Tentative Rulings for December 17, 2025
Department 503

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

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

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

23CECG01114 ***Sheryl Smith v. Fresno Community Hospital and Medical Center*** **is continued to Tuesday, January 13, 2026 at 3:30 p.m. in Department 503.**

25CECG00954 ***Carmen Esqueda v. Jasdave Maan, Medical Doctor*** **is continued to Thursday, January 15, 2026 at 3:30 p.m. in Department 503.**

25CECG03333 ***Teresa Cosio v. Border Transfer, Inc*****. is continued to Thursday, December 18, 2025 at 3:30 p.m. in Department 503.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

Begin at the next page

(03)

Tentative Ruling

Re: ***Figueroa v. RCJG Company***
Case No. 23CECG03465

Hearing Date: December 17, 2025 (Dept. 503)

Motion: Defendant Saleh's Motion for Summary Judgment

If oral argument is timely requested, it will be entertained on Tuesday, December 30, 2025, at 3:30 p.m. in Department 503.

Tentative Ruling:

To deny defendant Saleh's motion for summary judgment.

Explanation:

Defendant Saleh moves for summary judgment of the entire complaint based on the "completed and accepted" doctrine. Under the completed and accepted doctrine, " '[W]hen a contractor completes work that is accepted by the owner, the contractor is not liable to third parties injured as a result of the condition of the work, even if the contractor was negligent in performing the contract, unless the defect in the work was latent or concealed. The rationale for this doctrine is that an owner has a duty to inspect the work and ascertain its safety, and thus the owner's acceptance of the work shifts liability for its safety to the owner, provided that a reasonable inspection would disclose the defect.' Stated another way, 'when the owner has accepted a structure from the contractor, the owner's failure to attempt to remedy an obviously dangerous defect is an intervening cause for which the contractor is not liable.' The doctrine applies to patent defects, but not latent defects. 'If an owner, fulfilling the duty of inspection, cannot discover the defect, then the owner cannot effectively represent to the world that the construction is sufficient; he lacks adequate information to do so.'" (*Neiman v. Leo A. Daly Co*. (2012) 210 Cal.App.4th 962, 969, citations omitted.) Thus, the completed and accepted doctrine does not apply where the defect is latent and could not have been discovered by the owner through a reasonable inspection. (*Sanchez v. Swinerton & Walberg Co*. (1996) 47 Cal.App.4th 1461, 1467.)

In the present case, defendant Saleh contends that the completed and accepted doctrine applies here because he was hired by Kelly Spicer to fill in two potholes in the front entrance walkway of Kelly's store with concrete, he completed the work, and Kelly Spicer accepted the work without objecting to it or requesting any further repairs. (Defendant's UMF Nos. 2, 3, 4, 7.) In fact, Kelly Spicer's representative stated that the work "looked great" when he accepted it. (UMF No. 4.) However, the concrete patches began to fail about five months later, and Kelly Spicer contacted Saleh to ask him if there was anything he could do. (UMF No. 5.) When he did not respond, Kelly Spicer hired a different contractor to replace the concrete in the entrance completely. (UMF Nos. 6, 7.) Kelly Spicer also placed cones and a shopping cart around the damaged concrete before work started on it. (UMF Nos. 9, 13.) The new contractor began work by

painting the concrete to mark the areas that needed to be cut out and replaced, but plaintiff tripped and fell before they were able to start the work. (UMF Nos. 1, 10.)

Kelly Spicer had been experiencing problems with the concrete in the entranceway for several years before the accident, as the concrete seemed to sink for some reason. (UMF No. 12.) Plaintiff was aware of the problems with the concrete, and he was told by the store manager the day before the accident that the concrete was being cut up as part of the replacement. (UMF No. 15.)

Thus, Saleh argues that he completed the work and Kelly Spicer accepted it, so he no longer had any legal duty to a third party like plaintiff to protect him from the dangerous condition caused by the broken concrete. He also argues that the defect caused by the broken concrete was patent, as Kelly Spicer had clearly seen the broken concrete and had taken steps to warn of it and remedy the defect, including placing cones around the area, contacting Saleh to see if he could do anything, and hiring another contractor to replace the concrete. Plaintiff himself also saw the work being done of the area, and had been told by his supervisor that the concrete was being replaced. Thus, Saleh concludes that the defect was obvious as a matter of law, and therefore the completed and accepted doctrine bars plaintiff's claim against him.

However, defendant has not met his burden of showing that the completed accepted doctrine applies to the plaintiff's claims against him, and there is a triable issue of material fact with regard to whether the defect was latent. As discussed above, the completed and accepted doctrine does not apply where the defect that caused plaintiff's injuries was latent rather than patent. A patent defect "'is one which can be discovered by such an inspection as would be made in the exercise of ordinary care and prudence. This is contrasted with a latent defect, one which is hidden and which would not be discovered by a reasonably careful inspection.'" (*Preston v. Goldman* (1986) 42 Cal.3d 108, 123, citations omitted.) " 'The test used to determine whether a deficiency is patent is not a subjective one, applied to each individual user; rather, it is an objective test based on the reasonable expectations of the average consumer.'" (*Sanchez v. Swinerton & Walberg Co. supra*, 47 Cal.App.4th at p. 1467 citation omitted.)

In *Neiman v. Leo A. Daly Co., supra*, 210 Cal.App.4th 962, the Court of Appeal found that the completed and accepted doctrine barred the plaintiff's claim against the contractor where the property owner accepted the contractor's work after it was completed, because the defect that allegedly caused plaintiff's injury, a lack of contrast marking stripes on the stairs, was obvious and would have been discovered by a reasonable inspection. (*Id*. at pp. 969-970.)

Likewise, the Supreme Court in *Preston v. Goldman* found that the fact that a pool was unfenced was an obvious dangerous condition that would have been obvious to an objective observer, and therefore the defect was patent as a matter of law. (*Preston, supra*, 42 Cal.3d at p. 123; see also *Mattingly v. Anthony Industries* (1980) 109 Cal.App.3d 506, 510 [same].) The question of whether a defect is patent or latent may be determined as a matter of law where the facts are not in dispute. (*Ibid*.) Also, the fact that the cause of the defect may be unknown does not render it a latent defect, if it would be easily discovered by a reasonable inspection. (*Tomko Woll Group Architects, Inc. v. Superior*

Court (1996) 46 Cal.App.4th 1326, 1339 [holding raised pavement on which plaintiff tripped was a patent defect, even if the cause of the lifted pavement was unknown].)

Here, the evidence submitted by defendant does not establish as a matter of law that the defect was patent and would have been discovered through a reasonable inspection at the time Kelly Spicer accepted the work. Defendant's evidence shows that Kelly Spicer hired him to patch two holes in front of its store, and that he filled the holes with concrete as he was hired to do. (UMF Nos. 2, 4.) At the time he completed the work, the holes were filled with concrete, and Kelly Spicer's representative said that the work "looked great." (UMF No. 4.) There is no evidence that the holes continued to present a dangerous condition at the time Kelly Spicer inspected the work and accepted it. In fact, the evidence suggests that the work seemed to have been completed in a satisfactory manner, that the holes were filled, and that the work "looked great." (*Ibid*.) Defendant has not pointed to any evidence that Kelly knew or could have discovered through a reasonable inspection at the time it accepted the work that the concrete would start to crumble in a few months, or that the work was otherwise obviously defective. In fact, all of the evidence tends to show that the work seemed to be completed in a reasonable and competent manner, and that a reasonable inspection would not have revealed the defect when Kelly Spicer accepted the work. Therefore, defendant has not shown that the completed and accepted doctrine applies and that he is not liable to plaintiff as a result.

Defendant argues that the defect was patent and obvious, as Kelly Spicer knew that the concrete in front of the entrance was prone to sinking and developing potholes, and that it developed holes again about five months after defendant completed his work. Defendant points to the fact that Kelly Spicer placed cones and a shopping cart around the damaged area, that it contacted defendant to see if he could repair the damage, and that it hired another contractor to replace the damaged concrete. Defendant also notes that plaintiff himself noticed the work being done on the damaged area before the accident, and he was told the concrete was being replaced. Thus, defendant concludes that the defect was open and obvious, and therefore the completed and accepted doctrine applies and bars plaintiff's claim.

However, none of defendant's evidence shows that the defect was patent or would have been obvious through a reasonable inspection at the time Kelly Spicer accepted it. The evidence shows that defendant filled the holes with concrete in March of 2022, that the work seemed to be completed in a satisfactory manner when Kelly Spicer accepted it, and that it "looked great." (UMF No. 4.) It was only months later, in August of 2022, that the concrete patches started to crumble and that Kelly Spicer realized that the concrete needed to be replaced. (UMF Nos. 5, 6.) At that time, Kelly placed cones and a shopping cart around the damaged concrete, hired a different contractor to replace the concrete, and informed plaintiff that the concrete was being replaced. (UMF Nos. 6-10.)

The fact that Kelly Spicer became aware of the fact that the concrete work done by defendant was crumbling and creating a dangerous condition at the store entrance in August of 2022 does not mean that the defect in defendant's work was obvious or discoverable through a reasonable inspection in March of 2022, when Kelly Spicer accepted defendant's work. The only evidence before the court at this time indicates

that the work was completed in an apparently satisfactory and competent manner, and that it "looked great." (UMF No. 4.)

Defendant also points to the fact that Kelly Spicer was aware of the problem with the concrete since at least 2020, as the concrete had been sinking and creating potholes for years. (UMF Nos. 11, 12.) However, the fact that Kelly Spicer had been having problems with potholes in the concrete prior to hiring defendant to fill the holes does not establish that it could have learned of the defective nature of his work after it was completed. While Kelly Spicer was clearly aware of the fact that the concrete in front of the store was crumbling and had potholes before it hired defendant to fill the holes, there is no evidence that it knew that defendant's work was defective after the holes were filled and it accepted the work. Instead, the evidence suggests that Kelly Spicer did not know of the defects until months later, when the concrete patches began to fail.

Defendant nevertheless contends that Kelly Spicer must have known of the defect because Kelly allegedly hired him to do a temporary patch repair of the holes rather than a full replacement of the concrete. (UMF Nos. 3, 18, 19.) Because Kelly Spicer opted for a patch rather than a full replacement, defendant argues that it must have known that the patch was a temporary fix and that it was likely to fail in a short time.

Yet there is a disputed issue of fact with regard to whether Kelly Spicer knew or intended that defendant's patch would be only a temporary fix that would quickly fail. Defendant's evidence does show that Kelly Spicer hired him to do a patch rather than a more complete preplacement of the concrete. Defendant claimed in his deposition testimony that Kelly Spicer told him to do a temporary patch repair, and that it was more important for Kelly Spicer to get it done quickly than to make sure it would be a permanent fix. (Exhibit 2 to Plaintiff's Evidence, Saleh depo., pp. 21-23.)

On the other hand, Kelly Spicer's email to defendant in August of 2022 indicates that it did not believe the patch was merely a temporary fix. In the email, Kelly's representative stated that the concrete patch had started to crumble after only five months, and asked him if there was anything he could do about it. (UMF No. 5.) This email seems to indicate that Kelly Spicer was surprised that the patch had failed so quickly and wanted defendant to repair the problem if possible. The email suggests that Kelly Spicer did not intend the patch to be only a temporary fix.

In addition, Kelly Spicer's representative, Melissa McCreight, testified that Kelly Spicer had hired defendant to perform the repair work for the concrete, that she had no recollection of discussing with him that the work would only be a temporary fix, and that she believed that the repair would be more permanent that it turned out to be. (Exhibit 1 to Plaintiff's Evidence, McCreight depo., pp. 69-72.) Kelly Spicer's store manager, Eric Fernandez, also testified that he believed the concrete patch would be a permanent fix and that it would last more than five months. (Exhibit 4 to Plaintiff's Evidence, Fernandez depo., p. 45.) Thus, according to Kelly Spicer, they did not believe that the patch was simply a temporary fix when they hired defendant to make the repairs, which indicates that they were not aware of that the patch was likely to fail in a few months when they accepted the defendant's work.

Also, according to plaintiff's expert, the defendant's concrete patches would have lasted at least 20 years if the work had been done properly. (Plaintiff's Evidence, Exhibit 3, Moore decl., ¶ 9.) The expert states that the defendant failed to properly mix the concrete and give it adequate time to cure before allowing people and shopping carts to cross it. (*Ibid*.) If the concrete had been properly mixed and allowed adequate time to cure, it would have lasted for a minimum of 20 years. (*Ibid*.)

Thus, plaintiff's evidence indicates that defendant's patch repair of the area would have been permanent rather than temporary if it had been performed properly. In fact, it should have lasted at least 20 years rather than only five months, provided that defendant had properly mixed the concrete and allowed it enough time to cure. However, there is no evidence that defendant's defective work would have been obvious or discoverable by Kelly Spicer at the time it accepted the work in March of 2022, as the fact that the concrete was improperly mixed and had not yet adequately cured would not have been readily apparent at the time. In the alternative, there is a triable issue of material fact as to whether the defect was patent when Kelly Spicer accepted the work. Therefore, the court intends to deny defendant Saleh's motion for summary judgment.

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: JS on 12/15/2025.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***K.U. v. Daniel Dzung Nguyen, M.D., et al.***
Superior Court Case No. 25CECG00283

Hearing Date: December 17, 2025 (Dept. 503)

Motion: by Plaintiff for Leave to Amend

If oral argument is timely requested, it will be entertained on Tuesday, December 30, 2025, at 3:30 p.m. in Department 503.

Tentative Ruling:

To grant. (Code Civ. Proc., §§ 425.13; 473.)

Plaintiff is required to file the Second Amended Complaint within 10 days from the service of the clerk of the minute order. New allegations/language must be set in **boldface** type.

Explanation:

Plaintiff seeks leave to amend to add claims for punitive damages and a cause of action for invasion of privacy against defendant Daniel Dzung Nguyen, M.D.

Plaintiff's motion to assert punitive damages must be filed within two years after the original complaint was filed, or nine months before the date the matter is first set for trial, whichever is earlier. (Code Civ. Proc., § 425.13, subd. (a).) Here, the original complaint was filed on January 16, 2025, and trial is not set. Therefore, this motion is timely.

No claim for punitive damages may be included in an original complaint "[i]n any action for damages arising out of the professional negligence of a health care provider." (Code Civ. Proc., § 425.13, subd. (a).) Instead, a punitive damages claim in such a case must be raised in an amended complaint filed with leave of court pursuant to the procedures required by Section 425.13. This statute "shift[s] to the plaintiff the procedural burden that would otherwise fall on the defendant to remove a 'frivolous' or 'unsubstantiated' claim early in the suit." (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 787.)

It is undisputed that defendants are "health care providers" under the statute. Further, the phrase "arising out of professional negligence" is not limited to a malpractice action, but applies to any claim for injury, including intentional tort claims, such as battery (i.e., based on treatment different from or exceeding the consent given), and fraud or intentional infliction of emotional distress (e.g., related to the manner in which defendants performed or communicated test results). The key is that the claims are "directly related to the professional services provided" by a health care provider. (*Id*., 782.)

The motion under Section 425.13 must be supported by affidavits stating facts sufficient to support a finding that there is a "substantial probability" plaintiff will prevail on the claim. (Code Civ. Proc., § 425.13, subd. (a).) "Substantial probability" requires plaintiff to both state and substantiate (i.e., with competent, admissible evidence) a legally sufficient claim. (*College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 719.) Thus, plaintiff's burden on this motion is to produce evidence that, if accepted by the trier of fact, would establish a prima facie showing of "malice, oppression or fraud," bearing in mind the "clear and convincing" standard of proof required at trial. (*Ibid.*) This statutory procedure operates as a "demurrer or summary judgment in reverse," such that instead of requiring defendant to defeat a punitive damages claim by showing it is factually or legally meritless, plaintiff has the burden to state and substantiate the merits of the claim. (*Ibid*.)

However, the court cannot weigh conflicting affidavits or predict the likely outcome at trial. (*Id*., 709 [the trial court cannot "reject a well pled and factually supported punitive damages claim simply because the court believes the evidence is not strong enough for probable success before a jury."].)

(1) "'Malice' means conduct which is intended by the defendant to cause injury to plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others; (2) 'Oppression' means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. (3) 'Fraud' means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." (Code Civ. Proc., § 3294, subd. (c).)

Here, plaintiff submits her own affidavit, the affidavits of her mother, Laura Plank and father, Matthew Plank, and Dr. Nguyen's verified responses to requests for admission, in support of her motion to amend. The motion is unopposed and there are no objections to the evidence. Plaintiff and Mrs. Plank's declarations are made with personal knowledge of the facts, as they both declare that they were present during the June 29, 2024 examination conducted by Dr. Nguyen. (K.U. Decl., ¶¶ 2-4; L. Plank Decl., ¶¶ 1, 4-5.) Plaintiff and Mrs. Plank attest that throughout examination and during the ultrasound, Dr. Nguyen stopped on multiple occasions on the image of K.U.'s fetus' genitalia and referred to the genitalia as a "beautiful hamburger" at least three times. (K.U. Decl., ¶ 5; L. Plank Decl., ¶¶ 7-8.) Both testify that they saw that Dr. Nguyen had a visible erection through his pants, and he proceeded to remove his shoe, put his knee up, and touch and manipulate his erection. It is further asserted that Dr. Nguyen's genitals made physical contact with K.U.'s bedside. (K.U. Decl., ¶ 7; L. Plank Decl., ¶ 9.) Dr. Nguyen's verified responses admit that he referred to the fetal genitalia as a hamburger, but he denies using the phrase "beautiful hamburger." (Zakhary Decl., Exh. A, Response to Request Nos. 3, 4.) Dr. Nguyen's verified responses also deny that he developed an erection or otherwise rubbed his groin or genitalia against the bedside or exam table during plaintiff's June 29, 2024 ultrasound. (*Id*., at Response to Request Nos. 5-9.)

Mr. Plank's declaration asserts that on June 29, 2024, at approximately 10:55 p.m., he received a phone call from Dr. Nguyen, wherein Dr. Nguyen discussed K.U.'s medical

treatment. Mr. Plank indicates that he was not authorized to receive her medical information. (M. Plank Decl., ¶¶ 5-7.)

Without weighing the evidence, plaintiff's submissions are sufficient to support the allegation that Dr. Nguyen acted despicably and with a willful or conscious disregard of K.U's rights. An ordinary person would expect to be free from sexual misconduct by a medical provider during a medical examination and would consider such sexual misconduct to be despicable. The motion otherwise meets the formalities required of a motion to amend the complaint, and plaintiff has given due notice to all appearing defendants. (Code Civ. Proc., § 473, subd. (a)(1).) Therefore, the court intends to grant the motion for 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: JS on 12/15/2025.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***In re Melvin Collins III***
Superior Court Case No. 25CECG05333

Hearing Date: December 17, 2025 (Dept. 503)

Motion: Petition to Compromise Minor's Claim

If oral argument is timely requested, it will be entertained on Tuesday, December 30, 2025, at 3:30 p.m. in Department 503.

Tentative Ruling:

To grant the petition. Order Signed. 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: JS on 12/16/2025.
(Judge's initials) (Date)