Tentative Rulings for November 28, 2023
Department 501

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

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

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

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

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Tentative Ruling

Re: ***Valenzuela v. Emerzian Chiropractic Professional Corporation, et al.***
Superior Court Case No. 21CECG02138

Hearing Date: November 28, 2023 (Dept. 501)

Motion: by Plaintiffs for Preliminary Class Settlement Approval

Tentative Ruling:

To grant.

The motion for final approval and for an award of fees and costs will be heard on July 30, 2024, at 3:30 p.m. in this Department. Papers for such motions need be filed and served no later than June 28, 2024.

Explanation:

1. Class Certification

Settlements preceding class certification are scrutinized more carefully to make sure that absent class members' rights are adequately protected, although there is less scrutiny of manageability issues. (*Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 240; see *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1803, fn. 9.) The trial court has a "fiduciary responsibility" as the guardian of the absentee class members' rights to decide whether to approve a settlement of a class action. (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 95.)

A precertification settlement may stipulate that a defined class be conditionally certified for settlement purposes. The court may make an order approving or denying certification of a provisional settlement class after the preliminary settlement hearing. (Cal. Rules of Court, rule 3.769(d).) Before the court may approve the settlement, however, the settlement class must satisfy the normal prerequisites for a class action. (*Amchem Products, Inc. v. Windsor* (1997) 521 US 591, 625-627.)

"Class certification requires proof (1) of a sufficiently numerous, ascertainable class, (2) of a well-defined community of interest, and (3) that certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a class is superior to other methods. In turn, the community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*In re Tobacco II Cases* (2009) 46 Cal.4th 298, 313.)

Plaintiffs bear the burden of establishing the propriety of class treatment *with* admissible evidence. (*Richmond v. Dart Industries, Inc*. (1981) 29 Cal.3d 462, 470 [trial court's ruling on certification supported by substantial evidence generally not disturbed

on appeal]; *Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1107-1108 [plaintiff's burden to produce substantial evidence].)

Plaintiffs submit evidence of a class of 187 class members and 120 PAGA group members who are employees identifiable through defendants' business and personnel records, and in fact they have already been identified. (McCarty Decl., ¶¶ 2-3.) The numerosity and ascertainability criteria are satisfied.

Under the community of interest requirement, the class representative must be able to represent the class adequately. (*Caro v. Procter & Gamble* (1993) 18 Cal.App.4th 644, 669.) "[I]t has never been the law in California that the class representative must have identical interests with the class members . . . The focus of the typicality requirement entails inquiry as to whether the plaintiff's individual circumstances are markedly different or whether the legal theory upon which the claims are based differ from that upon which the claims of the other class members will be based." (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.)

Usually, in wage and hour class actions or PAGA class claims, the distinctive feature that permits class certification is that the employees have the same job title or perform similar jobs, and the employer treats all in that discrete group in the same allegedly unlawful fashion. In *Brinker Restaurant v. Superior Court* (2012) 53 Cal.4th 1004, 1017, "no evidence of common policies or means of proof was supplied, and the trial court therefore erred in certifying a subclass."

Common questions in this class include: (1) whether defendants adequately compensated class members for all hours worked; (2) whether defendants deprived plaintiff and other class members of meal and/or rest periods or required plaintiff to work during meal and/or rest periods without compensation or failed to properly compensate class member and plaintiff for rest periods and meal periods; (3) whether defendants failed to pay all wages due to class members within the required time upon their discharge or resignation; (3) whether the wage statements defendants provided to class members complied with California law; (4) whether defendants failed to properly compensate class members for business expenses. ; and (5) whether defendants' policies and practices violate California's Unfair Competition Law. Plaintiffs' counsel evaluated these claims by reviewing common evidence such as defendants' uniform employment policy and procedure documents. The motion is supported by a declaration from each plaintiff showing that each cause of action is premised on the application of policies applied to non-exempt hourly employees causing plaintiffs to experience Labor Code violations, including missed meal and/or rest periods, the failure to be paid all wages, failure to receive accurate wage statements, etc.

The adequacy of representation component of the community of interest requirement for class certification comes into play when the party opposing certification brings forth evidence indicating widespread antagonism to the class suit. " 'The adequacy inquiry … serves to uncover conflicts of interest between named parties and the class they seek to represent.' [Citation.] '… To assure "adequate" representation, the class representative's personal claim must not be inconsistent with the claims of other members of the class. [Citation.]' [Citation.]" (*J.P. Morgan & Co., Inc. v. Superior Court* (2003) 113 Cal.App.4th 195, 212.)

"[T]he adequacy inquiry should focus on the abilities of the class representative's counsel and the existence of conflicts between the representative and other class members." (*Caro v. Procter & Gamble Co.* (1993) 18 Cal.App.4th 644, 669.) Counsel have substantial class action experience, and the declarations from plaintiffs shows there are no conflicting interests with the class. (Scheppach Decl. ¶¶ 10-21; Bauer Decl., ¶¶ 4-8; St. John Decl., ¶¶ 2-7; (Valenzuela Suppl. Decl., ¶ 19; Cabrera Suppl. Decl., ¶ 19; Amezola Suppl. Decl., ¶ 19.).)

The class may be certified for settlement purposes.

2. Settlement Approval

"[I]n the final analysis it is the Court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing litigation. The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement." (*Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, 129.) "[T]o protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished … [therefore] the factual record must be before the … court must be sufficiently developed." (*Id.* at p. 130.)

Plaintiffs' counsel provides a valuation of the class claims, which arise from the application of three policies in the workplace that ultimately resulted in Labor Code violations: Off-the-clock work that resulted in unpaid wages, meal period violations, and rest period violations. The failure to pay those wages is the basis of the violations alleging non-compliant pay statements, untimely paychecks and untimely final paychecks in the fifth, sixth and seventh causes of action. Plaintiffs initially estimated the claims to be worth approximately $2.787 million for the Labor Code causes of action and $3.875 million in PAGA penalties. (See Scheppach Decl., ¶ 90.) The estimates were reached with the assistance of an expert and by estimating the hours, shifts or class members for a violation-specific time period and applying the appropriate average hourly rate. The underlying information came from the data provided by defendant or interviews with 13 employees, including the three class representatives. (Id. at ¶¶ 48-92.) There is a sufficient explanation to support the figures as calculated in Scheppach's declaration.

Counsel's analysis supports a finding that the risks, costs and uncertainties of taking the case to trial weigh in favor of settling the action for $400,000 as opposed to the potential maximum recovery of approximately $6.662 million. (See Scheppach Decl. ¶¶ 99-109.) Plaintiffs also offers evidence regarding the views and experience of counsel, who state that they believe that the settlement is fair and reasonable based on their experience with class litigation. (Scheppach Decl., ¶¶ 96-109.) Plaintiff also points out that the settlement was reached after arm's length mediation, and that counsel conducted informal pre-mediation data production and engaged the services of an expert to investigate the claims and learn the strengths and weaknesses of the case.

These factors weigh in favor of finding that the settlement is fair, adequate, and reasonable.

Plaintiffs' counsel seeks up to $133,333.33 (1/3 of the gross settlement) in attorneys' fees, and actual costs of up to $20,000. A third is within the range of fees that have been approved by other courts in class actions, which frequently approve fees based on a percentage of the common fund. (*City & County of San Francisco v. Sweet* (1995) 12 Cal.4th 105, 110-11; *Quinn v. State* (1975) 15 Cal.3d 162, 168; see also *Apple Computer, Inc. v. Superior Court* (2005) 126 Cal.App.4th 1253, 1270; *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19, 26.)

While it is true that courts have found fee awards based on a percentage of the common fund are reasonable, the California Supreme Court has also found that the trial court has discretion to conduct a lodestar "cross-check" to double check the reasonableness of the requested fees. (*Laffitte v. Robert Half Intern. Inc*. (2016) 1 Cal.5th 480, 503-504 [although class counsel may obtain fees based on a percentage of the class settlement, courts may also perform a lodestar cross-check to ensure that the fees are reasonable in light of the number of hours worked and the attorneys' reasonable hourly rates].) With the final approval motion, counsel shall submit a full lodestar analysis, supported by full and complete billing records and evidence supporting the hourly rates claimed.

The motion seeks preliminary approval of a $10,000 "service awards" to each of the three plaintiffs. These awards are in addition to each plaintiff's share of the settlement fund as a class member. There is no "presumption of fairness" in review of an incentive fee award. (*Clark v. Residential Services LLC* (2009) 175 Cal.App.4th 785, 806.) Preliminary approval may be granted at this time, though a lower amount is likely to be awarded at final approval, as the requested enhancement is large for the size of the settlement, there is no evidence indicating any substantive contributions by the plaintiffs during the short period of time between the case being filed and ultimately settled, neither is there evidence of any real risk to plaintiff in being named in a representative action apart from the theoretical.

The parties agreed to use Simpluris, Inc. as settlement administrator. The motion represents that the cost of administration will not exceed $7,500. Jacob Kamenir of Simpluris, Inc. provides a declaration detailing the tasks that will be performed by the administrator, and estimate of the administration costs, which are expected to exceed but were discounted to $7,500. The administrator shall provide an update of the expected total actual costs with the final approval 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: DTT on 11/21/2023.
(Judge's initials) (Date)
(34)

(34)

Tentative Ruling

Re: ***Sayson v. West Valley Construction Company, Inc., et al.***
Superior Court Case No. 22CECG03700

Hearing Date: November 28, 2023 (Dept. 501)

Motion: by Defendant Zachry Construction Corporation for an Order Compelling Plaintiff's Responses to Form Interrogatories, Special Interrogatories, and Requests for Production

Tentative Ruling:

To deny.

Explanation:

The discovery at issue was served by email to plaintiff on May 8, 2023, and extensions for plaintiff to provide responses were granted as requested through August 4, 2023. Despite defendant's efforts to address the lack of responses informally, plaintiff failed to serve any responses and prompted the filing of these motions to compel on September 7, 2023.

All that needs to be established to support an order compelling initial responses to discovery is to show that the discovery was properly served, and that no responses were received by the due date. While not an express requirement, including the propounded discovery as evidence in support of the motion is the standard manner of proving service on a motion to compel, since the proof of service should be attached to the subject discovery. Here, defendant Zachry Construction Corporation's counsel did not attach copies of the subject discovery to his supporting declaration, although the declarations submitted with each motion indicated the discovery propounded was attached as Exhibit A. (Gevorgyan Decl., ¶ 2.) Counsel's declaration stating the manner of service does not include the information required by statute to prove service. (See Code Civ. Proc., § 1013b.) Accordingly, the court cannot grant the motions.

Moreover, plaintiff has provided evidence that responses have been served. (Staskus Decl., ¶ 4, Exh. A.) As a result, it does not appear there are outstanding responses for the court to compel.

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: DTT on 11/22/2023.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Doe K.M. v. Doe #1, et al.***
Superior Court Case No. 22CECG03708

Hearing Date: November 28, 2023 (Dept. 501)

Motion: by Plaintiff to Reinstate November 22, 2022, Filing Date

Tentative Ruling:

To grant. (Code Civ. Proc., § 473, subd. (d).) The filing date of the Certificate of Merit by Licensed Mental Health Practitioner for Plaintiff John Doe K.M. and the Certificate of Merit Regarding Defendant Doe #1 are deemed to be on November 22, 2022.

Explanation:

On November 22, 2022, plaintiff electronically filed his Complaint and Certificates of Merit by counsel and by a mental health practitioner in compliance with Code of Civil Procedure section 340.1. The filing was accepted by the court. On March 20, 2023, the court filed and served a Notice of Striking/Voiding of Filed Documents, causing the Certificates of Merit filed on November 22, 2022, to be voided. The notice did not provide an explanation for why the documents were voided, only that they were accepted in error. After inquiry, plaintiff's counsel indicates that the court informed counsel that the documents were voided because they were electronically filed. Plaintiff immediately refiled the Certificates of Merit on March 20, 2023. Plaintiff brings the instant motion to reinstate the November 22, 2022, filing date, as he indicates the statute of limitations on his claim elapsed on December 31, 2022. (Shakh, Decl., ¶¶ 1-7.)

Plaintiff does not provide authority for the basis of the motion; however, "[t]he court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgments or orders as entered, so as to conform to the judgment or order directed…" (Code Civ. Proc., § 473, subd. (d).) As plaintiff points out, there is no authority prohibiting the electronic filing of the Certificates of Merit. However, documents required to be kept confidential as a matter of law, such as the Certificates of Merit (Code Civ. Proc., § 340.1, subd. (o)), must be electronically filed in conformance to the Fresno County Superior Court local rules. Local Rule 4.1.3 provides:

> Records required to be kept confidential as a matter of law may be submitted to the court electronically through the court's e-filing system or physically through the clerk's office or drop box. Failure to use the below procedure for filing confidential records will result in the records being rejected.
>
> 1. Documents filed as confidential shall be designated as such by selecting the "confidential security group" security option on the filing

> details prompt in the Court's electronic system. Records not designated "confidential" in the e-filing process will automatically be accessible to the public.
>
> When submitting confidential records through e-filing, the filing party must indicate the legal authority that mandates the confidentiality of the record in the "Comments to Court" field.

(Fresno County Superior Court Local Rule, rule 4.1.3(B).)

While plaintiff was permitted to file the Certificates of Merit electronically, the court's electronic filing system does not show that plaintiff properly complied with Local Rule 4.1.3 by notating the legal authority mandating the confidentiality of the filing in the "Comments to Court" field. Consequently, plaintiff's electronic filing of the Certificates of Merit should not have been accepted.

However, it was not until March 20, 2023, approximately four months later, that the court voided the Certificates of Merit filed on November 22, 2022, and served notice to plaintiff's counsel without explanation or opportunity to correct. "If the clerk does not file a document because it does not comply with applicable filing requirements…, the court must *promptly* send notice of the rejection of the document for filing to the electronic filer. *The notice must state the reasons that the document was rejected for filing.*" (Cal. Rules of Court, rule 2.259(b), emphasis added.) Had the clerk rejected the filing in a reasonable time and provided plaintiff with an explanation for why the documents were not accepted for filing, plaintiff would have had ample opportunity to correct and resubmit. The court has no reason to believe that plaintiff would not have done so, since the record shows that plaintiff promptly resubmitted the Certificates of Merit for filing on March 20, 2023, following receipt of the court's notice of voiding. Justice would not be served should plaintiff suffer for the remissness of the clerk in the performance of his duty. Thus, the court intends to deem the filing date of the Certificates of Merit as filed on November 22, 2022.

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: DTT (Judge's initials) on 11/22/2023 (Date).

(35)

Tentative Ruling

Re: ***Khalil v. Withrow et al.***
Superior Court Case No. 22CECG02007

Hearing Date: November 28, 2023 (Dept. 501)

Motion: by Defendants California Department of State Hospitals and Brandon Price for Demurrer to Second Amended Complaint

Tentative Ruling:

To sustain the demurrer to the second, third and fourth causes of action of the First Amended Complaint, *without* leave to amend. (Code Civ. Proc. § 430.10, subd. (e).) Defendants California Department of State Hospitals and Brandon Price are directed to file an Answer within ten days of service of the minute order by the clerk.

Explanation:

On June 30, 2022, plaintiff filed suit against defendants California Department of State Hospitals ("CDSH"), Robert Withrow, and Brandon Price. On September 13, 2023, following the sustaining of a demurrer and granting of a motion to strike, plaintiff filed a Second Amended Complaint ("SAC") containing four causes of action: (1) violation of whistleblower protection act (all defendants); (2) violation of Labor Code section 1102.5 (CDSH); (3) violation of Health and Safety Code section 1278.5 (CDSH); and (4) violation of Labor Code section 6310 (CDSH). Defendants CDSH and Brandon Price demur to the SAC.

Demurrer

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.) On demurrer, the court must determine if the factual allegations of the complaint are adequate to state a cause of action under any legal theory. (*Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 103.)

CDSH renews its argument from prior demurrers that the second, third and fourth causes of action are barred by applicable statutes of limitation.[1] Specifically, CDSH argues that the second, third and fourth causes of action are barred because suit was filed more than six months after the date of CDGS's December 15, 2021, rejection letter. (Gov. Code § 945.6, subd. (a).) The instant Complaint was filed on June 30, 2022, which is facially more than six months after December 15, 2021. Plaintiff renews his opposition that the statute of limitation was equitably tolled.

[1] As CDSH is the only affected defendant of this demurrer, the court references CDSH in place of the collective defendants for clarity.

Application of the equitable tolling doctrine requires a balancing of the injustice to the plaintiff occasioned by the bar of his claim against the effect upon the important public interest or policy expressed by the Government Claims Act limitations statute. (*Addison v. State of Cal.* (1978) 21 Cal.3d 313, 321 ["*Addison*"].) Equitable tolling applies when three elements are present: (1) timely notice; (2) lack of prejudice to the defendant; and (3) reasonable and good faith conduct on the part of the plaintiff. (*St. Francis Memorial Hospital v. State Dept. of Public Health* (2020) 9 Cal.5th 710, 724 ["*St. Francis*"].) Though these three factors call for a practical inquiry not generally appropriate on demurrer, facts must still be alleged which, if true, would satisfy the three factors. (*Metabyte, Inc. v. Technicolor S.A.* (2023) 94 Cal.App.5th 265, 277-278.)

Plaintiff, as with the prior demurrers to his complaints, submits that he presented timely notice, that CDSH is not prejudiced, and that he conducted himself in a reasonable and good faith manner, based on the allegations of the SAC. CDSH challenges timely notice and conduct of a reasonable and good faith manner.

CDSH submits that plaintiff failed to provide timely notice of his intent to sue until the filing of the original Complaint in this action on June 30, 2022, and that at no point prior to the expiration of the six-month deadline following the denial of the government claim on December 15, 2021, did CDSH receive sufficient notice. Plaintiff submits that CDSH has had notice of the claim since the date of termination, and in any event had notice of the claim through the SPB proceeding. CDSH did not address this issue on reply. The court finds that there was timely notice to CDSH, as CDSH's December 15, 2021, rejection of plaintiff's claim succinctly acknowledges the possibility of court action. (Defendant's Request for Judicial Notice, Ex. A [warning Plaintiff of a six-month deadline to file a court action and explicitly acknowledging that "[the claim] is being rejected so you can initiate court action if you choose to pursue this matter further."])[2]

CDSH submits that plaintiff failed to act in a reasonable and good faith manner because the allegations of the SAC demonstrate that plaintiff merely erroneously chose to not timely file the instant action. CDSH concludes that errors amounting to mistake or general negligence alone do not excuse an untimely pleading. (*St. Francis*, *supra*, 9 Cal.5th at p. 726.) However, as the California Supreme Court in *St. Francis* noted, errors amounting to mistake or general negligence are merely a part of the analysis of whether a plaintiff has established the elements of equitable tolling. (*Ibid.*) It is a factor to balance the injustice to the plaintiff occasioned by the bar of his claim against the effect upon the important public interest or policy expressed by the Government Claims Act statutes. (*Ibid.*; *Addison*, *supra*, 21 Cal.3d at pp. 320-321.)

Plaintiff opposes on the grounds that he was arguably required to exhaust his administrative remedies. Plaintiff further opposes on the grounds that even if he was not required to exhaust his administrative remedies, the pursuit of administrative remedies automatically tolls the limitations period of all other legal remedies.

However, as plaintiff notes, equitable tolling, among other things, is meant to avoid the hardship of compelling plaintiffs from pursuing several duplicative actions simultaneously on the same set of facts. (*See Elkins v. Derby* (1974) 12 Cal.3d 410, 417

[2] Defendant's Request for Judicial Notice is granted.

["*Elkins*"].) If a plaintiff pursues one of several available legal remedies that causes the plaintiff to miss the statute of limitations for other remedies the plaintiff later wishes to pursue, equitable tolling will apply. (*St. Francis*, *supra*, 9 Cal.5th at p. 725.) Accordingly, if the reasonable and good faith pursuit of other remedies does not cause the plaintiff to miss other applicable deadlines, there will be no injustice to balance.

Here, the SAC alleges that: plaintiff initiated a governmental tort claim to preserve his ability to bring suit; plaintiff's claim was rejected while the SPB proceeding was ongoing; plaintiff believed that the deadline to bring suit was June 15, 2022, was tolled; he hoped to avoid the present litigation; and that between the final determination by the SPB and the filing of the instant litigation, plaintiff worked diligently with counsel to research the matter and underlying factual record. (SAC, ¶¶ 10, 13, 21, 22 and 23.)

Plaintiff chose to pursue several duplicative actions simultaneously on the same set of facts. As the SAC alleges, the purpose of initiating the government claim was to preserve the claim for a court action. (SAC, ¶ 10.) Indeed, had plaintiff failed to present the government claim within six months of the incident, equitable tolling would not have preserved the claim. (*Bjorndal v. Superior Court* (2012) 211 Cal.App.4th 1100, 1109-1110; *see also DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 991, fn. 8.)

However, the SAC fails to allege facts sufficient that, if true, would show the pursuit of one available legal remedy caused plaintiff to miss the statute of limitations for other remedies that plaintiff later wished to pursue. Plaintiff's claim with the SPB concluded, on April 7, 2022, well before the June 15, 2022, deadline that plaintiff identified to pursue a claim under the Government Claims Act. (SAC, ¶¶ 17 and 21.) It would not be an injustice to bar plaintiff's Government Claims Act claims where plaintiff had over two months after the conclusion of the SPB action to act. Here, the SAC does not allege a situation where plaintiff's pursuit of his claim before an administrative body caused him to miss the deadline to bring a court action (*e.g. Elkins*, *supra*, 12 Cal.3d at pp. 419-420), nor is it the situation that plaintiff failed to timely pursue his action due to an erroneous choice of forum (*Addison*, *supra*, 21 Cal.3d at pp. 320-321), or any other unjust technical forfeiture (*Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 370).

The demurrer to the second, third, and fourth causes of action is sustained based on the applicable statutes of limitation. As this is the third consecutive failure to state cause of action, the court finds that plaintiff is unable to cure his pleading, and the demurrer to the second, third and fourth causes action is sustained, without leave to amend. (Code Civ. Proc. § 430.41, subd. (e)(1).) The demurring parties must timely file an Answer to the remaining cause of action.

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: DTT on 11/22/2023.
(Judge's initials) (Date)

(29)

Tentative Ruling

Re: ***Mendez v. Munguia***
Superior Court Case No. 22CECG03837

Hearing Date: November 28, 2023 (Dept. 501)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To grant and sign the Proposed Order. No appearances 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: DTT on 11/22/2023.
(Judge's initials) (Date)