

Tentative Rulings for January 23, 2025
Department 403

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.*

23CECG02293 *Josue Jimenez, et al. v. Chicago Title Company, et al. (Dept. 403)*

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

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Tentative Ruling

Re: **Deborah Rodriguez v. Covenant Care California, LLC**
Superior Court Case No. 23CECG02993

Hearing Date: January 23, 2025 (Dept. 403)

Motion: By Defendant for Judgment on the Pleadings

Tentative Ruling:

To grant defendant Covenant Care California, LLC's motion for judgment on the pleadings, without leave to amend, as to the third cause of action for wrongful death.

Explanation:

A motion for judgment on the pleadings has the same function as a demurrer, but is made after the time for demurrer has passed. (Code Civ. Proc., § 438; *Prickett v. Bonnier Corporation* (2020) 55 Cal.App.5th 891, 896.) The grounds for the motion must appear on the face of the challenged pleading or from facts judicially noticeable. (*Prickett v. Bonnier, supra*, 55 Cal.App.5th at p. 896.) The court is to treat all facts as properly pled. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.) While leave to amend is routinely granted, a court may deny leave to amend where "there is no reasonable possibility that the defect can be cured by amendment." (*Von Batsch v. American Dist. Telegraph Co.* (1985) 175 Cal.App.3d 1111, 1117.) Plaintiff has the burden of showing it can cure any defect in the complaint. (*Id.* at p. 1118.)

An "action for violation of the Elder Abuse Act belongs to the elder victim; the claim does not pass on to survivors." (*Holland v. Silverscreen Healthcare, Inc.* (2024) 101 Cal.App.5th 1125, 1132.) While a successor in interest may pursue an elder abuse claim on the elder's behalf, successors in interest cannot assert a claim for elder abuse on their own behalf. (*Id.* at p. 1133.) Where a cause of action against a healthcare provider is asserted based on a legal theory other than medical malpractice, the courts still determine whether it is based on the professional negligence of the healthcare provider. (*Ibid.*) The statute of limitations for claims involving professional negligence of a healthcare provider is "three years after the date of injury or one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first." (Code Civ. Proc., § 340.5.) Wrongful death causes of action statutes of limitations run from the date of death. (*Horwich v. Superior Court* (1999) 21 Cal.4th 272, 283.) The applicable statute of limitations may vary. (*Ibid.*)

Here, plaintiffs argue that the wrongful death cause of action is based on the elder abuse claim, not on professional negligence of a healthcare provider. As such, plaintiffs assert that the applicable statute of limitations is the two-year statute of limitations for elder abuse. However, as noted above, case law establishes that successors in interest cannot assert an independent claim for elder abuse and the court is still to determine

