**Tentative Rulings for February 8, 2022**
**Department 501**

---

**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 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

Begin at the next page

(27)

**Tentative Ruling**

Re: ***Rodriguez v. Baeza***
Superior Court Case No. 20CECG01888

Hearing Date: February 8, 2022 (Dept. 501)

Motion: Defendant Farmers Specialty Insurance Company's demurrer to the First Amended Complaint and motion to strike portions of the First Amended Complaint

***If a timely request for oral argument is made, such argument will be conducted on Thursday, February 10 at 3:30 p.m.***

**Tentative Ruling:**

To sustain the demurrer to the First Amended Complaint's third cause of action. (Code Civ. Proc., § 430.10, subd. (e).) To grant the motion to strike. (Code Civ. Proc., §§ 435 and 431.10, subd. (b).) To grant leave to amend. Should plaintiff desire to amend, a Second Amended Complaint shall be filed within ten (10) days from the date of this order. Any new language in the amended pleading shall be in **bold print**.

**Explanation:**

*Demurrer*

A general demurrer, "admits the truth of all material factual allegations in the complaint" and the plaintiff's "ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court …." (*Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 496; *Stella v. Asset Management Consultants, Inc.* (2017) 8 Cal.App.5th 181, 190 ["We assume the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded and matters of which judicial notice has been taken."].)

Although the courts "will not close their eyes to situations where a complaint contains allegations of fact inconsistent with attached documents, or allegations contrary to facts which are judicially noticed …" (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604), "liberal construction means that the reviewing court draws inferences favorable to the plaintiff, not the defendant." (*Perez v. Golden Empire Transit Dist*. (2012) 209 Cal.App.4th 1228, 1238.) Furthermore, "in order to be demurrer-proof, a form 'complaint must contain whatever *ultimate facts* are essential to state a cause of action under existing statutes or case law.' [Citation.]" (*People ex rel. Dept. of Transportation v. Superior Court* (1992) 5 Cal.App.4th 1480, 1484.)

*Third Cause of Action: General Negligence*

A negligence suit requires the plaintiff to demonstrate " ' "a legal duty to use due care, a breach of such legal duty, and [that] the breach [is] the proximate or legal cause

of the resulting injury." ' " (*Kesner v. Superior Court* (2016) 1 Cal.5th 1132. 1142.) The existence of duty is a question of law for the court. (*Cabral v. Ralphs Grocery Co.* (2011) 51 Cal.4th 764, 770.) Although "particularly amenable to resolution by summary judgment" (*Parsons v. Crown Disposal Co*. (1997) 15 Cal.4th 456, 465; see also *Regents of University of California v. Superior Court* (2010) 183 Cal.App.4th 755, 758 [the absence of duty required summary adjudication]), the existence of a duty can be examined on demurrer. (See e.g. *Brown v. USA Taekwondo* (2021) 11 Cal.5th 204, 209.)

In addition, "the question whether one owes a duty to another must be decided on a case-by-case basis" (*Weirum v. RKO General, Inc.* (1975) 15 Cal.3d 40, 46), and "[g]enerally speaking, standards relevant to the determination of duty in one particular situation may not be applied mechancially [sic] to other cases." (*Ibid*, at fn. 4.) In essence, "one owes no duty to control the conduct of another, nor to warn those endangered by such conduct." (*Regents of University of California v. Superior Court* (2018) 4 Cal.5th 607, 619.)

Nevertheless, "[a]n exception to this no-duty-to-protect rule exists for cases in which the defendant has a special relationship with either the dangerous third party or with the victim." (*Brown v. USA Taekwondo, supra,* 11 Cal.5th at p. 211.) Accordingly, a negligence cause of action sufficiently pleads the duty element where it alleges a special relationship and no policy limitations are apparent. (*Id*. at p. 222; see *e.g. Mann v. State of California* (1977) 70 Cal.App.3d 773, 780 ["While no special relationship may exist between members of the California Highway Patrol and the motoring public generally, or between the Patrol and stranded motorists generally, once a state traffic officer has chosen to investigate the plight of specific persons on a freeway and informed himself of the foreseeable danger to them from passing traffic, a special relationship requiring him to protect them by readily available means arises and liability may attach if the officer's limited duty to protect these people under these special circumstances is not performed."].) In other words, "[w]here the defendant has neither performed an act that increases the risk of injury to the plaintiff nor sits in a relation to the parties that creates an affirmative duty to protect the plaintiff from harm … our cases have uniformly held the defendant owes no legal duty to the plaintiff." (*Brown v. USA Taekwondo, supra,* 11 Cal.5th at p. 216.)

The First Amended Complaint alleges that prior to his collision with plaintiff, dismissed defendant Joaquin Baeza ("Baeza") collided with a car driven by nonparty Pearl Rose Garza ("Garza"), where insurance information was exchanged. At that time, Garza contacted Baeza's insurer due to her concern over his "intoxicated state" and to "verify that [Baeza] had insurance." The First Amended Complaint contains no description of the phone conversation – save for the one allegation that Garza was "discouraged" from calling police when she asked whether she should do so. Plaintiff's opposition to the demurrer characterizes this alleged discouragement as "prevention of aide [sic] by others" which caused harm. (Opp. at 2:23.)

The First Amended Complaint does not explain, and thus alleges no facts, regarding how defendant Farmers Specialty Insurance Company's ("Farmers") representative "discouraged" plaintiff from calling the police. There is no description of

what information plaintiff provided to the representative. Rather, the First Amended Complaint only alleges that plaintiff contacted Farmers primarily to verify that Baeza had insurance. In essence, the First Amended Complaint neither provides sufficient facts to allege that the single phone conversation created a special relationship nor that Farmers' "conduct contributed to, increased, and changed the risk which would have otherwise existed." (*Williams v. State of California* (1983) 34 Cal.3d 18, 25 [discussing *Mann v. State of California, supra,* 70 Cal.App.3d 773].)

Accordingly, even if the allegation that the representative discouraged plaintiff from calling the police is assumed true - as is required in determining a demurrer (*Stella v. Asset Management Consultants, Inc., supra,* 8 Cal.App.5th at p. 190) – the First Amended Complaint lacks factual allegations sufficient to establish the element of duty, and consequently does not state a cause of action for negligence. Therefore, the demurrer is sustained. (*Kesner v. Superior Court, supra,* 1 Cal.5th at p. 1142; Code Civ. Proc., § 430.10, subd. (e).)

*California Rules of Court, rule 3.1320(d)*

"Demurrers must be set for hearing not more than 35 days following the filing of the demurrer or on the first date available to the court thereafter. *For good cause shown, the court may order the hearing held on an earlier or later day on notice prescribed by the court*." (Cal. Rules of Court, rule 3.1320(d), emphasis added.)

Plaintiff argues that the hearing was not timely scheduled. However, when these hearings were scheduled, global events well beyond the court's control dramatically affected the calendaring of hearings, and often resulted in lengthy time periods between motion filing and hearing thereon. Therefore, there is good cause excusing the length of time between the filing and the hearing of these matters.

*Motion to Strike*

A motion to strike can be used to cut out any "irrelevant, false or improper" matters or "a demand for judgment requesting relief not supported by the allegations of the complaint." (Code Civ. Proc., § 431.10, subd. (b).) A motion to strike is the proper procedure to challenge an improper request for relief, or improper remedy, within a complaint. (*Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 166-167.)

With respect to punitive damage allegations, mere legal conclusions of oppression, fraud or malice are insufficient (and hence improper) and therefore may be stricken. However, if looking to the complaint as a whole, sufficient facts are alleged to support the allegations, then a motion to strike should be denied. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) There must be clear and convincing evidence that the defendant is guilty of oppression, fraud or malice. (Civ. Code, § 3294, subd. (a); *Neal v. Farmers Ins. Exchange* (1978) 21 Cal. 3d 910, 922.)

"To support punitive damages, the complaint asserting one of those causes of action must allege *ultimate facts* of the defendant's oppression, fraud, or malice." (*Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal.App.4th 1004, 1055 (emphasis added).) "[A]bsent an intent to injure the plaintiff, 'malice' requires more than a willful

and conscious disregard of the plaintiff's interests. The additional component of 'despicable conduct' must be found." (*College Hosp. Inc. v. Superior Court* (1994) 8 Cal.4th 704, 725.) "Despicable" conduct is defined as "conduct which is so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people." (*Ibid*.) Such conduct has been described as "having the character of outrage frequently associated with crime." (*Tomaselli v. Transamerica Ins. Co*. (1994) 25 Cal.App.4th 1269, 1287; *Cloud v. Casey* (1999) 76 Cal.App.4th 895, 912.)

A claim may be supported by showing "despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (Civ. Code, § 3294, subd. (c)(1).) " "To establish conscious disregard, the plaintiff must show 'that the defendant was aware of the probable dangerous consequences of his conduct, and that he willfully and deliberately failed to avoid those consequences.' " (*Spinks v. Equity Residential Briarwood Apartments*, *supra*, 171 Cal.App.4th at p. 1055.) Furthermore, an employer cannot be liable for the outrageous acts of its employee unless it authorized or ratified the wrongful conduct. (Civ. Code, § 3294, subd. (b).)

Dissuading a witness from contacting police is a crime (Penal Code, § 136.1, subd. (b)), however, as discussed above, the allegations of the First Amended Complaint lack sufficient detail to establish a basis for duty, let alone detail sufficient to plead a claim for punitive damages. Therefore, the motion to strike is granted.

*Leave to Amend*

"If the plaintiff has not had an opportunity to amend the complaint in response to the demurrer, leave to amend is liberally allowed as a matter of fairness, unless the complaint shows on its face that it is incapable of amendment." (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 747.) Accordingly, to the extent additional facts exist to support plaintiff's claims of negligence and conduct justifying punitive damages, she is granted the opportunity to amend her complaint to plead such allegations. (*City of Stockton v. Superior Court, supra,* 42 Cal.4th at p. 747.) Therefore, leave to amend is granted.

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

**Tentative Ruling**
**Issued By: DTT on 2/4/2022.**
(Judge's initials) (Date)

(30) **Tentative Ruling**

Re: ***In Re: Isabella Avellaneda***
Superior Court Case No. 21CECG03277

Hearing Date: February 8, 2022 (Dept. 501)

Motion: Petition to Compromise a Minor's Claim, re: Isabella Avellaneda

***If a timely request for oral argument is made, such argument will be conducted on Thursday, February 10 at 3:30 p.m.***

**Tentative Ruling**:

To deny the petition, without prejudice. Petitioner must file an Amended Petition, and obtain a new hearing date for consideration of the Amended Petition. (Super. Ct. Fresno County, Local Rules, rule 2.8.4.)

**Explanation:**

The Petition at issue contains the following discrepancies and omissions:

1. *Item no. 12, Claimant's medical expenses*

In section 12. a. (1), petitioner indicates that the total amount of medical expenses is $4,505. However, in section 12. b. (5)(b), only the City of Coalinga Ambulance Service is listed as a medical service provider, and the City of Coalinga only charged $2,304 total. Upon resubmission, all medical service providers must be listed under section 12. b. (5)(b). The total charged by all of the providers must equal the amount stated in section 12. a. (1) of the Amended Petition. Also, the amount listed in section 12. a. (5) must match any amount listed in section 12. b. (5) (a) (ii). Currently, petitioner lists $1,090.31 in section 12. a. (5) as the total amount of statutory or contractual liens. Then, in section 12. b. (5) (a) (ii), petitioner states that in full satisfaction of lien claims, lienholders have agreed to accept the sum of $1,830.47.

2. *Forms MC-351 and MC-355*

The proposed orders submitted on 11/3/2021 – on forms MC-351 and MC-355, are on outdated forms. Upon resubmission, current forms must be submitted. Use of current forms is mandatory.

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 2/4/2022.**
(Judge's initials) (Date)

(24)

**Tentative Ruling**

Re: ***City of Clovis v. Borden***
Superior Court Case No. 16CECG02857

Hearing Date: February 8, 2022 (Dept. 501)

Motion: Default Prove-up

***If a timely request for oral argument is made, such argument will be conducted on Thursday, February 10 at 3:30 p.m.***

**Tentative Ruling:**

To deny without prejudice, and to direct plaintiff to present a renewed request for default judgment as to the parcels at issue with this prove-up request at the conclusion of the trial with the appearing defendants now set for February 22, 2022, with additional proof of valuation and fair compensation to be provided as to parcels number 2, 4, 7 and 15.

**Explanation:**

Plaintiff requests default judgment for the defaulted defendants who are record owners of parcel numbers 2, 4, 7 and 15, which are, in part, the subject of its complaint in eminent domain. Plaintiff has not provided sufficient proof of the value of the property interest to be taken as to these defaulted defendants. It references the $24,000 deposited in 2017 based on the inspection and appraisal report of Kenneth R. McBay, which was intended to be the approximation of just compensation for *all* defendant record owners named in the complaint, and not just compensation concerning the 4 parcels which are the subject of this default prove-up. There was no attempt to show how the $1,500 proposed to be paid to the record owners of each parcel was calculated. Further, the court sees that the amounts offered to the appearing defendants as just compensation (filed on September 28, 2021) are substantially more than this, and in fact the amounts offered to them are well above the initial estimate of $24,000. This difference in value may have to do with the relative size of the parcels and/or the impact of the easement on the owners' use of their parcels. But at this point the court has no basis to conclude that the $24,000 initially deposited was an adequate sum to represent the probably amount of compensation for the easements sought to be acquired, much less that the amount of $1,500 for each of parcel numbers 2, 4, 7, and 15 represents just compensation. More proof is required, and a new appraisal of these parcels may be required.[1]

[1] The court notes that the reappraisal of the parcels owned by the appearing defendants, filed on July 27, 2021, as an exhibit to "Plaintiff City of Clovis' Statement of Valuation Data and Expert Witness Disclosure" is much more detailed than the inspection and appraisal report of Kenneth R. McBay.

Furthermore, the court will require, at the trial on February 22, 2022, that plaintiff provide more detail as to whether there are any remaining parcels to be dealt with, whether by trial or default judgment. The First Amended Complaint concerned a total of 14 parcels (1, 2, 3, 4, 6, 7, 9, 10, 12, 13, 14, 15, 16 and 17). (See First Amended Complaint filed on September 6, 2017.) This default prove-up concerns parcels 2, 4, 7 and 15, and the trial on February 22, 2022, concerns parcels 9, 12 and 13. There were many more parcels involved and defendants named, and the court sees that plaintiff has filed many dismissals. The court would like confirmation that all other defendants have been dismissed.

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 2/7/2022.**
(Judge's initials) (Date)