

**Tentative Rulings for July 14, 2021**  
**Department 503**

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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).)

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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.

19CECG00219      *Flores v. City of Fresno* is continued to Wednesday, July 21, 2021 at 3:30 p.m. in Dept. 503

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(Tentative Rulings begin at the next page)

## **Tentative Rulings for Department 503**

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**Tentative Ruling**

Re: **Carrillo v. Kourosh Sarkhosh, M.D.**  
Superior Court Case No. 20CECG03429

Hearing Date: July 14, 2021 (Dept. 503)  
**In the event oral argument is timely requested, it will be heard on July 15, 2021, at 3:30 p.m., in Dept. 503.**

Motion: Defendant's demurrer to the first amended complaint

**Tentative Ruling:**

To sustain, with leave to amend as to the first and second causes of action only. The demurrer to the third cause of action for defamation is sustained without leave to amend. Should plaintiff desire to file a second amended complaint, that complaint must be filed within 20 days from the date of service of this order and any new allegations must be in **bold print**. Defendant's request for judicial notice is denied.

**Explanation:**

"In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties." (Code Civ. Proc., § 452.) However, the purpose of a complaint "is to present and define the issues, to form the foundation of, and to limit, the proof to be submitted; and to advise the court and the adverse party as to what is relied on as a cause of action." (*Roth v. Cottrell* (1952) 112 Cal.App.2d 621, 624.) Accordingly, conclusory allegations are insufficient. (*Freeman v. San Diego Ass'n of Realtors* (1999) 77 Cal.App.4th 171, 189.) And "statutory causes of action must be pleaded with particularity . . . ." (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790.)

*First Cause of Action: Harassment in Violation of Civil Code Section 51.9*

Civil Code section 51.9 provides, in relevant part:

(a) A person is liable in a cause of action for sexual harassment under this section when the plaintiff proves all of the following elements:

(1) There is a business, service, or professional relationship between the plaintiff and defendant or the defendant holds himself or herself out as being able to help the plaintiff establish a business, service, or professional relationship with the defendant or a third party. Such a relationship may exist between a plaintiff and a person, including, but not limited to any of the following persons:

(A) Physician, psychotherapist, or dentist. . . .

[¶] . . . [¶]

(2) The defendant has made sexual advances, solicitations, sexual requests, demands for sexual compliance by the plaintiff, or engaged in other verbal, visual, or physical conduct of a sexual nature or of a hostile nature based on gender, that were unwelcome and pervasive or severe.

(3) The plaintiff has suffered or will suffer economic loss or disadvantage or personal injury, including, but not limited to, emotional distress or the violation of a statutory or constitutional right, as a result of the conduct described in paragraph (2).

The first amended complaint alleges that defendant's prescribing of controlled substances equates to an existence of a professional relationship. (FAC, ¶ 6.) The first amended complaint, however, asserts no other facts describing the nature of the professional relationship or its formation. (See *C.R. v. Tenet Healthcare Corp.* (2009) 169 Cal.App.4th 1094, 1106-1107 [although allegations of a fiduciary relationship are not required, the existence of a professional relationship is an element for potential liability].) Particularly, plaintiff does not allege whether the substances were actually "controlled" when they were prescribed, or their frequency. Similarly, there are no facts alleged of diagnosis, treatment, or payment. Rather, the first amended complaint only asserts the conclusory allegation that a professional relationship existed. Consequently, the first amended does not sufficiently allege a professional relationship. Furthermore, although the first amended complaint alleges that defendant demanded sexual acts in exchange for future services, it alleges no facts on when the demand occurred or the statements to comprise the demand. Therefore, the demurrer to the first cause of action is sustained.

Plaintiff's opposition notes that the controlled substance was "namely diet pills" and asserts that defendant has admitted in deposition that plaintiff became his patient once he prescribed her that medication. (Opp. p. 3:21-27.) Plaintiff's opposition further argues that defendant has admitted he continued to text plaintiff about sexual matters while plaintiff was his patient. (*Id.* at p. 4:12-15.) Nevertheless, plaintiff does not assert these new allegations in the first amended complaint, which is the operative pleading. Although these allegations are not asserted in the current complaint, plaintiff's assertion of them in opposition to defendant's demurrer indicates the possibility that the pleading can be amended to potentially cure the defects described above. Accordingly, leave to amend is granted. (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 747 ["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."].)

### Second Cause of Action: Intentional Infliction of Emotional Distress

The elements of a cause of action for intentional infliction of emotional distress are: (1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct. (*Wilson v. Hynek* (2012) 207 Cal.App.4th 999, 1009.) To be "outrageous," the conduct must be "so extreme as to exceed all bounds of that usually tolerated in a civilized community." (*Ibid.*, internal citation and quotations omitted.) To survive demurrer, the plaintiff must allege with

Plaintiff premises her intentional infliction of emotional distress cause of action on the same claims made in support of her claim for violation of Civil Code section 51.9. (FAC, ¶ 16.) However, as set forth above, those allegations are insufficient, and intentional infliction of emotional distress requires even greater specificity. (*Yau v. Santa Margarita Ford, Inc.*, *supra*, 229 Cal.App.4th at pp. 160-161.) Furthermore, the first amended complaint does not describe defendant's conduct or statements, and plaintiff does not describe her emotional distress. (*Bikina v. Mahadevan* (2015) 241 Cal.App.4th 70, 88; *Wong v. Jing* (2010) 189 Cal.App.4th 1354; 1377.) Therefore, the demurrer to the second cause of action is sustained. To the extent the deficiencies can be cured, leave to amend is granted.

Plaintiff's opposition states that there is no opposition to the demurrer to the third cause of action for defamation. Therefore, the demurrer is sustained as to the third cause of action for defamation, without leave to amend.

## Tentative Ruling

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**Tentative Ruling**

Re: **James Sepeda Jr v. Christopher Bispham, et al.**  
Superior Court Case No. 18CECG01500

Hearing Date: July 14, 2021 (Dept. 503)  
**In the event oral argument is timely requested, it will be heard on July 15, 2021, at 3:30 p.m., in Dept. 503.**

Motion: Demurrer and Motion to Strike First Amended Complaint

**Tentative Ruling:**

To overrule the demurrer, with defendant Eric Johnson granted 10 days' leave to file his answer to the First Amended Complaint. The time in which the answer can be filed will run from service by the clerk of the minute order.

To deny the motion to strike the First Amended Complaint.

**Explanation:**

Demurrer

A demurrer is made under Code of Civil Procedure section 430.10, and is used to test the legal sufficiency of the complaint or other pleading. (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.) The demurrer admits the truth of all facts properly pleaded by the plaintiffs, as well as those that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

First and Second Causes of Action

On February 4, 2021, the court granted plaintiff's request to dismiss the first and second causes of action against defendant Johnson. The demurrer and motion to strike the first and second causes of action are therefore moot.

Third and Eleventh Causes of Action: Negligence and Negligent Inflection of Emotional Distress

Defendant Johnson bases his demurrer on the untimely filing of a doe amendment adding him as a defendant to this action. He contends plaintiff was not genuinely ignorant of his role or identity as required by Code of Civil Procedure section 474, and, as such, the doe amendment filed July 6, 2020 and granted by the court on August 3, 2020 was improper as was the subsequent First Amended Complaint incorporating that amendment.

Plaintiff acknowledges that the addition of defendant Johnson should have been made through an amendment to the complaint. However, the court has the ability to treat the doe amendment as an amendment to the complaint and bypass the discussion

of whether plaintiff was genuinely ignorant of the identity of the doe defendant where the statute of limitation has not passed. (*Davis v. Marin* (2000) 80 Cal.App.4th 380, 387.)

A doe amendment will relate back to the date of filing the complaint for statute of limitations purposes where an amendment to the complaint will not. (*Woo v. Superior Court* (1999) 75 Cal.App.4th 169, 176.) Where the improper doe amendment was filed after the statute of limitations has passed, it is appropriate to sustain the demurrer/grant the motion to strike. (*Ibid.*) In the instant case, the causes of action are brought against plaintiff based upon his alleged breach of duty and that being the direct and proximate cause of the sexual abuse by defendant Bispham. (FAC ¶¶ 36, 71.) These allegations support plaintiff's position that Code of Civil Procedure 340.1, subdivision (a) controls the statute of limitations.

In an action for recovery of damages suffered as a result of childhood sexual assault, the time for commencement of the action shall be within 22 years of the date the plaintiff attains the age of majority or within five years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual assault, whichever period expires later, for any of the following actions:

...

(2) An action for liability against any person or entity who owed a duty of care to the plaintiff, if a wrongful or negligent act by that person or entity was a legal cause of the childhood sexual assault that resulted in the injury to the plaintiff.

(Code Civ. Proc., § 340.1, subd. (a).)

Consistent with the court's holding in *Davis v. Marin*, *supra*, the court will exercise its discretion to treat the defective doe amendment as the amendment to the complaint that it should have been and overrule the demurrer. (*Davis v. Marin*, (2000) 80 Cal.App.4th 380, 387.)

Plaintiff's new arguments raised in the reply papers will not be considered. (See *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-1538.) Further, the court's function on a demurrer is testing the legal sufficiency of the complaint; it is not an evidentiary hearing to determine the truth of disputed facts. (*Fremont Indemnity Company v. Fremont General Corporation* (2007) 148 Cal.App.4th 97, 113-114.) Where judicial notice is taken, the truth of the contents of the document is not what is being noticed. It is the existence of the document. (*Id.* at 113.) The court declines to take notice of the depositions, as they are submitted for the truth of the matters stated.

### Motion to Strike

A motion to strike may be used to strike out all or any part of any pleading not "filed in conformity with the laws of the state." (Code of Civ. Proc., § 436, subd. (b).) Defendant Johnson seeks to strike the improper doe amendment incorporated into the

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.

**Issued By:** KAG **on** 7/9/2021.  
(Judge's initials) (Date)