Tentative Rulings for October 22, 2026
Department 502

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, the remote appearance will be conducted through Zoom. 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.

24CECG03111 ***Villatoro v. F&M Restaurants, Inc*. is continued to Thursday, December 10, 2026, at 3:30 p.m. in Department 502.**

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Tentative Rulings for Department 502

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(41)

Tentative Ruling

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

Hearing Date: October 22, 2026 (Dept. 502)

Motions: (1) Demurrer by Hospital to First Amended Cross-complaint Filed by Jail Medical Providers;
(2) Demurrer by Hospital to Cross-complaint Filed by County Staff;
(3) Motion by Hospital to Strike Portions of Jail Medical Providers' First Amended Cross-complaint.
(4) Motion by Hospital to Strike Portions of County Staff's Cross-Complaint;

Tentative Ruling:

(1) To sustain the demurrer filed by Fresno Community Hospital and Medical Center dba Community Regional Medical Center (Hospital) to the first amended cross-complaint (FACC) filed on April 14, 2026, by cross-complainants California Forensic Medical Group, Inc. (CFMG), Jenni Dinis, Kockcheung Ho, Robert Portillo, and nominal defendant Wellpath LLC (together, Jail Medical Providers), without leave to amend. (Code Civ. Proc., § 430.10, subd. (e).)

(2) To sustain the demurrer filed by Hospital to the cross-complaint filed on April 24, 2026 (Cross-complaint or XC), by cross-complainants County of Fresno, Sheriff Margaret Mims, Captain Joe Smith, Sergeant Ivana Hamilton-Cortez, and Andrew Machoian (together, County Staff), without leave to amend. (Code Civ. Proc., § 430.10, subd. (e).)

(3) To find moot Hospital's motion to strike portions of Jail Medical Providers' FACC in light of the ruling sustaining the demurrer to the FACC. (Code Civ. Proc., § 436.)

(4) To find moot Hospital's motion to strike portions of County Staff's' Cross-complaint in light of the ruling sustaining the demurrer to the Cross-complaint. (Code Civ. Proc., § 436.)

Hospital, as the prevailing party, is directed to submit to this court, within seven days of service of the minute order, a proposed judgment dismissing the Jail Medical Providers' FACC as to Hospital and the County Staff's' Cross-complaint as to Hospital.

Explanation:

In the main suit, Vicki Grayson, individually and as the personal representative of the estate of her deceased son, Nathaniel Grayson, (Plaintiff) filed suit against the County Staff and the Jail Medical Providers (together, Defendants or Cross-complainants, depending on context), alleging Defendants caused the death of her son, while he was an inmate at the Fresno County Jail, due to their deliberate indifference. In her operative

Third Amended Complaint (TAC), Plaintiff seeks to recover monetary damages from Defendants based on Defendants' deliberate indifference and reckless disregard of Mr. Grayson's federal and state civil rights. Plaintiff did not name Hospital as one of the Defendants in the main suit.

The lengthy introductory paragraph of Plaintiff's Third Amended Complaint includes the following description of Defendants' deliberate wrongful conduct:

> Plaintiff brings this action under the Fourteenth Amendment of the United States Constitution and the Civil Rights Act of 1871, as codified at 42 U.S.C. § 1983, and State law for injuries and death suffered as a result of the Defendants' substantial and deliberate indifference to Decedent's health and welfare while he was in their custody. Plaintiff further brings her 14th Amendment Deliberate indifference claim under the recent 9th Circuit Court of Appeals decision in *Gordon v. County of Orange et al*. 888 F.3d 1118. The plaintiff states a claim against the Defendants for a failure to establish policies, procedures, and training which resulted in the subject incident. This is a civil action seeking damages against the Defendants for committing acts under color of law, and depriving the Decedent of rights secured by the Constitution and laws of the United States (42 U.S.C. § 1983) and California state laws. Defendants . . . were deliberately indifferent by, without limiting other acts and behaviors: failing to safeguard against Decedent's known history of seizures, alcoholism, syncope, loss of consciousness and a risk factor for ground-level-falls, failing to protect Decedent who was known to have seizure related to alcohol withdrawals, a history of syncope and failing to monitor decedent while he was housed in a sobering cell. *Most importantly, the Decedent who was initially hospitalized for alcohol intoxication was discharged to the Defendants' custody and provided a full history of his seizures and a history of ground-level falls.* The [D]efendants ignored obvious signs and symptoms such as conditions and a history of complications due to his seizures and syncope. Mr. Grayson was suffering from severe alcohol withdrawals which, in light of his known seizure and fall risk history required close monitoring to safeguard his custody environment and to provide prophylactic measures. Mr. Grayson was not in a condition to be released from the sobering unit without close monitoring. Defendants were deliberately indifferent to Mr. Grayson's known medical condition by failing to monitor him for his known seizures. By failing to monitor him closely, Mr. Grayson suffered a syncope and collapsed head-first suffering from an irreparable brain hemorrhage. By failing to protect the decedent from harm, by discriminating against the decedent who *unequivocally suffered from a known medical condition and was a known fall risk, by failing to closely monitor signs and symptoms of delirium tremens ("DT")*, and by failing to provide necessary and appropriate mobility aid, Defendants deprived the Decedent's rights as guaranteed by the Fourteenth Amendment to the Constitution of the United States against cruel and unusual punishment and guaranteed under State law.

(TAC, ¶ 1, p. 2:12-3:19, italics added.)

In the second paragraph of her Third Amended Complaint, Plaintiff summarizes Defendants' deliberate indifference to Mr. Grayson's rights with a list of 10 actions or inactions:

> The Defendants, and their management and employees violated the decedent's constitutional and state law rights and were deliberately indifferent by, without limiting other acts and behaviors: (1) deliberately ignoring and failing to heed to decedent's known serious medical condition, to wit, decedent's tremors, impaired gait, seizures and delirium tremens (2) failing to monitor Decedent closely for potentially lethal symptoms of seizures (3) failing to conduct constitutionally adequate Title 15 welfare checks (4) failing to supervise and monitor an inmate known to be a fall-risk (5) failing to provide the necessary and appropriate personnel for the health and welfare of the decedent (6) failing to provide necessary medication for severe alcohol withdrawals with associated seizures (7) failing to train defendants in the risk assessment of inmate-patients with a history of developing seizures-related-complications due to withdrawals (8) failing to follow inmate sobering cell policies and procedure (9) failing to perform frequent assessments for severe alcohol withdrawals (10) failing to place an inmate who has a knowable history of seizures under medical watch.

(TAC, ¶ 2.)

In short, Plaintiff alleges that after Hospital discharged Mr. Grayson, Defendants (not Hospital) deliberately disregarded Mr. Grayson's civil rights and failed to safeguard and care for Mr. Grayson while he was a prisoner in their custody, although Hospital provided a "full history of his seizures and a history of ground-level falls" (TAC, p. 3:4-5); and the failure of Defendants to establish and follow inmate-sobering policies, procedures, and training resulted in Mr. Grayson's death.

On April 14, 2026, the Jail Medical Providers filed their operative FACC against Hospital, and two physicians, Jordan Beshore, D.O., the attending physician, and Brandon Kuang, M.D., the treating resident physician.[1] The FACC has three causes of action: (1) equitable indemnity; (2) tort of another/contribution; and (3) declaratory relief. On April 24, 2026, the County Staff filed their Cross-complaint against Hospital, and also Dr. Beshore and Dr. Kuang, with the same three causes of action.[2]

The parties agree there is no federal right to indemnification or contribution under section 1983 of title 42 of the United States Code (Section 1983). (*Hoa v. Riley* (N.D. Cal. 2015) 78 F.Supp.3d 1138, 1145 [Ninth Circuit has concluded there is no federal right to indemnification under Section 1983].) But the Jail Medical Providers and the County Staff

[1] The demurrer filed by Dr. Beshore and Dr. Kuang is set for hearing on November 3, 2026.

[2] Although the Cross-complaint filed on April 24, 2026, appears to be the County Staff's original cross-complaint, it is entitled "County of Fresno, Sheriff Margaret Mims, Captain Joe Smith, Andrew Machoian, and Sergeant Ivana Hamilton-Cortez's *Amended Proposed* Cross-complaint." (XC, italics added, all caps and boldface omitted.)

seek indemnification or contribution under state statutory and common law. Hospital now demurs to the Jail Medical Provider's FACC and the County Staff's Cross-complaint on the grounds that each cause of action fails to state facts sufficient to constitute a cause of action. Hospital also moves to strike specific allegations of the subject cross-complaints for the recovery of attorney fees.

Meet and Confer

Hospital's counsel filed and served a declaration stating counsel met and conferred with opposing counsel by telephone at least five days before a responsive pleading was due to be filed, but they were unable to reach an agreement resolving the matters raised by the demurrer or the motion to strike. This satisfies the requirements of Code of Civil Procedure sections 430.41 (demurrer) and 435.5 (motion to strike) for the moving party to meet and confer in person, by telephone, or by video conference with the opposing party.

Demurrer

In testing a pleading against a demurrer, the alleged facts are deemed true, "however improbable they may be." (*Del E. Webb Corp. v. Structural Materials* Co. (1981) 123 Cal.App.3d 593, 604.) A demurrer tests only the legal sufficiency of the pleading—not the truth of the plaintiff's allegations or the accuracy of the plaintiff's description of the defendant's conduct. (*Quelimane Co. v. Stewart Title Guaranty Co*. (1998) 19 Cal.4th 26, 47.) The court treats a demurrer as admitting all material facts properly pleaded, but not contentions, deductions, or conclusions of law. (*Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.)

Equitable Indemnity and Contribution

Hospital demurs to the first cause of action in the Cross-complaint and the FACC for equitable indemnity and the second cause of action for contribution for failure to state causes of action on the grounds that the indemnity and contribution claims are barred as a matter of law because no joint liability exists for the civil rights violations, (including liability under the Bane Act); public policy bars an indemnity or contribution claim for this type of civil rights violation;[3] and the tort of another doctrine is an inapplicable remedy.

In *Leko v. Cornerstone Building Inspection Service* (2001) 86 Cal.App.4th 1109, the court summarized the requirements for equitable indemnity as follows:

> *Joint and several liability is a prerequisite for equitable indemnity*. [Citation.] . . . . [¶] When the negligent acts of two tortfeasors are both a

[3] Although there are differences between equitable indemnity and contribution, such as historically indemnity involved the complete shifting or a loss from one tortfeasor to another, and contribution involved pro rata sharing or "appointment" of a loss, for purposes of Hospital's motions, the court will generally treat the two doctrines the same, unless a statute applies. For a full discussion of the differences, see *B.B. v. County of Los Angeles* (2020) 10 Cal.5th 1, 15-16.

> proximate cause of an indivisible injury, the tortfeasors are jointly and severally liable for that injury. (*American Motorcycle Assn. v. Superior Court* (1978) 20 Cal.3d 578, 586 588.) Joint tortfeasors may act in concert or independently of one another. (*Id.* at p. 587.) "There seems to be no logical reason why the application of [joint and several liability] should turn on the relationship of the tortfeasors to each other. *What is important is the relationship of the tortfeasors to the plaintiff and the interrelated nature of the harm done*." [Citation.]
>
> *Joint and several liability does not depend on whether the tortfeasors owe a duty to one another*. " 'It would be unfair to require one tortfeasor to bear a loss disproportionate to his relative culpability simply because a tortfeasor who contributed to the loss owed a duty to the plaintiff but not to the defendant.' " [Citation.] *Nor must joint tortfeasors owe the same duty of care to the plaintiff*. "[A] defendant/indemnitee may in an action for indemnity seek apportionment of the loss on any theory that was available to the plaintiff upon which the plaintiff would have been successful." [Citation.]

(*Id.* at p. 1115, italics added.)

As a threshold matter, Cross-complainants' claims for common law equitable indemnity depend on whether they and Hospital are jointly and severally liable for violating the Bane Act, which requires proof of a defendant's reckless disregard or deliberate indifference to Mr. Grayson's serious medical needs. (*Leko v. Cornerstone Building Inspection Service, supra*, 86 Cal.App.4th at p. 1115 [claim for equitable indemnity depended on whether home inspection company and realtor could be jointly and severally liable for failure to disclose defects to residential purchaser].) Also, statutory contribution is unavailable for intentional torts. (Code Civ. Proc., § 875, subd. (d) ["There shall be no right of contribution in favor of any tortfeasor who has intentionally injured the injured person."])

California Civil Code Section 52.1(Bane Act) Claim

In Plaintiff's main action against Defendants, she alleges, inter alia, that Defendants violated the Bane Act, set forth in California Civil Code section 52.1. The Bane Act "provides a private right of action for damages against any person , , , who interferes or attempts to interfere 'by threats, intimidation, or coercion,' with the exercise or enjoyment" by another of the rights secured by federal or state law. (*M.H. v. County of Alameda* (N.D. Cal. 2013) 90 F.Supp.3d 889, 896.)

> The essence of a Bane Act claim is that the defendant, by the specified improper means (i.e., "threats, intimidation or coercion"), tried to or did prevent the plaintiff from doing something he or she had the right to do under the law or to force the plaintiff to do something that he or she was not required to do under the law.

(*Scalia v. County of Kern* (E.D. Cal. 2018) 308 F.Supp.3d 1064, 1079, quoting *Austin B. v. Escondido Union School Dist.* (2007) 149 Cal.App.4th 860, 883.)

The Jail Medical Providers confirm that they are asserting their claims "solely with respect to Plaintiff's Bane Act cause of action." (FACC, ¶ 15.) The County Staff assert their claims with respect to Plaintiff's Bane Act cause of action (XC, ¶¶ 14-18) and her cause of action for failure to summon medical care under Government Code section 845.6 (XC, ¶ 28).

Both the Jail Medical Providers and the County Staff include conclusions of law about the Bane Act in their cross-complaints. (See, e.g., FACC, p. 4:28-5:1 ["Liability under the Bane Act does not require intentional misconduct; a reckless disregard is sufficient"]; and XC, p. 5:7-8 ["The Act does not require intentional misconduct; a reckless disregard is sufficient"].) Such statements are incomplete and the court may disregard all conclusions of law in the pleadings. (*Zelig v. County of Los Angeles*, *supra,* 27 Cal.4th at p. 1126.) The cases establish that the Bane Act requires more than simple negligence; it requires a heightened standard of conduct designed to interfere intentionally with another's civil rights (or attempt to do so).

As stated in the Judicial Council of California Civil Jury Instructions, to prevail under the Bane Act, a plaintiff must establish that a defendant intentionally interfered with the plaintiff's civil rights. CACI No. 3066 sets forth the essential factual elements of a Bane Act claim under Civil Code section 52.1. The jury instruction begins with this introductory paragraph: "[*Plaintiff*] claims that [*Defendants*] intentionally interfered with [or attempted to interfere *with*] [*Mr. Grayson*'s] civil rights by threats, intimidation, or coercion." (*Id.,* italics original, underscoring and names added.) The instruction then lists the four elements a plaintiff must prove. The second element requires a plaintiff to prove: "That [*Defendants*] [intended to deprive [*Mr. Grayson*] of / [or] acted with reckless disregard for] [[*Mr. Grayson*'s] enjoyment of the interests protected by the right [*e.g., to treatment for a prisoner's serious medical need*] [.]" (*Ibid.*, italics original, names and descriptions added.)

Thus, to establish a violation under the Bane Act based on inadequate medical care, "the plaintiff must 'prove more than negligence but less than subjective intent—something akin to reckless disregard.' [Fn., Citation]." (*Gordon v. County of Orange* (2018) 888 F.3d 1118, 1125.) "Medical malpractice does not become a constitutional violation merely because the victim is a prisoner." (*Estelle v. Gamble* (1976) 429 U.S. 97, 106.)

Plaintiff alleges Defendants violated Mr. Grayson's federal and state rights by acting with deliberate indifference or reckless disregard for Mr. Grayson's safety. Again, as noted in more detail below, to prevail on the Bane Act claim based on deliberate indifference, a prisoner must establish more than negligence in treating a medical condition:

> In order to state a deliberate indifference claim, Plaintiffs must first show a "serious medical need" such that "failure to treat a prisoner's condition could result in further significant injury or the unnecessary and wanton infliction of pain." [Citation.] Next, Plaintiffs must show that Defendants' response to the serious medical need was deliberately indifferent. [Citation.] The second prong may be established by allegations of "(a) a purposeful act or failure to respond to a prisoner's pain or possible medical need and (b) harm caused by the indifference." [Citation.] Deliberate

> indifference may be shown where prison officials or practitioners "deny, delay or intentionally interfere with medical treatment." [Citation.] *In contrast, "mere negligence in diagnosing or treating a medical condition, without more, does not violate a prisoner's Eighth Amendment rights*." [Citation.]

(*M.H. v. County of Alameda, supra,* 90 F.Supp.3d at p. 896, italics added.)

In sum, "[i]nadvertent failure to provide medical care, a complaint that a physician has been negligent in diagnosing or treating a medical condition, and medical malpractice claims do not qualify as deliberate indifference claims." (*M.H. v. County of Alameda, supra,* 90 F.Supp.3d at p. 899, internal quotation marks and citation omitted; see also *Scalia v. County of Kern, supra,* 308 F.Supp.3d at p. 1084 [prison official's deliberate indifference to traumatic brain injury, resulting in detainee's death is coercive act that rises above mere negligence].)

Both the Jail Medical Providers and the County Staff allege nothing more than that Hospital provided negligent medical care or committed medical malpractice before Mr. Grayson was booked into the Fresno County Jail. Unlike Cross-complainants, Plaintiff alleges in her Bane Act claim—in addition to the previously-incorporated allegations, such as failing to follow established protocols—that Defendants violated Mr. Grayson's civil rights by deliberately, intentionally, and spitefully denying medical care, withholding necessary anti-seizure and detoxing medication, ignoring Mr. Grayson's critical condition, failing to perform constitutionally-required welfare checks, and failing to monitor him closely for potentially lethal symptoms of seizures, despite their knowledge that he was suffering from serious known risks. (TAC, ¶¶ 1, 2, 117-121.)

In contrast to Plaintiff's allegations in the main action, the Jail Medical Providers base their claims on nothing more than acts of medical malpractice, at best. For example, in the FACC, the Jail Medical Providers allege Hospital acted improperly by certain acts of medical malpractice, committed by a physician "who did not have the experience and training to order the necessary imaging and scans . . . " (FACC, pp. 5:28-6:1):

> If the allegations in Plaintiff's Third Amended Complaint are found to be true, [Hospital] . . . acting . . . under color of state law and/or in concert with state actors, interfered with and/or attempted to interfere with Mr. Grayson's enjoyment and exercise of the foregoing constitutionally protected rights by means of deliberate indifference, coercion, intimidation, and/or threats, including but not limited to the following specific acts and omissions: [¶] a) Upon information and belief, [Hospital] failed to do any imaging studies of Mr. Grayson's head, failed to do any CT scans of his head, and cleared Mr. Grayson for custody in the Fresno County Jail despite him having demonstrated altered mental status including syncope, an extremely high blood alcohol level of .402. . . .

(FACC, ¶ 17.)

Likewise, in their Cross-complaint, the County Staff allege:

> If the allegations in the Third Amended Complaint are found to be true, [Hospital] . . . acting . . . under color of stale law and/or in concert with state actors, interfered with and/or attempted to interfere with Decedent's enjoyment and exercise of the foregoing constitutionally protected rights by means of deliberate indifference, coercion, intimidation, and/or threats, including but not limited to the following specific acts and omissions: [¶] a) Upon information and belief, Cross-Defendants failed to do any imaging studies of Mr. Grayson's head, failed to do any CT scans of his head, and cleared Mr. Grayson for custody in the Fresno County Jail despite him having an extremely high blood alcohol level of ,401 . . . .

(XC, ¶ 16.) Cross-complainants also allege the resident physician who treated Mr. Grayson "did not have the experience or training to order the necessary imaging and scans or to hold Decedent for further observation and treatment given his low platelet levels and likely brain bleed." (XC, p. 4:13-15.)

In the TAC, Plaintiff sufficiently alleges facts to show Defendants, but not Hospital, violated the Bane Act.[4] Although the cross-complaints include allegations that Hospital acted with "deliberate indifference, coercion, intimidation and/or threats," a demurrer does not admit contentions, deductions, or conclusions of law. (*Zelig v. County of Los Angeles, supra,* 27 Cal.4th at p. 1126.) "[M]edical malpractice claims do not qualify as deliberate indifference claims." (*M.H. v. County of Alameda, supra,* 90 F.Supp.3d at p. 899; *Gordon v. County of Orange, supra,* 888 F.3d at p. 1125 [*lack of due care does not*

[4] In her Third Amended Complaint, Plaintiff alleges County Staff and the Jail Medical Providers deliberately ignored Mr. Grayson's known medical needs and failed to send him back to Hospital or provide the higher level of care they knew he needed (TAC, ¶ 62), which resulted in his death at the age of 35 (TAC, ¶ 63). Plaintiff does not allege that Hospital violated the Bane Act. In their Cross-complaint, County Staff appear to imply that the Third Amended Complaint includes references to Dr. Beshore and Dr. Kuang:

> As alleged in each iteration of the Complaint, on June 10, 2021, Decedent Nathaniel Grayson was arrested for assaulting his live-in girlfriend, when he purportedly suffered a head injury. He was highly intoxicated with a blood alcohol level of .401/ g/DL and was transported to [Hospital] where medical providers noted that he had suffered from seizures and alcohol withdrawals. Hospital staff noted that Decedent was a fall risk, had an impaired gait, and went in and out of consciousness. He spent one night at the Hospital where the attending physician was [Dr. Beshore] and the treating resident physician was [Dr. Kuang].

(XC, ¶ 8.) The court was unable to locate any references to Dr. Beshore or Dr. Kuang in the Third Amended Complaint, which alleges Bane Act violations against Defendants only. Therefore, if the allegations of the Third Amended Complaint are found to be true, then it leads to the conclusion that Defendants—Jail Medical Providers and County Staff—acted with the requisite deliberate indifference. The court was unable to locate any allegations of fact in the Third Amended Complaint that would lead to the conclusion that Hospital acted with the requisite deliberate indifference.

deprive person of civil rights; plaintiff must establish by objective standard more than negligence].)

The Jail Medical Providers cite *Fenimore v. Regents of University of California* (2016) 245 Cal.App.4th 1339 (*Fenimore*), where the appellate court suggested that allowing a dementia patient to suffer a fall and failing to treat his resulting fractured hip for four days would not establish the recklessness required for elder abuse, as a matter of law. (*Id.* at p. 1348.) However, the trial court erred in sustaining a demurrer because the plaintiffs sufficiently alleged a course of conduct designed to cut costs by deliberately violating applicable regulations and understaffing the hospital. The appellate court explained that for a pleading to satisfy the required elder abuse element of reckless conduct, a plaintiff must plead more than simple or gross negligence by a health care provider. The court explained how recklessness differs as follows:

> Recklessness is "a subjective state of culpability greater than simple negligence, which has been described as a 'deliberate disregard' of the 'high degree of probability' that an injury will occur. [Citations.] *Recklessness, unlike negligence, involves more than 'inadvertence, incompetence, unskillfulness, or a failure to take precautions' but rather rises to the level of a 'conscious choice of a course of action .. with knowledge of the serious danger to others involved in it*.'" [Citation.]
>
> Here, the FAC alleged the Hospital committed neglect by allowing George to fall minutes after entering the facility, failing to treat George's fractured hip for four days, and violating certain state regulations for acute psychiatric hospitals. [¶] *If the Fenimores alleged only these first two things [falling within minutes and failing to treat for four days], we might agree that the trial court correctly sustained the demurrer.* According to the FAC, George fell within minutes of entering the Hospital, either because he was trying to follow a nurse into the hall, or when staff was changing his adult diaper. Alone, the fact that staff allowed him to fall suggests perhaps incompetence or unskillfulness. Recklessness, by contrast, lies in a " 'conscious choice of a course of action.' " [Citation.] The same can be said for the allegations relating to the treatment of his hip. It is not as though the Hospital did nothing at all, even according to the FAC. The nurses inquired about his pain, they gave him acetaminophen for it, and the occupational therapist noted his need for an X-ray. The X-ray did not take place for several days. *But there are no factual allegations showing this delay in diagnosis and proper treatment was more than mere incompetence or unskillfulness, i.e., negligence.* [¶] The allegations that the Hospital's regulatory violations constituted elder abuse add more to the story, however. . . .

(*Id.* at pp. 1347-1348, italics added.)

As in the fall and delayed treatment alleged in *Fenimore*, which did not establish recklessness, here there are no factual allegations to show that Hospital's treatment of Mr. Grayson was deliberately reckless—that is, more than mere incompetence or unskillfulness. There are no factual allegations that the physicians made a conscious

choice of a course of action involving serious danger to Mr. Grayson. An allegation that a physician made a mistake because he lacked experience plainly falls within the category of an ordinary medical malpractice claim, which does not qualify as a deliberate indifference claim. (*M.H. v. County of Alameda, supra,* 90 F.Supp.3d at p. 899.) Accepting the factual allegations as true and drawing all inferences in Cross-complainants' favor, as the court must on demurrer, the court finds they cannot establish that Hospital engaged in the heightened conduct required to make Hospital either jointly or severally liable with Defendants for violating the Bane Act. Therefore, Defendants cannot meet the equitable indemnity prerequisite of joint and several liability. (*Leko v. Cornerstone Building Inspection Service, supra*, 86 Cal.App.4th at p. 1115.)

As an independent ground for demurrer, Hospital also contends it would be inequitable and against public policy to allow a defendant who intentionally violated another's civil rights or (acted with the requisite reckless disregard) to obtain partial indemnity from a negligent third party:

> Allowing a civil rights violator to seek indemnity or contribution from an alleged negligent third party would dilute the statutory penalty and frustrate the public policy of personal accountability mandated by the Bane Act. "Indemnification between joint tortfeasors is an equitable rule created to correct potential injustice, and the doctrine is not available where it would operate against public policy." (*Leko v. Cornerstone Building Inspection Service*, supra, 86 Cal.App'4th 1109, 1118.)

(Hospital memo. [County Staff], p. 11:14-19.)

Hospital cites *Weidenfeller v. Star & Garter* (1991) 1 Cal.App.4th 1, where the court held "an intentional actor cannot rely on someone else's negligence to shift responsibility for his or her own conduct. . . . [A] party who commits intentional misconduct should not be entitled to escape responsibility for damages based upon the negligence of the victim or a joint tortfeasor." (*Id.* at pp. 6–7.) California statutory law provides: "There shall be no right of contribution in favor of any tortfeasor who has intentionally injured the injured person." (Code Civ. Proc., § 875, subd. (d).) "Allowing a shift in the opposite direction would be inequitable as it would permit wrongdoers to offload their liability onto merely careless parties." (Hosp. memo. [County Staff], p. 12:4-5.) As the Hospital summarizes:

> California courts have recognized equitable indemnity between negligent tortfeasors (*American Motorcycle* [*Assn. v. Superior Court* (1978)] 20 Cal.3d 578, 598); between strictly liable and negligent defendants (*Safely Stores Inc. v. Nest-Kart* (1978) 21 Cal.3d 322,328); when asserted by a negligent party against another who is guilty of willful misconduct (*Allen* [*v. Sundean* (1982) 137 Cal.App.3d 216]); to permit a negligent defendant to shift loss to an intentional tortfeasor (*Weidenfeller, supra*); and even be applied between concurrent intentional tortfeasors (*Baird* [*v. Jones* (1993) 21 Cal.App.4th 686, 689]). However, an intentional tortfeasor may not obtain equitable indemnity against a negligent tortfeasor (*Allen, supra*).

(Hosp. memo. [County Staff], p. 12, fn. 5; see also, discussion in *B.B. v. County of Los Angeles, supra,* 10 Cal.5th at p. 24 ["California principles of comparative fault have never required or authorized the reduction of an intentional tortfeasor's liability based on the acts of others"].)

The Jail Medical Providers cite *Bach v. County of San Diego* (S.D. Cal. Jan. 14, 2026, No. 24-cv-1687-W-DTF) (*Bach*), where the court refused to dismiss indemnity and contribution claims based on the Bane Act, as persuasive authority.[5] To the extent *Bach* is persuasive, it supports Hospital's contentions.

In *Bach*, Keith Bach was cleared by a hospital before being booked into the county jail. The hospital doctors provided a note that Mr. Bach's insulin pump needed to be refilled. While in jail, Mr. Bach did everything he could to obtain the necessary insulin. During mealtimes he gave his food to fellow inmates because he did not want to eat without insulin. When the medical staff failed to provide the requested insulin, Mr. Bach notified his wife, who frantically visited the jail many times to deliver insulin to her husband, but was told that he would be taken care of by the jail's medical staff and deputies. Other inmates around Mr. Bach also tried to help him by requesting insulin and pointing out to jail staff that Mr. Bach's insulin pump was beeping and empty. The medical staff skipped some doses and when they did provide insulin, they provided a lower dose than requested by Mr. Bach. Two days later, Mr. Bach was found dead in his cell with extremely high glucose levels.

Mrs. Bach filed a lawsuit against the County of San Diego and NaphCare, one of the on-site medical providers. NaphCare then filed a third-party complaint against another on-site medical provider, Correctional Healthcare (among others). Correctional Healthcare moved to dismiss NaphCare's causes of action to the extent NaphCare sought indemnification or contribution for claims under Section 1983 or the Bane Act. After NaphCare conceded that indemnification and contribution are not available for the Section 1983 causes of action, the district court framed the relevant issue as "whether NaphCare's claim for indemnification and contribution for liability under the Bane Act, California Civil Code § 52.1, is barred as a matter of law." (*Bach,* p. 6.)

Based on the alleged facts, the court denied the motion as to the Bane Act. The court ruled that "contrary to Correctional Healthcare's contention, liability under the Bane Act does not require intentional misconduct; a reckless disregard is sufficient." (*Bach,* p. 7.) The plaintiff in the main action had alleged the defendants, including NaphCare's employees, "acted, or failed to act, with deliberate indifference to the substantial risk of [Mr. Bach's] health and safety while he was in their custody and care." (*Bach,* p. 6.) The district court then ruled:

> Because Mr. Bach was a pretrial detainee, the deliberate-indifference claim arises under the Fourteenth Amendment and requires Plaintiff to establish:

[5]California courts may cite and rely upon unpublished federal court decisions as persuasive authority. (*Travelers Indemnity Company of Connecticut v. Navigators Specialty Insurance Company* (2021) 70 Cal.App.5th 341, 362, fn. 16.)

(1) The defendant made an intentional decision with respect to the conditions under which the plaintiff was confined [including a decision with respect to medical treatment];

(2) Those conditions put the plaintiff at substantial risk of suffering serious harm;

(3) The defendant did not take reasonable available measures to abate that risk, even though a reasonable official in the circumstances would have appreciated the high degree of risk involved—making the consequences of the defendant's conduct obvious; and

(4) By not taking such measures, the defendant caused the plaintiff's injuries.

[Citations.] Significantly, with respect to the third element, "the plaintiff must show that the defendant's actions were 'objectively unreasonable,' which requires a showing of 'more than negligence but less than subjective intent—*something akin to reckless disregard*.'" [Citations.] Accordingly, contrary to Correctional Healthcare's contention, liability under the Bane Act does not require intentional misconduct; a reckless disregard is sufficient.

Because NaphCare's liability under the Bane Act does not require a showing of intentional misconduct, Correctional Healthcare's motion to dismiss the contribution and indemnity causes of action to the extent they are based on the Bane Act cause of action will be denied.

(*Bach*, pp. 6-7, italics original, underlining added.)

In *Bach*, the factual allegations in the main action and the indemnity action involved two on-site providers, both of whom recklessly disregarded repeated, frantic requests for insulin. The *Bach* ruling makes no mention of any allegations against the hospital that provided medical clearance and advised the medical providers of the need for insulin. Thus, *Bach* provides an example of indemnity between concurrent tortfeasors under the same heightened standard owed to the plaintiff. (See *Baird v. Jones, supra,* 21 Cal.App.4th at p. 686 [an intentional tortfeasor may obtain indemnity from a concurrent intentional tortfeasor].)

Bach is persuasive authority for indemnity between on-site jail personnel, such as the Jail Medical Providers and County Staff. But *Bach* does not provide authority for indemnity against a hospital which provides pre-detention off-site medical clearance along with critical medical information. After clearance, a hospital has no control over the conduct of on-site jail staff and medical providers. The on-site personnel alone are responsible for their own deliberate disregard of critical medical information while a pre-trial detainee is in their custody. Here, Hospital's deliberate actions consisted of providing medical evaluation and clearance, along with important information about the precautions required for Mr. Grayson's fragile health condition—including the known risks of seizures, falls, and symptoms of delirium tremens—which would be exacerbated by the detoxing process. To the extent medical malpractice was committed, even if the malpractice could be imputed to Hospital, Cross-complainants fail to allege facts that could rise to the level of reckless disregard under the Bane Act.

In conclusion, the court finds the Bane Act claims for indemnity made by the Jail Medical Providers and the County Staff fail for two independent reasons: (1) Hospital has no joint or several liability to Plaintiff for violation of the Bane Act because Cross-complainants fail to plead facts to establish the essential elements that Hospital acted with deliberate indifference or made a conscious choice of a course of action involving serious danger arising from Mr. Grayson's conditions of confinement; and (2) public policy bars such relief.

Failure to Summon Medical Care – Government Code Section 845.6

In the FACC, the Jail Medical Providers expressly state the Third Amended Complaint asserts six causes of action against them, but they are seeking indemnity, contribution, or declaratory relief solely with respect to Plaintiff's Bane Act cause of action. (FACC, ¶¶ 14, 15.)

In paragraph 28 of its Cross-complaint, the County Staff allege if they "are found liable to Plaintiff for any damages arising from the allegations in Plaintiff's Third Amended Complaint pursuant to California Government Code section 845.6 [Section 845.6] for failure to summon medical care, then such liability will have been caused or contributed to entirely or in substantial part" by Hospital's negligence, professional liability, or wrongful acts or omissions. (XC, ¶ 28.)

In her eighth cause of action for failure to summon medical care, Plaintiff alleges in paragraph 129:

> California Government Code §845.6 creates an affirmative duty for jail officers and personnel to furnish or obtain medical care for a prisoner in his/her custody. In fact, a public employee, and the public entity where the employee is acting within the scope of his employment, are liable if the employee knows or has reason to know that the prisoner is in need of immediate medical care, and he fails to take reasonable action to summon such medical care

Hospital cites *Castaneda* v. *Department of Corrections & Rehabilitation* (2013) 212 Cal.App.4th 1051 (*Castaneda*), where the court explained that a public entity is not vicariously liable for the medical malpractice of its prison employees under the applicable governmental immunity provisions, *unless a very narrow exception for failure to summon immediate care applies*:

> Public entities in California are not liable for tortious injury unless liability is imposed by statute. (§ 815.) "[S]overeign immunity is the rule in California; governmental liability is limited to exceptions specifically set forth by statute." [Citation.] Section 844.6, subdivision (a)(2) establishes the State's immunity to liability for injuries to prisoners. Section 845.6 both affirms the public entity immunity to liability for furnishing medical care, and creates a narrow exception to that immunity.

> Section 845.6 states in relevant part, "Neither a public entity nor a public employee is liable for injury proximately caused by the failure of the employee to furnish or obtain medical care for a prisoner in his custody; but, except as otherwise provided by Sections 855.8 and 856 [concerning mental illness and addiction], a public employee, and the public entity where the employee is acting within the scope of his employment, is liable if the employee knows or has reason to know that the prisoner is in need of immediate medical care and he fails to take reasonable action to summon such medical care."
>
> The first clause of section 845.6 establishes the immunity generally of both the public entity and its employees from liability "for injury proximately caused by the failure of the employee to *furnish or obtain medical care* for a prisoner in his custody." The second phrase creates a limited public-entity liability when: (1) the public employee "knows or has reason to know [of the] need," (2) of "*immediate* medical care," and (3) "fails to take reasonable action to *summon* such medical care." (§ 845.6.)
>
> Section 845.6 is very narrowly written to authorize a cause of action against a public entity for its employees' failure to summon immediate medical care only, not for certain employee's malpractice in providing that care. The 1963 Law Revision Commission comments to section 845.6 clarify, "This section limits the duty to provide medical care for prisoners to cases where there is actual or constructive knowledge that the prisoner is in need of immediate medical care. *The standards of medical care to be provided* to prisoners involve *basic governmental policy* that *should not be subject to review in tort suits for damages*." (Cal. Law Revision Com. com., 32 West's Ann. Gov. Code (1980 ed.) § 845.6, p. 459.) Thus, section 845.6 creates out of the general immunity a limited cause of action against a public entity for its employees' failure to *summon* immediate medical care only. [Citation.] The statute does not create liability of the public entity for malpractice in furnishing or obtaining that medical care. [Citations.] Nor does the statute make the State " 'vicariously liable for the medical malpractice of its employees. [Citation.] Although the State is required to pay the judgment assessed against its employees for medical malpractice committed against a prisoner, the State is immune from suit directly." [Citations.]

(*Id.* at pp. 1069–1071, all italics added by *Castaneda* court [finding, as a matter of law, public entity was immune from liability under Gov. Code, §§ 845.6 and 844.6].)

Plaintiff's cause of action for failure to summon medical care is statutory, based on the narrow provisions of Section 845.6. As noted above, the statute does not make the State vicariously liable for its employees' medical malpractice. (*Castaneda, supra,* 212 Cal.App.4th at p. 1071.) Furthermore, Section 845.6, creates a duty imposed only on a public entity and a public employee to furnish or obtain medical care in limited, specified situations for "a prisoner in his custody." County Staff does not allege Hospital is a public entity, acting through public employees, nor does it allege that Mr. Grayson was a prisoner in Hospital's custody. Therefore, Section 845.6 does not apply to Hospital, and a claim for equitable indemnity or statutory contribution cannot be based on this section.

Tort of Another

Hospital contends Cross-complainants are not entitled to attorney fees under the doctrine of tort of another. California follows the general rule that "attorney's fees are to be paid by the party employing the attorney." (*Prentice v. North Am. Title Guaranty Corp., Alameda Division* (1963) 59 Cal.2d 618, 620 (*Prentice*), citing Code Civ. Proc., § 1021.) But there is a limited exception to the general rules as follows:

> A person who through the tort of another has been required to act in the protection of his interests by bringing or defending an action against a third person is entitled to recover compensation for the reasonably necessary loss of time, attorney's fees, and other expenditures thereby suffered or incurred.

(*Prentice, supra,* 59 Cal.2d at p. 620.) The tort of another applies in limited circumstances where an innocent party is forced into litigation against a third party solely by the tort of another. (*Id.* at pp. 620-621.) Where the proposed indemnitee has defended a claim "upon his own contract, or for his own misfeasance," there is no basis for an award of attorney fees. (*Davis v. Air Technical Indus., Inc.* (1978) 22 Cal.3d 1, 5-6 [reversing attorney fee award to party defending against own wrongdoing; noting "tort defendants, even if vindicated, must pay for their own defense]").

Furthermore, '"nearly all of the cases which have applied the [tort of another] doctrine involve a clear violation of a traditional tort duty between the tortfeasor who is required to pay the attorney fees and the person seeking compensation for those fees.' [Citation."' (*Mega RV Corp. v. HWH Corp.* (2014) 225 Cal.App.4th 1318, 1339.) The parties agree that under "the 'tort of another' doctrine, there must be a clear violation of a traditional tort duty owed by the tortfeasor to the party seeking compensation." (FACC, ¶ 22; XC, ¶ 21.)

The Jail Medical Providers and the County Staff both allege that *if* the allegations of the Third Amended Complaint are found to be true, *then* Cross-complainants' damages are the result in whole or in part of Hospital's acts or omissions. (FACC, ¶ 35; XC, ¶ 35.) The court may disregard this alleged deduction or conclusion, which does not follow from the premise. The correct conditional statement would be: *if* the allegations of the Third Amended Complaint are found to be true, *then* Cross-complainants' damages are the result of their [Defendants'] own acts or omissions. Plaintiff does not allege *Hospital* violated the Bane Act or any other duty owed to Plaintiff. (See fn. 4 above.) She alleges Defendants violated the Bane Act and breached other duties. Although both cross-complaints include an allegation that Cross-complainants "have been forced to defend this action [presumably the Third Amended Complaint], solely as a result of the actions or omissions of Cross-Defendants [Hospital]," (FACC, ¶ 37; XC, ¶ 37) the court may also disregard this conclusion. because a demurrer does not admit deductions or conclusions. (*Zelig v. County of Los Angeles, supra,* 27 Cal.4th at p. 1126.)

In sum, the Third Amended Complaint has no allegations of wrongdoing against Hospital. Cross-complainants must defend the Third Amended Complaint for their own benefit, rather than for Hospital's benefit. (*Davis v. Air Technical Industries, Inc., supra,* 22

Cal.3d at p. 5.) Therefore, to the extent Cross-complainants rely on the tort-of-another doctrine to state an independent cause of action or as authority to recover attorney fees, the claims fail.

Declaratory Relief

The declaratory relief cause of action is derivative and depends on the viability of the other underlying claims. Based on the court's ruling to sustain Hospital's demurrers, the declaratory relief action is unnecessary and without merit.

Leave to Amend

It is the opposing party's responsibility to request leave to amend, and to show how the pleading can be amended to cure its defects. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "[T]he plaintiff bears the burden of proving an amendment would cure the defect." (*Tindell v. Murphy* (2018) 22 Cal.App.5th 1239, 1251.) To meet this burden, "[t]he plaintiff must identify some legal theory or state facts that can be added by amendment to change the legal effect of his or her pleading." (*Ibid.*; accord, *Hernandez v. City of Pomona* (2009) 46 Cal.4th 501, 520, fn. 16.)

It is an abuse of discretion to sustain a demurrer without leave to amend if there is a reasonable possibility the defect can be cured by amendment. Here Cross-complainants have the burden to demonstrate how the FACC or the Cross-complaint might be amended. Although Cross-complainants oppose the demurrers, they fail to suggest how their cross-complaints can be amended to cure the defects. Therefore, the court sustains Hospitals' demurrers without leave to amend.

Motions to Strike

Given the ruling on Hospital's demurrers to the FACC and the Cross-complaint, Hospital's motions to strike are moot.

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 10-20-26.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Johnson, Jr. v. James Bruce, M.D., et al.***
Superior Court Case No. 25CECG03602

Hearing Date: October 22, 2026 (Dept. 502)

Motion: by Plaintiff to Set Aside Dismissal of Action

Tentative Ruling:

To grant. The dismissal entered on April 22, 2026, is set aside on grounds of "mistake, inadvertence, surprise or excusable neglect." (Code Civ. Proc., § 473, subd. (b).) A Case Management Conference hearing is set for Wednesday, January 20, 2027, at 3:30 p.m. in Department 502.

Explanation:

Attorney Affidavit of Fault:

The court is empowered to relieve a party "upon any terms as may be just … from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." (Code Civ. Proc. § 473, subd. (b).) Where a motion seeking this relief is based on an "attorney affidavit of fault," the neglect need not be excusable. (*Ibid.*) Relief is mandatory when a timely application is made with "an attorney's sworn affidavit attesting to the attorney's mistake, inadvertence, surprise, or neglect. . ." (*Ibid*.; *Younessi v. Woolf* (2016) 244 Cal.App.4th 1137, 1148.)

Moreover, the law favors judgments on the merits. Where dismissals are the procedural equivalent on a default; i.e., those which deprive plaintiffs of their day in court, relief is favored. (*Leader v. Health Indus. Of America, Inc.* (2001) 89 Cal.App.4th 603, 618.)

Here, the motion was filed on July 6, 2026 and served on the parties on August 13, 2026. Therefore, the motion is timely. Next, it is clear that the court's dismissal of the action was caused by Mr. Kim's repeated inadvertences. The court dismissed the action because plaintiff (or plaintiff's counsel) failed to appear at the case management conference ("CMC") and the subsequent order to show cause ("OSC") hearing. Mr. Kim indicates that his failure to appear at the CMC was due to technical difficulties relating to zoom, and his failure to appear for the OSC was due to his ignorance in arranging for a zoom appearance in the Fresno Superior Court. (Kim Decl., ¶¶ 2, 5.) Therefore, it is clear that Mr. Kim's mistakes caused the dismissal of the action.

Saint Agnes Medical Center ("SAMC") relies upon *Comunidad en Accion v. Los Angeles City Counsel* (2013) 219 Cal.App.4th 1116 ("*Comunidad en Accion*"), *Younessi v. Woolf* (2016) 244 Cal.App.4th 1137 ("*Younessi*"), and *Jackson v. Kaiser Foundation*

Hospitals, Inc. (2019) 32 Cal.App.5th 166 ("*Jackson*"), to support its contention that a counsel's failure to adhere to a court order does not constitute neglect warranting relief under Code of Civil Procedure section 473, subdivision (b). However, none of these cases stand for the proposition SAMC is suggesting.

Comunidad en Accion did not discuss the mandatory relief under Code of Civil procedure section 473, subdivision (b). "It is axiomatic that cases are not authority for propositions not considered." (*People v. Gilbert* (1969) 1 Cal.3d 475, 482; see also *Santisas v. Goodin* (1998) 17 Cal.4th 599, 620. ["[a]n appellate decision is not authority for everything said in the court's opinion but only 'for the points actually involved and actually decided.'"].)

Younessi stands for the proposition that relief is mandatory upon an attorney's filing of an affidavit of fault, and provides as follows: " 'Notwithstanding any other requirements of this section, the court shall, whenever an application for relief is made no more than six months after entry of judgment, is in proper form, and is accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect, vacate any ... resulting default judgment or dismissal entered against his or her client, unless the court finds that the default or dismissal was not in fact caused by the attorney's mistake, inadvertence, surprise, or neglect.' 'Relief under this provision is mandatory if the conditions are fulfilled.' [Citation.] (*Younessi v. Woolf, supra,* 244 Cal.App.4th at p. 1147, citations omitted.)

Jackson discussed the unavailability of mandatory relief for certain types of dismissals, including voluntary dismissals, dismissals following the sustaining of a demurrer without leave to amend, and mandatory dismissals for failure to serve a complaint within three years. (*Jackson,* at pp. 176-177.) None of these facts are implicated in the case at bench.

Regardless of whether Mr. Kim's neglect was excusable, relief is mandatory where an attorney unambivalently falls on his sword by declaring under oath that the client's dismissal was his fault. (Code Civ. Proc., § 473, subd. (b).) Accordingly, the motion is granted.

Procedural Requirements:

The application "shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted." (Code Civ. Proc. §473, subd. (b).) But this requirement is not jurisdictional, and substantial compliance may suffice. (*Carmel, Ltd. V. Tavoussi* (2009) 175 CA4th 393, 403 [substantial compliance found where counsel offered proposed answer at motion hearing rather than serving it with moving papers.]; *Austin v. Los Angeles Unified School Dist.* (2016) 244 CA4th 918, 933 [plaintiff substantially complied with the "attached-pleading requirement" by offering facts and legal arguments in her motion.].) Given that, ordinarily, there is not a pleading to be filed by plaintiff at this stage of the proceedings; plaintiff is excused from this requirement.

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 10-20-26.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Underground Boring Systems, Inc. v. Imperial Electric Service***
Superior Court Case No. 26CECG00071

Hearing Date: October 22, 2026 (Dept. 502)

Motion: Default Prove-Up

Tentative Ruling:

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

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

Tentative Ruling
Issued By: lmg on 10-21-26.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re:	***Ban v. Ming*** Superior Court Case No. 24CECG04019
Hearing Date:	October 22, 2026 (Dept. 502)
Motion:	By Defendant/Cross-Complainant for Judgment on the Pleadings

Tentative Ruling:

To grant defendant/cross-complainant Roeum Ming's motion for judgment on the pleadings as to both the complaint and cross-complaint, without leave to amend. (Code Civ. Proc., § 438.) Defendant/cross-complainant is to file a proposed judgment consistent with this ruling within seven days of service of the minute order from the clerk.

Explanation:

A motion for judgment on the pleadings has the same function as a demurrer, but is made after the time for demurrer has passed. (Code Civ. Proc., § 438; *Prickett v. Bonnier Corporation* (2020) 55 Cal.App.5th 891, 896.) The grounds for the motion must appear on the face of the challenged pleading or from facts judicially noticeable. (*Prickett v. Bonnier, supra,* 55 Cal.App.5th at p. 896.) The court is to treat all facts as properly pled. (*Aubry v. Tri-City Hospital Dist*. (1992) 2 Cal.4th 962, 967.) While leave to amend is routinely granted, a court may deny leave to amend where "there is no reasonable possibility that the defect can be cured by amendment." (*Von Batsch v. American Dist. Telegraph Co*. (1985) 175 Cal.App.3d 1111, 1117.)

Here, defendant/cross-complainant moves for judgment on the pleadings as to both the complaint and cross-complaint. As to both, defendant/cross-complainant asserts that the court has ordered that admissions be deemed admitted which conclusively establish against plaintiff/cross-defendant as to the complaint and establish liability as to plaintiff/cross-defendant as to the cross-complaint.

The court takes judicial notice of the admissions deemed admitted. Matters which are deemed admitted "are conclusively established in the litigation and are not subject to being contested through contradictory evidence." (*Stover v. Bruntz* (2017) 12 Cal.App.5th 19, 30.) Here, the admissions deemed admitted establish both that plaintiff/cross-defendant cannot prevail on his complaint and that defendant/cross-complainant prevails on her cross-complaint.

In light of the foregoing, the court grants defendant/cross-complainant's motion for judgment on the pleadings, without 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 10-21-26.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Mohammed v. Fresno 62 Investment LLC et al.***
Superior Court Case No. 23CECG00020

Hearing Date: October 22, 2026 (Dept. 502)

Motion: Motion to Set Aside Settlement

Tentative Ruling:

To take off calendar, as no moving papers have been filed.

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 20-32-36.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Perez Vaca v. Sran Ag II, Inc.***
Superior Court Case No. 22CECG03802

Hearing Date: October 22, 2026 (Dept. 502)

Motion: By Plaintiff to Enforce Settlement

Tentative Ruling:

To grant. To approve a balance sought on the settlement of $63,333.49. To award attorney fees in the amount of $500. To approve costs in the amount of $60. Plaintiff Jose Ramon Perez Vaca is directed to submit an amended proposed judgment consistent with this order within five days of service of the order by the clerk.

Explanation:

Code of Civil Procedure Section 664.6 provides as follows: "If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court . . . for settlement of the case . . . the court, upon motion, may enter judgment pursuant to the terms of the settlement." It also provides that the parties may request that the court "retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement." (Code Civ. Proc., § 664.6.)

Here, plaintiff Jose Ramon Perez Vaca ("Plaintiff") seek entry of judgment pursuant to Code of Civil Procedure section 664.6. Plaintiff submits a writing, signed by the parties, made outside the presence of the court. The writing reflects that this court would retain jurisdiction under section 664.6 to enforce the writing if defendant Sran Ag II, Inc. ("Defendant") failed to make any timely payments required under the settlement agreement. (Gaines Decl., ¶ 4, and Ex. A thereto.) The agreement contemplated single monthly payments to Plaintiff to settle the claims of this action. Plaintiff submits that Defendant has made some but not all payments. (*Id.*, ¶¶ 8-10.) Defendant has since failed to make any further payments. (*Id.*, ¶ 10.) Notice was provided of the outstanding balance. (*Id.*, ¶ 12.) The agreement has an acceleration clause. (*Id.*, Ex. A, § 7.16.) Accordingly, entry of judgment is in order for the principal remaining balance of $63,333.49.

Plaintiff seeks imposition of an award of attorney fees. The settlement agreement provides a basis to seek fees related to enforcement. Counsel's rate sought of $700 is high. The court sets a rate of $500. Counsel appears to be 19 years into practice, the majority of which has been in civil litigation. (Gaines Decl., ¶ 16.) 8 hours spent researching and preparing this simple motion is therefore unreasonable. Attorney fees are awarded in the amount of $500. Costs are approved at $60.

Based on the above, the motion is granted. Judgment shall be entered in the total amount of $63,893.49.

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 10-21-26.
(Judge's initials) (Date)