

**Tentative Rulings for April 7, 2022**  
**Department 501**

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

21CECG02758      *Starks v. Walmart, Inc.* (Dept. 501)

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

20CECG00418      *Adamo v. Clark Pest Control, Inc.* is continued to Tuesday, May 3, 2022 at 3:30 p.m. in Dept. 501

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## **Tentative Rulings for Department 501**

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**Tentative Ruling**

Re: **Doshi v. Maring**  
Superior Court Case No. 20CECG02106

Hearing Date: April 7, 2022 (Dept. 501)

Motion: Plaintiff's Demurrer to the First Amended Cross-Complaint

**Tentative Ruling:**

To sustain the demurrer to the first cause of action without leave to amend.

**Explanation:**

*Demurrer*

It is "the established rule that as against a general demurrer a complaint will be liberally construed[...]; that any mere ground of special demurrer for uncertainty will be resolved in support of the complaint and the demurrer overruled, when the necessary facts are shown to exist, although inaccurately or ambiguously stated, or appearing only by necessary implication." (*Hunter v. Freeman* (1951) 105 Cal.App.2d 129, 133; see *Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1238 [pursuant to rule of liberal construction, court draws inferences favorable to plaintiff, not defendant].) In testing a pleading against a demurrer, the facts alleged are deemed to be true, as it is "not the ordinary function of a demurrer to test the truth of the plaintiff's allegations or the accuracy with which [plaintiff] describes the defendant's conduct." (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 47.) Pleadings are to be reasonably interpreted, read as a whole and in context. (*Fundin v. Chicago Pneumatic Tool Co.* (1984) 152 Cal.App.3d 951, 955.) Plaintiff is not required to plead evidentiary facts supporting the allegation of ultimate fact; the pleading is adequate if it apprises defendant of the factual basis for plaintiff's claim. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6; see *Fundin*, supra, 152 Cal.App. 3d at p. 955 ["All that is necessary as against a general demurrer is to plead facts showing that the plaintiff may be entitled to some relief."].)

First Cause of Action – Declaratory Relief

Defendants seek a declaration that: 1) they did not breach the Purchase Agreement; 2) they did not breach the implied covenant of good faith and fair dealing implied in the Purchase Agreement; 3) they are not liable to Plaintiffs, in any amount, for the claims raised by Plaintiffs in this action or otherwise; 4) they have not waived any right to recover their attorneys' fees and costs pursuant to the Purchase Agreement; 5) they are entitled to their attorneys' fees and costs as the "prevailing party" in this action; 6) Plaintiff Doshi contracted to purchase and receive the irrigation water that is the subject of this action; and 6) Plaintiffs abandoned their appeal to Westlands and failed to exhaust an available administrative remedy.

The First Amended Cross-Complaint contains no new factual allegations that would demonstrate that these controversies would not be resolved within the primary action. The first three declarations sought would negate the claims in plaintiff's causes of action in the Complaint. The same issues were found to be redundant to the issues within the Complaint in the previous demurrer. They remain redundant in the First Amended Cross-Complaint.

The fourth and fifth requests seek determination of the prevailing party and rights to recover attorney's fees. These determinations are naturally encompassed within and dependent upon the primary action.

The sixth declaration sought, as with the first three, is a factual dispute that will be resolved in the primary action. The seventh issue seeks a declaration regarding Defendant's affirmative defenses. Where an issue can be raised by way of an affirmative defense, the court has the discretion to dismiss a declaratory relief claim raising the same questions in the cross-complaint. (*C.J.L. Construction, Inc. v. Universal Plumbing* (1993) 18 Cal.App.4th 37, 391.)

The amended cause of action for declaratory relief has failed to state issues that would not otherwise be resolved in the primary action.

The declaratory relief statute should not be used for the purpose of anticipating and determining on issue which can be determined in the main action. The object of the statute is to afford a new form of relief where needed and not to furnish a litigant with a second cause of action for the determination of identical issues.

(*General of America Ins. Co. v. Lilly* (1968) 258 Cal.App.2d 465, 470.)

The demurrer to the First Amended Cross-Complaint is sustained 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:** DTT **on** 4/1/2021.  
(Judge's initials) (Date)

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**Tentative Ruling**

Re: **Millan v. Jacobsen**  
Superior Court Case No. 20CECG00168

Hearing Date: April 7, 2022 (Dept. 501)

Motion: Petition to Compromise Minor's Claim

**Tentative Ruling:**

To grant. The proposed Orders have been signed, but they have been revised to strike the word "Amended" from them, since they are not amended Orders; counsel simply lodged revised Orders with the court. No appearances are 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 4/1/2022.  
(Judge's initials) (Date)

(24)

**Tentative Ruling**

Re: ***Abdillah v. Western Dental Services, Inc.***  
Superior Court Case No. 16CECG03528

Hearing Date: April 7, 2022 (Dept. 501)

Motion: by Plaintiff for Reconsideration

**Tentative Ruling:**

To order the motion off calendar. Judgment in defendant's favor (i.e., a judgment of dismissal) was entered on September 15, 2021, and in fact plaintiff has filed an appeal from that judgment. Once judgment is entered, the court loses jurisdiction to entertain or decide a motion for reconsideration. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 859, fn. 29; *Ten Eyck v. Industrial Forklifts Co.* (1989) 216 Cal.App.3d 540, 545.)

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**

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