

**Tentative Rulings for May 8, 2024**  
**Department 502**

**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)**

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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).) *The above rule also applies to cases listed in this "must appear" section.*

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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.

22CECG02776      *Lisa Sifuentes v. Fresno Community Hospital and Medical Center* is continued to Wednesday, June 26, 2024, at 3:30 p.m. in Department 502

22CECG00160      *Roseann Molina v. Lithia NC, Inc.* is continued to Wednesday, July 17, 2024, at 3:30 p.m. in Department 502

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# **Tentative Rulings for Department 502**

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**Tentative Ruling**

Re: ***Lupita Sanchez v. Manuel Esquer***  
Superior Court Case No. 23CECG02125

Hearing Date: May 8, 2024 (Dept. 502)

Motion: By Plaintiff to Quash Subpoena

**Tentative Ruling:**

To grant in part. United Health Centers shall produce all records specified in the subpoena related to both knees without limitation as to time, and produce all other records relating to plaintiff from June 4, 2011 to the present.

**Explanation:**

This is a personal injury auto accident action in which plaintiff alleges she suffered "severe and permanent injury to the body and nervous system" ... (Complaint ¶ 20.) In her discovery responses, plaintiff states that she suffered a tear in her right knee's lateral meniscus, as well as injuries to her back, left arm, bilateral shoulders, neck, hip, head, and upper back. (Response to Defendant Form Interrogatories, Set One ("Form Rog"), No. 6.2.) Plaintiff also states that she continues to suffer constant pain in her right knee, which limits standing and walking for extended periods, and has led to additional strain on her left knee. (*Id.* at No. 6.3.) Plaintiff also contends constant pain in her upper back affects her mobility and sleep. (*Ibid.*) Plaintiff, who is now 51 years old, has suffered from knee pain since she was 16 years old due to an injury from stepping wrong, and which reoccurred in 2020 prompting medical treatment. (*Id.* at No. 10.1.)

Defendants served a subpoena for plaintiff's medical records on her healthcare provider, United Health Centers, seeking all records relating to plaintiff.

A plaintiff "may not withhold information which relates to any physical or mental condition which they have put in issue by bringing the lawsuit." (*Britt v. Superior Court* (1978) 20 Cal.3d 844, 864.) "[W]hile [plaintiffs] may not withhold information which relates to any physical or mental condition which they have put in issue by bringing this lawsuit, they are entitled to retain the confidentiality of all unrelated medical or psychotherapeutic treatment they may have undergone in the past." (*Id.* at p. 864, fn. omitted.)

Where it is argued that the privacy protection is waived by the filing of a lawsuit, the compelling interest is shown only where the material sought is directly relevant to the litigation. (*Id.* at p. 859.) The party seeking constitutionally protected information through discovery bears the burden of showing the direct relevance of the information sought. (*Davis v. Superior Court* (1992) 7 Cal.App.4th 1008, 1017.) Even where discovery of private information is found to be directly relevant to the issues of the litigation, it is not automatically allowed; for such discovery to be permitted, the court must engage in a careful balancing of the compelling public need for discovery against the fundamental right of privacy. (*Binder v. Superior Court* (1987) 196 Cal.App.3d 893.)



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**Tentative Ruling**

Re: **Billy Shaw v. Suzette Rainy**  
Superior Court Case No. 24CECG00436

Hearing Date: May 8, 2024 (Dept. 502)

Motion: Defendants' Motion to Quash Service of Summons

**Tentative Ruling:**

To grant.

**Explanation:**

Improper service of a summons can be challenged with a Motion to Quash pursuant to CCP §418.10. Without valid service of summons, the court never acquires jurisdiction over defendant. (*Ziller Electronics Lab GmbH v. Superior Court* (1988) 206 Cal.App.3d 1222, 1229.) Therefore, the statutory ground of this motion is that the court lacks jurisdiction over defendant. (Code Civ. Proc., § 418.10, subd. (a)(1).)

Until proper service is made on a defendant, he is under no duty to respond in any way to a defectively served summons. This is so even if he has actual knowledge of the action. That knowledge does not dispense with statutory requirements for service of summons. (*MJS Enterprises, Inc. v. Superior Court* (1984) 153 Cal.App.3d 555, 557; *Kappel v. Bartlett* (1988) 200 Cal.App.3d 1457, 1466.)

The court has taken judicial notice of the proof of service plaintiff filed on February 5, 2024.<sup>1</sup> The proof of service shows service by mail on February 2, 2024. To effect the required personal service on defendants, service by mail would only be effective if it met the requirements of Code of Civil Procedure section 415.30, which requires plaintiff to cause to be mailed to each defendant “[a] copy of the summons and of the complaint . . . , together with two copies of the notice and acknowledgment provided for in subdivision (b) and a return envelope, postage prepaid, addressed to the sender.” However, the proof of service shows that the only document served on defendants was the Summons. Further, the statute specifies that all proof of personal service of process (including service by acknowledgment of receipt) must be made on the form adopted for this by the Judicial Counsel. (Code Civ. Proc., § 417.10, subd. (d).) This is Form POS-010, adopted for mandatory use. However, plaintiff did not use Form POS-010, but instead used Form POS-030. Therefore, on its face the proof of service is defective.

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<sup>1</sup> However, the court does not grant defendants' second request for judicial notice, i.e., of the purported “copy of proof of service filed by Plaintiff on or about February 15, 2024,” since the court does not find any such document in the file. The court also disregards various statements made in the points and authorities which defendants erroneously contend are supported by taking judicial notice of the proof of service. For instance, taking notice of the proof of service does not support finding that the “company corporate office of AMVETS” received “an envelope with three copies of the summons and complaint” and that the “envelope failed to include any notice and acknowledgment receipt forms.” (P&A, p. 3:9-12.)

The time for filing the motion to quash is "on or before the last day to plead, or within any further time that the court may for good cause allow[.]" (Code Civ. Proc., § 418.10, subd. (a).) This time is measured from the date service is complete. Here, the proof of service shows service on February 2, 2024. But with service by notice and acknowledgment of receipt, service is deemed effective as of the date the defendant signs the Notice and Acknowledgment form (Form POS-015), and here there is no proof that any defendant signed and dated a POS-015 form, or that any defendant was given this form to sign in the first place. Thus, there was no "last day to plead" based on this proof of service, so this motion must be considered timely.

When a defendant challenges the court's personal jurisdiction on the ground of improper service of process the burden is on the plaintiff to prove "the existence of jurisdiction by proving, inter alia, the facts requisite to an effective service." (*Summers v. McClanahan* (2006) 140 Cal.App.4th 403, 413, internal quotes omitted.) Since plaintiff did not file opposition to the motion, no such evidence was presented. Therefore, the evidence provided by defendants establishes that proper and adequate service of Summons/Complaint was not made, and thus the court lacks jurisdiction over Defendants. (*Engbretson & Co. v. Harrison* (1981) 125 Cal.App.3d 436, 443.) As noted above, their actual knowledge of the litigation does not confer personal jurisdiction over them absent substantial compliance with the statutory requirements for service of summons. (*MJS Enterprises, Inc. v. Superior Court, supra*, 153 Cal.App.3d at p. 557.)

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:       **KCK**       on       **05/07/24**      .  
                                  (Judge's initials)  (Date)

(37)

**Tentative Ruling**

Re: ***Hedrick Ranch, a Sole Proprietorship v. Doris Dickens***  
Superior Court Case No. 24CECG01006

Hearing Date: May 8, 2024 (Dept. 502)

Motion: By Plaintiff for an Order Authorizing Sale of Livestock

**Tentative Ruling:**

To deny as the proofs of service filed March 21, 2024 for each defendant are defective.

**Explanation:**

On March 21, 2024, two proofs of service were filed as to the summons, complaint, and the instant motion. Both proofs of service indicate that service was accomplished on each defendant by substituted service on March 20, 2024 by leaving the documents with "John Doe"-Clerk at Postal Place at the Post Office located at 269 S. Beverly Dr. in Beverly Hills, California. The box indicating that the physical address is unknown is checked for each.

Code of Civil Procedure section 415.20 governs substituted service of a summons and complaint. A summons may be served where no physical address is known at a party's usual mailing address "other than a United States Postal Service post office box". (Code Civ. Proc., § 415.20.) Here, the proof of service indicates substituted service at the post office. Additionally, there is no declaration of diligence. It does not appear that any attempt was made to personally serve the defendants. As such, the proofs of service filed March 21, 2024 are both defective.

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:**         **KCK**  **on 05/07/24**  
  (Judge's initials)  (Date)

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### **Tentative Ruling**

Re: **Antonio Cruz v. Carolina Cruz**  
Superior Court Case No. 23CECG03225

Hearing Date: May 8, 2024 (Dept. 502)

Motion: Defendants' Demurrer

### **Tentative Ruling:**

To sustain the demurrer on the basis of standing. (Code Civ. Proc., § 430.10, subd. (d).) Plaintiff is granted 30 days' leave to apply for the appointment of a guardian ad litem and to amend the complaint to name the proper real party in interest as the plaintiff in the action.

### **Explanation:**

#### *Standing*

An individual with durable power of attorney may bring an action on behalf of his principal only as guardian ad litem. (*In re Marriage of Caballero* (1994) 27 Cal.App.4th 1139, 1152.) Here, it is apparent that the real party in interest is Carolina Cruz and that Antonio Cruz would be an appropriate guardian ad litem for Carolina Cruz. The court grants leave to amend the complaint to name the real party in interest as the plaintiff and to address the issue of a guardian ad litem for Carolina Cruz. The court will further address the merits of the remainder of the demurrer.

#### *Demurrer Generally*

The function of a demurrer is to test the sufficiency of a plaintiff's pleading by raising questions of law. (*Plumlee v. Poag* (1984) 150 Cal.App.3d 541, 545.) The test is whether plaintiff has succeeded in stating a cause of action; the court does not concern itself with the issue of plaintiff's possible difficulty or inability in proving the allegations of his complaint. (*Highlanders, Inc. v. Olsan* (1978) 77 Cal.App.3d 690, 697.) In assessing the sufficiency of the complaint against the demurrer, we treat the demurrer as admitting all material facts properly pleaded, bearing in mind the appellate courts' well established policy of liberality in reviewing a demurrer sustained without leave to amend, liberally construing the allegations with a view to attaining substantial justice among the parties. (*Glaire v. LaLanne-Paris Health Spa, Inc.* (1974) 12 Cal.3d 915, 918.)

#### *Uncertainty*

Defendants' special demurrer for uncertainty is overruled because defendants have not distinctly specified exactly how or why the pleading is uncertain, and where the uncertainty allegedly appears by reference to page and line numbers of the complaint. (*Fenton v. Groveland Community Services District* (1982) 135 Cal.App.3d 797,



809, overruled in part on other grounds in *Katzberg v. Regents of the University of California* (2002) 29 Cal.4th 300, 328.)

### *Statute of Limitations*

Turning to the issue of the statute of limitations, where the dates alleged in the complaint show the cause of action is time-barred, a general demurrer is appropriate. (*Vaca v. Wachovia Mortgage Corp.* (2011) 198 Cal.App.4th 737, 746.) The running of the statute of limitations must appear clearly and affirmatively on the face of the complaint. (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42.) Where the complaint alleges wrongful conduct commencing at a time now barred by the statute of limitations, but continuing until a date not barred, there is no ground for a general demurrer based on the statute of limitations. (*Wyatt v. Union Mortgage Co.* (1979) 24 Cal.3d 773, 786.)

Here, the complaint alleges that the family did not discover the title change for the subject property until after April of 2022. (Complaint, ¶ 49.) The complaint further alleges that efforts were made to resolve the matter short of court involvement, but when it became apparent that these efforts were failing, a complaint was filed. (Complaint, ¶¶ 53-56.) The basis of the claims is that defendants manipulated and misled their mother in order to obtain her property. (Complaint, ¶¶ 28-33.) The complaint was filed approximately one year and four months after the family discovered the title change. As such, the court does not find that the statute of limitations bars any of the causes of action alleged in the complaint.

### *Causes of Action Sufficiently Alleged*

#### Quiet Title

In order to assert a claim for quiet title, the verified complaint must include 1) a description of the property, including a legal description and street address for real property; 2) the title of the plaintiff as to which determination is sought; 3) the adverse claims to plaintiff's title; 4) the date as of which determination is sought; and 5) a prayer for determination of the title. (Code Civ. Proc., § 761.020.)

Here, the complaint is verified. Defendants assert that the verification must be made by the "former owner Carolina Cruz". However, the only authority cited by defendants is Code of Civil Procedure section 761.020 which provides that the complaint must be verified, but does not specifically state by whom. The court is ordering that the complaint be amended to properly name Carolina Cruz, with the understanding that Antonio Cruz will be appointed as guardian ad litem. The court is not inclined to sustain a demurrer to this cause of action based on who signed the verification, particularly without clear legal authority provided by the demurring defendants.

Defendants assert that the complaint must allege how title has been perfected. The case law defendants cite do not address a situation comparable to that alleged here where title was obtained by defendant by misleading the owner. The complaint alleges that Carolina Cruz held title to the subject property, first with her husband in 1981,

then solely after his death, until she unknowingly signed a deed in August of 2017. (Complaint, ¶¶ 19, 24-26, 33.) The complaint sufficiently alleges title for Carolina Cruz.

Defendants also claim the complaint must name as defendants all persons known or unknown claiming an interest in the property. Code of Civil Procedure section 762.060, subdivision (a) articulates that the complaint “may name as defendants ‘all persons unknown...’ The operative word here is “may”. The court will not sustain a demurrer to the first cause of action on this basis.

Defendants also assert that the date of determination is not pled. The complaint requests the court restore the ownership of the property prior to an alleged fraudulent deed recorded on August 11, 2017. (Complaint, ¶¶ 75-78.) The complaint sufficiently alleges a cause of action for quiet title.

#### Intentional Misrepresentation

In order to assert a claim for intentional misrepresentation, the complaint must allege 1) a misrepresentation, 2) knowledge of its falsity, 3) the intent to induce another’s reliance on the misrepresentation, 4) justifiable reliance, and 5) resulting damage. (*Conroy v. Regents of University of California* (2009) 45 Cal.4th 1244, 1255.) Fraud must be pled with particularity. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) Defendants assert that the complaint does not plead with sufficient particularity facts showing how, when, where, to whom, and by what means the misrepresentation occurred.

The complaint alleges that defendants Carolina Ester Cruz and Amalia Day approached Carolina Cruz shortly before her anticipated retirement in 2017. (Complaint, ¶¶ 80-81.) They allegedly informed Carolina Cruz that she could not obtain social security or Medi-Cal benefits if she was a homeowner, with the intent of removing Carolina Cruz from title to the subject property. (Complaint, ¶ 81.) The complaint alleges that defendants knew this information was false, particularly in light of later actions attempting to have Carolina Cruz assist with other home purchases. (Complaint, ¶¶ 82-84.) The complaint alleges defendants’ intent to have Carolina Cruz change the title of the subject property. (Complaint, ¶ 81.) The complaint also alleges that she justifiably relied on her daughters’ representations based on her general reliance on her children in light of her lack of education and her inability to read, write, and understand Spanish and/or English. (Complaint, ¶ 85.) As a result, she signed documents conveying title to Carolina Ester Cruz. (Complaint, ¶ 33.) The complaint sufficiently alleges intentional misrepresentation.

#### Negligent Representation

In order to assert a claim for negligent misrepresentation, the complaint must allege 1) a false representation as to a past or existing material fact, 2) the representation was made without reasonable ground for believing it to be true, 3) intent to deceive, 4) justifiable reliance, and 5) resulting damages. (*Majd v. Bank of America, N.A.* (2015) 243 Cal.App.4th 1293, 1307.) Negligent misrepresentation is similar to fraud, except that it does not require scienter. (*Tenet Healthsystem Desert, Inc. v. Blue Cross of California*

(2016) 245 Cal.App.4th 821, 845.) As the court finds that intentional misrepresentation has been sufficiently alleged, negligent misrepresentation is also sufficiently alleged.

### Deceit

Civil Code section 1709 provides, "One who willfully deceives another with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers." To allege deceit, the complaint must allege 1) a misrepresentation, 2) knowledge of its falsity, 3) the intent to induce another's reliance on the misrepresentation, 4) justifiable reliance, and 5) resulting damage. (*Conroy v. Regents of University of California* (2009) 45 Cal.4th 1244, 1255.) For the reasons stated above, the court finds deceit is sufficiently alleged.

### Declaratory Relief

Any person who desires a declaration of his or her rights or duties with respect to another may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an action for a declaration of his or her rights and duties. (Code Civ. Proc., § 1060.) A complaint for declaratory relief should show the following: 1) a proper subject of declaratory relief within the scope of Code of Civil Procedure section 1060; and 2) an actual controversy involving justiciable question relating to the rights or obligations of a party. (*Tiburon v. Northwestern Pacific Railroad Co.* (1970) 4 Cal.App.3d 160, 170.) A general demurrer to a cause of action for declaratory relief must be overruled where an actual controversy is alleged. (*New Livable Calif. v. Association of Bay Area Governments* (2020) 59 Cal.App.5th 709, 715-717.)

The court in *Osseous Technologies of America, Inc. v. DiscoveryOrtho Partners LLC* "Osseous" (2010) 191 Cal.App.4th 357, 365 analyzed three types of classifications of declaratory relief actions: 1) actions that must be dismissed, 2) actions where declaratory adjudication is appropriate and cannot be dismissed, and 3) action where the court has discretion to either provide the relief or dismiss. The first category would include those where the relief requested seeks to redress past wrongs, rather than future harm. (*Id.* at p. 367.) The second category would include situations where continuing contractual relationships are alleged and there are future consequences and the parties' future conduct depends on the court's interpretation. (*Id.* at p. 371.) The third category includes situations where another remedy, such as a breach of contract, may also govern the parties' future conduct. (*Id.* at p. 372.)

Defendants claim this is a situation where the complaint only seeks to redress past harms. However, the complaint alleges that there are issues with rental income for the subject property and that defendants are attempting to evict the current tenants. (Complaint, ¶¶ 66-67.) As such, there are ongoing and future harms alleged. The complaint sufficiently alleges a claim for declaratory relief.

### Unjust Enrichment

The only argument defendants raise as to this claim is that it is barred by the statute of limitations. As discussed above, the statute of limitations will not act as a bar to any of the claims in the complaint.

