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 Rulings for Department 403

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(37)	Tentative Ruling		
Re:	Lihua Chu Sun v. Vishnu Bezwada, M.D. Superior Court Case No. 24CECG00363		
Hearing Date:	January 23, 2025 (Dept. 403)		
Motion:	Defendant Derek A. Taggard, M.D.'s Demurrer to the Second Amended Complaint		

Tentative Ruling:

1271

To continue the motion to Thursday, February 20, 2025, at 3:30 p.m. in Department 403, in order to allow the parties to meet and confer in person or by telephone, as required. If this resolves the issues, defendant shall call the court to take the motion off calendar. If it does not resolve the issues, counsel for defendant shall file a declaration, on or before February 6, 2025 stating the efforts made.

Explanation:

Code of Civil Procedure section 430.41 makes it clear that meet and confer must be conducted "in person or by telephone". (*Id.*, subd. (a).) Sending written communication first, as defendant's counsel did here, can be helpful to the process, but this does not shift the burden for meeting and conferring to the plaintiff. The Legislature specified in-person or telephone contact. The parties must engage in good faith meet and confer, in person or by telephone, as set forth in the statute. The court's normal practice in such instances is to take the motion off calendar, subject to being recalendared once the parties have met and conferred. However, given the extreme congestion in the court's calendar currently, the court will instead continue the hearing to allow the parties to meet and confer, and only if efforts are unsuccessful will it rule on the merits.

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 Rulin	ntative Ruling			
Issued By:	JS	on	1/17/2025	
	(Judge's initials)		(Date)	

(37)

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 whether a wrongful death claim is based on professional negligence of a healthcare provider, even where the cause of action is based on a different legal theory. Here, for the wrongful death claim brought by decedent's heirs, the basis is professional negligence of a healthcare provider. Thus, the applicable statute of limitations is found in Code of Civil Procedure section 340.5, for professional negligence of a healthcare provider. As such, the one-year statute of limitations applies. As decedent died on December 30, 2021, the statute of limitations ran on December 30, 2022. This complaint was not filed until July 25, 2023.

As such, the court grants the motion for judgment on the pleadings. Plaintiffs will be unable to cure the defect as to the wrongful death claim in light of the known date of death and applicable statute of limitations. Therefore, the motion is granted 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.

on

Tentative Ruling

Issued By:	S		
	(Judge's initials)		

(Date)