would otherwise create imbalance amongst the class members to constitute a fair and reasonable settlement.[2]

Any further motion, and opposition or responses thereto, for final approval must be resubmitted in full, and not as a renewed or continued matter.[3]

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 10-6-25.**
(Judge's initials) (Date)

[2] Neither is it clear any longer that, with the addition of 101 class members, the implicated amount of workweeks remains at 307,196 for the purposes of the Escalator Clause as original reported. (Mitzner Decl. dated September 5, 2024, ¶¶ 12-13.)

[3] Defendant filed a response, objecting only to certain characterizations forwarded by Plaintiff in his moving papers. Plaintiff does not appear to be seeking contribution from Defendant regarding the additional costs incurred due to the complications described at this time, despite alluding to caselaw in support. (Crist Decl., ¶ 56, *citing Hypertouch, Inc. v. Superior Court* (2005) 128 Cal.App.4th 1527, 1551 [citation corrected].) The response is noted. The request for judicial notice is denied in its entirety as moot, but without prejudice to further proceedings.

(29)

**Tentative Ruling**

Re: ***In re: Aurora Bustamantes***
Superior Court Case No. 25CECG04291

Hearing Date: October 7, 2025 (Dept. 403)

Motion: Petition to Compromise Minor's Claim

To deny without prejudice. Petitioner must file an amended petition, with appropriate supporting papers and proposed orders.

**Explanation:**

Item 8.a. of the petition has been marked, stating that claimant has fully recovered from her injuries. Though medical records have been provided, it did not appear to the court that any included a showing of full recovery. The court notes also that some of the medical records are illegible, while others appear to be those of Mr Bustamantes. Attachment 11b(3) states, "I, Ricardo Bustamantes … my daughter, Aurora Bustamantes, for whom I serve as guardian ad litem." First, the court did not find in its file an order appointing Mr Bustamantes as claimant's guardian ad litem. Second, the signature line is drafted: "_Declarant, Jessica Bustamantes" and appears to be signed by Ms Bustamantes, rather Mr Bustamantes who is the actual declarant.

Due to the defects set forth above, the petition is denied 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 10-6-25.**
(Judge's initials) (Date)