

Tentative Rulings for January 28, 2025
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)

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.

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Tentative Ruling

Re: **Muna Qasem v. Ron Lichtenstein, M.D.**
Superior Court Case No. 23CECG01735

Hearing Date: January 28, 2025 (Dept. 502)

Motion: by Defendant Ron Lichtenstein, M.D. for Summary Judgment

Tentative Ruling:

To grant defendant Ron Lichtenstein, M.D.'s Motion for Summary Judgment. (Code Civ. Proc., § 437c, subd. (c).) Moving party is directed to submit to this court, within five days of service of the minute order, a proposed judgment consistent with the court's summary judgment order.

Explanation:

As the moving party, defendant bears the initial burden of proof to show that plaintiffs cannot establish one or more elements of their cause of action or to show that there is a complete defense. (Code Civ. Proc., § 437c, subd. (p)(2).) Only after the moving party has carried this burden of proof does the burden of proof shift to the other party to show that a triable issue of one or more material facts exists – and this must be shown via specific facts and not mere allegations. (*Id.*)

Where the moving party produces competent expert opinion declarations showing that there is no triable issue of fact on an essential element of the opposing party's claim (e.g. that a medical defendant's treatment fell within the applicable standard of care), the opposing party's burden is to produce competent expert opinion declarations to the contrary. (*Ochoa v. Pacific Gas & Elec. Co.* (1998) 61 Cal.App.4th 1480, 1487.)

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. (*Barber v. Marina Sailing, Inc.* (1995) 36 Cal.App.4th 558, 562.) Any doubts as to whether a triable issue of material fact exists are to be resolved in favor of the party opposing summary judgment. (*Ibid.*)

Lastly, “[f]ailure to file opposition including a separate statement of disputed material facts by not less than 14 days prior to the motion ‘may constitute a sufficient ground, in the court's discretion, for granting the motion.’” (*Cravens v. State Bd. of Education* (1997) 52 Cal.App.4th 253, 257, quoting Code of Civil Procedure § 437c(c).)

Here, the complaint is based on a theory of medical negligence. Dr. Kamras' opinion is sufficient to shift the burden as to the existence of a triable issue of fact to the plaintiffs, as to the entirety of the complaint. Plaintiffs, however, neither filed an opposition nor an opposing statement of material fact, thus tacitly affirming the merits of defendant's motion. (*Cravens v. State Bd. of Education* (1997) 52 Cal.App.4th 253, 257.)

