

Tentative Rulings for January 28, 2025
Department 503

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 503

Begin at the next page

(27)

Tentative Ruling

Re: **Antonio Cuevas v. Stairway Fabricators, Inc.**
Superior Court Case No. 24CECG02097

Hearing Date: January 28, 2025 (Dept. 503)

Motion(s) (3x): Defendant's Demurrer and Motion to Strike Portions of the First Amended Complaint

Tentative Ruling:

To sustain the demurrer and grant the motion to strike. To grant leave to amend.

The Second Amended Complaint shall be filed within ten (10) days from the date of this order. The new amendments shall be in **bold print**.

Explanation:

A pleading is adequate only when "it apprises the defendant of the factual basis for the plaintiff's claim." (*McKell v. Washington Mut., Inc.* (2006) 142 Cal.App.4th 1457, 1469-1470, internal citations omitted.) Under long settled principles regarding demurrers, "[w]e give the complaint a reasonable interpretation, reading it as a whole and its parts in their context ... Further, we treat the demurrer as admitting all material facts properly pleaded, but do not assume the truth of contentions, deductions or conclusions of law." (*City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 865.) In other words, "[w]e disregard legal conclusions in a complaint; they are just a lawyer's arguments." (*Wexler v. California Fair Plan Association* (2021) 63 Cal.App.5th 55, 70, emphasis added.)

Defendant frames its basis for demurrer around the first two elements required to allege discrimination within the context of the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.). (See *Jensen v. Wells Fargo Bank* (2000) 85 Cal.App.4th 245, 254 [plaintiff must allege a disability, be a qualified individual, and have suffered an adverse employment action because of the disability].)

Regarding the first element of actionable disability, defendant contends plaintiff's allegations of a medical diagnosis of an "injur[ed] back and lumbar muscle" is inadequate to satisfy the exclusion of "conditions that are mild, which do not limit a major life activity, as determined on a case-by-case basis." (Cal. Code Regs., tit. 2 § 11065, subd. (d)(9)(B).) Although plaintiff alleges the injury, when first sustained, caused him to fall to the floor, he alleges no limitation to life activities, i.e. there are no allegations the injury was more than the type of mild muscle ache and soreness plainly excluded from the definition of actionable disability. Similarly, aside from describing plaintiff's position as a "general physical laborer" the first amended complaint provides no facts sufficient to inform defendant of whether plaintiff was qualified to perform the essential functions

