Tentative Rulings for January 23, 2025
Department 501

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.***

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

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

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Tentative Ruling

Re: ***Oracle Anesthesia, Inc. v. Central Valley Advanced Nursing Practice, Inc.***
Superior Court Case No. 22CECG02097

Hearing Date: January 23, 2025 (Dept. 501)

Motions: by Plaintiffs to Compel Production of Responses to Requests for Production, set one, Nos 17-20[1]

Tentative Ruling:

To grant the motion as it relates to previously withheld communications from April 10, 2022, thru May 31, 2022, to the extent such communications exist and are not subject to absolute work product protection. The motion is denied in all other respects, including the requests for monetary sanctions.

Explanation:

Through this motion, plaintiff essentially seeks an order compelling defendants produce "all documents [generated by/from/with Katherine Bowles ("Bowles")] previously held on attorney-client privilege and work product grounds regardless of whether those documents and communication are dated prior to or after April 10, 2022." (Notice of Motion, at 3:10-11.)

Plaintiff boldly contends "the duty of loyalty continues and case law makes clear there is no privilege between joint clients *at any time*." (Points & Auth. at p. 11:6, emphasis added.) However, the case cited for that proposition specifically rejected a request to broadly construe the "common interest" exception to privileged communications. (*Rockwell Internat. Corp. v. Superior Court* (1994) 26 Cal.App.4th 1255, 1266, 1267 [restricting the common interest exception to only what is expressly provided under Evid. Code, §§ 962, 963, subd. (a), 954, subd. (a).] (*Rockwell*).) Rather, as held in *Rockwell,* the common interest exception is limited to only communications "made in the course of [the attorney/client] relationship …." (Evid. Code, § 962; see also *Anten v. Superior Court* (2015) 233 Cal.App.4th 1254, 1257.) Furthermore, withdrawal and substitution generally terminate the attorney-client relationship unless "objective evidence shows that the attorney continues to provide legal advice or services." (*Michaels v. Greenberg Traurig, LLP* (2021) 67 Cal.App.5th 512, 536 (*Michaels*).)

Although an attorney for a partnership "represents all the partners as to matters of partnership business[]" (*Wortham & Van Liew v. Superior Court* (1987) 188 Cal.App.3d 927, 932), plaintiffs concede it is undisputed that plaintiffs only possessed partner status until April 10, 2022. (Points & Auth. at 10:12.) However, plaintiff also requests the court take (to which the court grants) judicial notice of the substitution of attorney, filed on May 31,

[1] Plaintiff seeks responsive documents for essentially two requests for production served on each of the eight responding parties. (See Notice of Motion, at p. 2, fn. 1.)

2022 in case no. 21CECG02397. Plaintiffs provide no objective evidence of legal services provided beyond the filed substitution, but, nevertheless, the substitution demonstrates that the course of the attorney-client relationship did not terminate until the filing of the substitution on May 31, 2022. (Evid. Code, § 362; *Michaels, supra*, 67 Cal.App.5th at p. 536.) Accordingly, privilege may not be asserted concerning partnership communications, including those made by Bowles, dated between April 10, 2022, thru May 30, 2022. To the extent such communications exist but have not been produced, this motion is granted. In all other respects (i.e. communications made after May 31, 2022), the motion is denied.

Procedural Contentions

Defendants' procedural contentions, primarily concerning timeliness and service on Bowles, are not availing. Counsel has accepted service on behalf of Bowles in the past (Supp. Toole, Decl., ¶ 6) and the court specifically authorized the filing of this motion in its order on pretrial discovery conference issued October 7, 2024.

Monetary Sanctions

Considering the minimal refinement of the disputed discovery, the court finds sufficient circumstances exist to make the imposition of sanctions unjust. (Code Civ. Proc., § 2031.310, subd. (h).)

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 1/21/2025 .
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Oralia de la Fuente v. City of Fresno***
Superior Court Case No. 23CECG03347

Hearing Date: January 23, 2025 (Dept. 501)

Motion: by Defendant City of Fresno for Summary Judgment

Tentative Ruling:

To grant defendant's motion for summary judgment. (Code Civ. Proc., § 437c.) Defendant shall submit a proposed judgment consistent with the terms of this order within 5 days of service of the order.

Explanation:

Timing of the Filings

"An opposition to the motion shall be served and filed not less than 20 days preceding the noticed or continued date of hearing, unless the court for good cause orders otherwise." (Code Civ. Proc., § 437c, subd. (b)(2).) A court has discretion to refuse to consider papers served and filed beyond the deadline without a prior court order finding good cause for late submission. (*Bozzi v. Nordstrom, Inc*. (2010) 186 Cal.App.4th 755, 765; *Mackey v. Board of Trustees of California State University* (2019) 31 Cal.App.5th 640, 657.)

Plaintiff Oralia de la Fuente's ("plaintiff") opposition was filed on January 9, 2025, and the hearing on the motion scheduled for January 23, 2025. Although this is less than the 20-day time frame, defendant City of Fresno ("defendant" or "the City") addressed the merits of the opposition on reply. The court will exercise its discretion in considering all of the filings.

Legal Standard

A trial court shall grant summary judgment where there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., §437c, subd. (c).) Summary judgment law turns on issue finding rather than issue determination. (*Diep v California Fair Plan Ass'n* (1993) 15 Cal.App.4th 1205, 1207.) The court does not decide the merits of the issues, but merely discovers, through the medium of affidavits or declarations, whether there are issues to be tried and whether the parties possess evidence that demands the analysis of a trial. (*Melamed v City of Long Beach* (1993) 15 Cal.App.4th 70, 76; *Molko v Holy Spirit Ass'n* (1988) 46 Cal.3d 1092, 1107; *Schwoerer v Union Oil Co.* (1993) 14 Cal.App.4th 103, 110.) In short, the motion is not a substitute for a bench trial.

A summary judgment motion must show that the "material facts" are undisputed. (Code Civ. Proc., § 437c, subd. (b)(1).) The ultimate burden of persuasion on summary judgment/adjudication rests on the moving party. The initial burden of production is on defendant to show, by a preponderance of the evidence, that it is more likely than not that there is no triable issue of material fact. (*Aguilar v. Atlantic Richfield* (2001) 25 Cal.4th 826, 850.) In determining whether any triable issues of material fact exist, the court must strictly construe the moving papers and liberally construe the declarations of the party opposing summary judgment. Any doubts as to whether a triable issue of material fact exist are to be resolved in favor of the party opposing summary judgment. (*Barber v. Marina Sailing, Inc.* (1995) 36 Cal.App.4th 558, 562.)

The court does not weigh evidence or inferences (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 856), nevertheless, "'[w]hen opposition to a motion for summary judgment is based on inferences, those inferences must be reasonably deducible from the evidence, and not such as are derived from speculation, conjecture, imagination, or guesswork.'" (*Waschek v. Department of Motor Vehicles* (1997) 59 Cal.App.4th 640, 647, citation omitted; Code Civ. Proc., § 437c, subd. (c).)

Application

Defendant argues that the Complaint is subject to summary judgment because: (1) the City as a public entity cannot be liable for common law negligence, (2) the alleged sidewalk defect was trivial and thus not a dangerous condition as a matter of law; and (3) the City did not have actual or constructive notice of the uplifted or defective sidewalk.

<u>Negligence</u>

A public entity is not liable for an injury caused by an act or omission of the public entity, or a public employee, except as otherwise provided by statute. (Gov. Code § 815 subd. (a).) "A public entity is liable for injury <u>proximately caused</u> by an act or omission of an employee of the public entity <u>within the scope of his employment</u> if the act or omission would, <u>apart from this section</u>, have given rise to a cause of action against that employee… Except as otherwise provided by statute, a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability." (*Id*., § 815.2, emphasis added.)

Defendant argues that there is no statutory authority allowing liability for common law negligence to attach to the City as a public entity. In her second amended complaint ("2AC"), plaintiff cites to Government Code section 815.2, subdivision (a), to argue that the City is vicariously liable for negligence of its employees acting in the course and scope of their employment with the City. (2AC, ¶ 38.) However, plaintiff has not demonstrated that the exception applies here, as she does not offer facts in her Complaint that demonstrate the elements required to support this exception.

Trivial Defect

The trivial defect rule is codified at Government Code section 830.2: a claimed defect on public property is not a dangerous condition where the trial or appellate court views the evidence in the light most favorable to the plaintiff and determines as a matter of law that the risk created by the condition "was of such a minor, trivial or insignificant nature in view of the surrounding circumstances that no reasonable person would conclude that the condition created a substantial risk of injury when such property or adjacent property was used with due care in a manner in which it was reasonably foreseeable that it would be used." (Gov. Code § 830.2.) This allows the issue to be tested by a motion for summary judgment.

Particularly with sidewalk defects, the size of a rise or gap between portions of the sidewalk, while an important factor, is not the only determining factor: "all of the circumstances surrounding the condition must be considered in the light of the facts of the particular case." (*Fielder v. City of Glendale* (1977) 71 Cal.App.3d 719, 729.) For instance, courts have considered how long the defect has existed, the time of day or night the accident occurred or whether the sidewalk was shadowy, whether plaintiff had ever traveled over that portion of the sidewalk before, whether plaintiff contributed to the accident in any way, whether there were breaks in the sidewalk which were irregular and jagged or with missing pieces, whether there were foreign substances present (such as grease and oil), whether there is any evidence that other persons have been injured on this same defect, and any other "aggravating factor" that might be present in a particular case. (*Id.,* surveying numerous cases.) "As to what constitutes a dangerous or defective condition no hard-and-fast rule can be laid down, but each case must depend upon its own facts. [Citations.] Whether a given set of circumstances creates a dangerous or defective condition is primarily a question of fact." (*Id.* at p. 728 (internal quotes omitted).)

While the court in *Fielder* indicated that there is no "tape measure test" in determining whether a sidewalk defect was trivial as a matter of law, two slabs of sidewalk nonaligned horizontally "by a slight depression" may be found trivial as a matter of law "provided that there are no aggravating circumstances attending the defect." (*Fielder, supra*, 71 Cal.App.3d at p. 729.) In the end, the rule is that "if reasonable minds can differ on the question it is one of fact, and that it is only when reasonable minds must come to the conclusion that the defect is so trivial that a reasonable inspection would not have disclosed it, that the question becomes one of law. Each case must be determined on its own facts." (*Id.* at p. 731.)

Defendant offers the declaration of Jace Badertscher (Street Maintenance Supervisor for the City) to establish the measurement of the defect as "less than one and one-half inch at its highest." (Defendant's Statement of Evidence, Exh. F, ¶ 3; Undisputed Material Fact ("UMF") No. 11.) Although plaintiff "disputes" this on the UMF, she offers the declaration of James E. Flynn (Registered Professional Engineer) who states that he measured the defect to be "1 inch on the western edge of the slab and which decreased to ½ an inch on the eastern edge of the slab." (Opp. to Statement of Evidence, Exh. 2, ¶ 8.) Plaintiff's proffered evidence does not support any "dispute" as to the measurement of the defect. Here, plaintiff agrees that "it is undisputed that the defect was at least 1 inch to 1½ inches." (Opp. at 6:8.)

Plaintiff does not dispute that it was a clear and sunny day, that there was no debris or trash covering the sidewalk, and that there was nothing obstructing plaintiff's view of the sidewalk. (UMF Nos. 6-8.) Plaintiff does not dispute that plaintiff was looking forward while walking, although she does specify that she was also looking around (e.g. at her companion and at their destination). (UMF No. 3.)

Plaintiff does dispute whether there were cracks/jagged edges/broken pieces in that area of the sidewalk, claiming that there were visible cracks and irregularities on the surface, and that the site was not smooth or clean-cut concrete. (UMF No. 13.) She follows this up, though, with the argument that based on "the appearance of the site of the deviation in photos submitted by both parties it appears that the area had been previously repaired." (Opp. at 6:17-18.) Perceived "repair" does not support an argument for cracks and irregularities.

The City argues that the totality of the circumstances, including the maximum 1.5 inch height of the deviation and lack of aggravating circumstances demonstrates that there was no dangerous condition. The City also argues that the lack of prior accidents in the area supports finding that the defect was trivial. This area of the sidewalk was a heavily trafficked one, and there are no prior reports found in the City's database of complaint. (See Exh. H – Kennedy Decl., Exh, M – Davisson Decl.) Thus, the City argues the alleged defect is trivial within the meaning of the Government Code and the City cannot be liable.

Plaintiff's rebuttal is that "[t]he presence of the previous repairs indicates that the deviation was a recurring problem and taken together with the surrounding circumstances of Defendant's prior knowledge and implied intention to repair the area prior to the incidents occurrence show the defect was not trivial." (Opp. 6:18-21.) This statement alone does not evidence that the totality of the circumstances should support a finding that it was not a trivial defect. Expert testimony sometimes indicates a triable issue of fact, but here, plaintiff's expert merely confirms the 1-1.5 inch measurement of the defect. While Mr. Flynn raises the possibility of prior repairs, this does not indicate that the sidewalk was in dangerous condition and in fact may suggest the opposite.

Based on the individual facts of this case and the declarations and evidence offered by both parties, the defect appears to be trivial.

<u>Notice</u>

Defendant argues that the City did not have actual notice of the alleged defect. The City had not received complaints of the subject area prior to the present underlying incident. (UMF Nos. 14-16, 19, 21.) The City offers the declaration of Bret Conner (Manager within the City's Department of Public Works) to state that the City had not received complaints or notices of a sidewalk defect in the area of incident, and the declaration of Dan Turner (Forestry Supervisor within the City's Department of Public Works) to state that the City had not received complaints or notices of any tree issues (that may have affected the sidewalk) in the area of incident. (See Defendant's Statement of Evidence, Exhs. I and J, ¶ 3.) Defendant further argues that plaintiff has not been able to establish the length of time of the existence of the defect, and therefore constructive notice cannot be established as there is no reliable basis for estimating the length of existence.

(Memo. P&A, at 14:1-2.) Plaintiff has not established that there was sufficient time for the City to discover and repair the condition, nor that the condition was so obvious that the City should have discovered it. (*Id*., at 14:2-3.)

The entirety of the plaintiff's position that the City "knew" of the deviation is that a "supervisor" employed by the City "reported to the scene of the incident[,] apologized to Oralia De La Fuente and told her that there was a significant deviation present, his awareness of it, and his surprise that it had not yet been fixed." (Opp., 8-11, referring to plaintiff's deposition testimony.) Plaintiff acknowledges that this is hearsay, but argues that it is admissible under Evidence Code section 1222.

Evidence Code section 1222 reads:

> Evidence of a statement offered against a party is not made inadmissible by the hearsay rule if:
>
> (a) The statement was made by a person authorized by the party to make a statement or statements for him concerning the subject matter of the statement; and
>
> (b) The evidence is offered either after admission of evidence sufficient to sustain a finding of such authority or, in the court's discretion as to the order of proof, subject to the admission of such evidence.

Plaintiff conclusively states that "the statement was made by a City of Fresno Supervisor at the scene, shortly after the fall and is thus imputed to the City." (Opp. at 5:4-5.) However, plaintiff offers no evidence that establishes the person making the statement was authorized by the City to make such statements. As noted by the defendant, plaintiff does not attempt to establish that the alleged supervisor (1) was actually a city employee; (2) was actually a supervisor; (3) what department he was allegedly employed by; (4) how he has the authorization to make this statement as required by Evidence Code section 1222; or (5) make any attempt to establish a proper foundation as to the alleged employee's authorization to speak on behalf of the City. The statements relied on by defendant to demonstrate notice are inadmissible hearsay.

Plaintiff references Mr. Flynn's assessment that two prior repairs at the site demonstrated the City had actual notice of the condition and deviation. However, plaintiff offers no evidence of repair that establishes this as a triable issue of fact. Defendant has declared that the City has no prior incident reports for this site area and can reference the City's database for this information. Mr. Flynn's professional opinion has not been supported by facts; plaintiff hasn't established that repairs were made, that more than one repair was made, that the City was behind any purported repairs, etc. Even had this been supportive of notice, plaintiff would need to additionally show that the property was in a dangerous condition at the time of the injury in order for the city to be liable, and as discussed above, plaintiff has not demonstrated she would be able to make that showing. (Gov. Code § 835.)

Plaintiff does not suggest that defendant had constructive notice, and does not present a time frame for the existence of the defect with which constructive notice may

be established. It appears that the City did not have actual or constructive notice of the alleged defect.

Given the foregoing, the court intends to grant the City's motion for summary judgment, as the defendant has carried its burden to demonstrate no triable issue of fact.

Evidentiary Objections

The court overrules defendant's objections numbers 5, 6, 7, 8, 10 and 11. The court sustains defendant's objection numbers 1 and 4 on the grounds of hearsay. The court sustains defendant's objection number 9 for lack of personal knowledge. The court declines to rule on objections numbers 2 and 3, as those objections are not necessary to determination of the motion. (Code Civ. Proc. § 437c, subd. (q).)

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 1/21/2025 .
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Real v. Vested Enterprises, Inc. et al.***
Superior Court Case No. 21CECG02679

Hearing Date: January 23, 2025 (Dept. 501)

Motion: by Defendant Amazon.com, Inc., to Strike Punitive Damages

Tentative Ruling:

To deny the motion to strike in its entirety. Defendant Amazon.com, Inc., is directed to file an Answer within 10 days of service of the minute order by the clerk.

Explanation:

On October 16, 2024, following a grant of leave to file an amended pleading, plaintiff Daniel Real ("plaintiff") filed a First Amended Complaint ("FAC"). Among other things, the FAC included a section regarding punitive damages. Defendant Amazon.com, Inc., ("defendant") now seeks to strike the supporting allegations and the prayer for punitive damages.

Pleadings are to be construed liberally with a view to substantial justice between the parties. (Code Civ. Proc. § 452.) The allegations in the complaint are considered in context and presumed to be true. (*Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255.)

While not cited in the FAC, there is no general dispute that the claim for punitive damages rests on Civil Code section 3294. Civil Code section 3294, subdivision (a), provides:

> In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

Mere legal conclusions of oppression, fraud or malice are insufficient and therefore may be stricken. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) However, if looking to the complaint as a whole, sufficient facts are alleged to support the allegations, then a motion to strike should be denied. (*Ibid*.) Allegations that include conclusions of law or that are considered to be ultimate facts will stand if sufficient facts are alleged to support them. (*Ibid.*) Stated another way, if the facts and circumstances are set out clearly, concisely, and with sufficient particularity to apprise the opposite party of what is called on to answer, such is sufficient to support a claim for punitive damages. (*Lehto v. Underground Const. Co.* (1977) 69 Cal.App.3d 933, 944.)

Defendant argues that there are no allegations that the entity defendants' officers, directors or managing agents authorized or ratified an employee's malicious conduct. A corporate employer may be liable for punitive damages only if the knowledge, authorization, ratification or act of wrongful conduct was on the part of an officer, director or managing agent of the corporation. (*Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 167.) However, the FAC alleges that defendant, by and through their directors, officers and/or managing agents ratified the actions of codefendant Zachary Mikel Adams. (FAC, ¶ 15.) This allegation of ratification, however, is disjointed from the allegations in support of punitive damages.

The FAC alleges as to Adams merely that he negligently failed to approach the intersection with due care (FAC, ¶ 58), or otherwise violated provisions of the Vehicle Code (*id.*, ¶ 67). Alleged ratification of these acts do not support the conclusions drawn against defendant itself, that defendant developed and operated a last-mile delivery platform with reckless disregard for public safety, prioritizing profit and market dominance. (*Id.*, ¶¶ 73, 74.) Moreover, the FAC states that defendant was willfully blind to the safety concerns raised by employees, drivers and the public. (*Id.*, ¶ 76.) In so doing, the FAC alleges that defendant demonstrates a pattern of prioritizing speed and cost-efficiency over safety. (*Id.*, ¶ 78.) None of these allegations flow from the ratification of the actions of Adams.

As defendant correctly notes, corporations are legal entities which do not have minds capable of recklessness, wickedness or intent to injure or deceive. (*Cruz v. HomeBase* (2000) 83 Cal.App.4th 160, 167.) Punitive damages therefore must rest on the actions of the corporation's leaders. (*Ibid.*) This is the group whose intentions guide corporate conduct. (*Ibid.*) Further, corporate ratification in the punitive damages context requires actual knowledge of the conduct and its outrageous nature. (*College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 726.) Here, there are no specific allegations as to any individual corporation leader. The FAC appears to rely solely on the allegation ratifying Adams's actions. Knowledge and ratification of the actions of Adams, an individual driver, does not, as defendant suggests, support more than general liability. These alleged ratifications by themselves do not provide the specificity required to support a claim of punitive damages against a corporation defendant, who must have actors on its behalf.

As to the allegations directly addressing defendant, they are both factual and conclusory. The FAC alleges the following mix of facts and conclusions that defendant: prioritized rapid deliveries with knowledge of the dangers posed by aggressive delivery schedules and policies; encouraged providers to focus on speed; received numerous reports of accidents and near-misses caused by its drivers; expanded its network in spite of these risks; failed implement adequate safety measures; and demonstrated a pattern of prioritizing speed and cost-efficiency over safety. (FAC, ¶¶ 73-78.) These facts, and conclusions, which are also ultimate facts are sufficiently particular as to the "what" and "how" to apprise defendant of what it is called to answer. General allegations provide information as to the "when" and generally the "where". (*Id.*, ¶¶ 16-32.) However, as defendant notes, the FAC lacks specificity as to the "who", and more specifically, which corporate officers, directors or agents are implicated.

As plaintiff suggests, these facts rest more with defendant than with plaintiff. In the context of fraud claims on demurrer, the California Supreme Court has found that the particularity required depends on the extent to which the defendant in fairness needs detailed information that can be conveniently provided by the plaintiff. (*Jackson v. Pasadena City School Dist.* (1963) 59 Cal.2d 876, 879.) Accordingly, less particularly is required where the defendant knowledge of the facts equal to that possessed by the plaintiff. (*Ibid.*; *see also Semole v. Sansoucie* (1972) 28 Cal.App.3d 714, 719 [citing *Jackson v. Pasadena City School District*, *supra*, and noting that modern discovery procedures affect the amount of detail that should be required in a pleading].) Here, knowledge of who specifically caused the allegations of the FAC rests more easily on defendant, who is otherwise sufficiently apprised by the FAC as to the nature of the claim for punitive damages. The court concludes that under the circumstances, defendant is equally positioned to know the specific facts necessary to support the claim for punitive damages.[1]

For the above reasons, the court finds that defendant is sufficiently positioned to answer as to whether it agrees to those allegations and what it intended compared to those allegations. The motion to strike is denied in its entirety.

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 1/22/2025 .
(Judge's initials) (Date)

[1] The situation here is distinctive to the specificity requirements of fraud causes of action challenged on demurrer. Where there are allegations of intentional or negligent misrepresentations, the absence of specific allegations of who did so become far more critical to the pleadings. Here, where there are allegations of broader policies adopted with oppression, fraud or malice, the information of who may have contributed lies predominately with defendant.

(35)

Tentative Ruling

Re: ***Gutierrez v. Rodriguez et al.***
Superior Court Case No. 24CECG02467

Hearing Date: January 23, 2025 (Dept. 501)

Motion: by Cross-Defendant Antonette Gutierrez on Demurrer to Cross-Complaint

Tentative Ruling:

To overrule on all grounds. (Code Civ. Proc. § 430.10, subd. (e).) Cross-Defendant Antonette Gutierrez is directed to file an answer within ten days of service of the order by the clerk.

Explanation:

In determining a demurrer, the court assumes the truth of the facts alleged in the complaint and the reasonable inferences that may be drawn from those facts. (*Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 883.) On demurrer, the court must determine if the factual allegations of the complaint are adequate to state a cause of action under any legal theory. (*Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 103.) The courts of this state have long since departed from holding a plaintiff strictly to the form of the action he has pleaded and instead have adopted the more flexible approach of examining the facts alleged to determine if a demurrer should be sustained. (*Ibid.*)

On a demurrer a court's function is limited to testing the legal sufficiency of the complaint. A demurrer is simply not the appropriate procedure for determining the truth of disputed facts. (*Fremont Indemnity Co. v. Fremont General Corp*. (2007) 148 Cal.App.4th 97, 113-114.) It is error to sustain a demurrer where plaintiff "has stated a cause of action under any possible legal theory. In assessing the sufficiency of a demurrer, all material facts pleaded in the complaint and those which arise by reasonable implication are deemed true." (*Bush v. California Conservation Corps* (1982) 136 Cal.App.3d 194, 200.) A 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.) When the complaint is defective, great liberality should be exercised in permitting a plaintiff to amend the complaint if there is a reasonable possibility that the defect can be cured by amendment. (*Scott v. City of Indian Wells* (1972) 6 Cal.3d 541, 549.)

Cross-Defendant Antonette Gutierrez ("cross-defendant") demurs on the following bases: (1) res judicata; and (2) cross-complainant Alice Rodriguez ("cross-complainant") "lacks standing to invoke the bankruptcy automatic stay protections under 11 U.S.C.A. § 362 to contend that the foreclosure and trustee's deed upon sale were void."

Certain alleged facts of the Cross-Complaint ("CC") are undisputed between the parties, which themselves are generally consistent with a prior matter, Fresno Superior Court Case No. 07CECG03513 (the "3513 Matter".[1] The following is a summary of the undisputed allegations, for the purposes of demurrer taken as true as alleged in the CC.

Raymond Renteria owned the real property that is the subject of the CC. At a point, a deed was recorded in favor of Finance and Thrift Company. Thereafter, Finance and Thrift Company deeded the subject property to Rita Renteria. Rita Renteria deeded the subject property to husband and wife Leroy and Erlinda Gutierrez. Upon his passing, Leroy Gutierrez left his interest to his wife, Erlinda Gutierrez. Erlinda Gutierrez conveyed her interest into a trust. Upon her passing, the trust conveyed a life estate to Raymond Renteria as to the subject property. Raymond Renteria passed away in 2023, resulting in the present action and the Complaint to be filed to quiet title.

Cross-Complainant by way of the CC contends that the deed executed by Finance and Thrift Company was void as it was exercised during an alleged bankruptcy stay. Cross-Complainant further alleges that the affidavit of death filed upon the passing of Leroy Renteria fraudulently refers to title as a joint tenancy.

Collateral Estoppel (Issue Preclusion)

Cross-defendant raises issues of res judicata, and specifically issue preclusion, based on a prior litigation between Raymond Renteria and Rita Renteria on the one hand, and cross-defendant on the other hand.

Issue preclusion arises: (1) after final adjudication, (2) of an identical issue, (3) actually litigated and necessarily decided in the first suit, and (4) asserted against one who was a party in the first suit or one in privity with that party. (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341.) Where an administrative remedy is sought, and an adverse finding found, the failure to have that finding set aside through the judicial review process will cause the adverse finding to be binding on discrimination claims under FEHA. (*Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 76.) The party asserting issue preclusion bears the burden of establishing these requirements. (*Lucido v. Superior Court*, *supra*, 51 Cal.3d at p. 341.)

Determining the issue foreclosed by prior judgment is one of the most difficult problems in applying the rule of issue preclusion. (*Burdette v. Carrier Corp.* (2008) 158 Cal.App.4th 1668, 1689.) In making such a determination, several factors are considered: (1) is there a substantial overlap between the evidence or argument to be advanced in the second proceeding and that advanced in the first; (2) does the new evidence or argument involve application of the same rule of law as that involved in the prior proceeding; (3) could pretrial preparation and discovery relating to the matter presented in the first action reasonably be expected to have embraced the matter

[1] Cross-Defendant's Request for Judicial Notice is granted to the extent that these documents exist. The court does not assume the truth of the facts found therefrom. (*Steed v. Dept. of Consumer Affairs* (2012) 204 Cal.App.4th 112, 120.) Cross-Complainant's Objections to the Request for Judicial Notice are accordingly overruled.

sought to be presented in the second; and (4) how closely related are the claims involved in the two proceedings? (*Ibid.*)

Cross-defendant submits that the primary right at issue in the 3513 Matter is identical to the present suit, namely that she has already had to defend against claims brought against the subject property. The evidence does not support this conclusion.

Upon a careful review of the Statement of Decision filed in the 3513 Matter, the issues were specifically defined. Before that court, the issues were (1) whether title to the subject property belonged to Raymond Renteria and Rita Renteria, and (2) whether Erlinda Gutierrez and cross-defendant converted money belonging to Rita Renteria. None of these individuals include cross-complainant. At best, cross-complainant appears as a witness in the 3513 Matter.

Neither are the conclusions drawn in the 3513 Matter specific as to cross-complainant. At best, the Statement of Decision determined that, based on credibility alone, Raymond Renteria and Rita Renteria were not owners of or entitled to the subject property at the time of trial. In other words, whether an act occurred in violation of federal bankruptcy laws, or a deed fraudulently filed to reclassify the interests as joint tenancy were not resolved. Moreover, the court in the 3513 Matter addressed these issues from one of contracts, focusing on a statute of frauds analysis to validate or otherwise enforce a purported oral agreement. In sum, what was at issue, even in the consideration of who owns the subject property, was, as cross-complainant suggests in opposition, money damages. The 3513 Matter did not declare the historical or actual interests of subject property, only that Raymond and Rita had not established a right to then claim title.

Standing

Cross-defendant further demurs on the apparent grounds of standing to "invoke" bankruptcy protections. At a surface level, this is a factual challenge to a specific allegation, which is inappropriate on demurrer. Nothing in the CC nor in evidence under judicial notice gives any indication as to the nature of the bankruptcy. There are no clear allegations who petitioned for bankruptcy, let alone who participated in the bankruptcy. Accordingly, no conclusions can be drawn, as a matter of law, who were parties or beneficiaries to an automatic stay.

For the above reasons, the present suit seeking to quiet title, and related claims for slander of title are not collaterally estopped by the 3513 Matter. The demurrer as to collateral estoppel is overruled. (Code Civ. Proc. § 430.10, subd. (e).) The demurrer as to "standing" is overruled. (*Ibid.*)

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 1/22/2025 .
(Judge's initials) (Date)