<u>Tentative Rulings for January 28, 2025</u> <u>Department 503</u>

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 Rulings for Department 503

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<u>Tentative Ruling</u>

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 <u>first</u> 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

of that position. (Green v. State of California (2007) 42 Cal.4th 254, 262; Gov. Code, § 12940, subd. (a)(1).)1

The inadequate allegations of disability and qualification also undermine the second thru fourth and seventh causes of action, which also seek relief under FEHA. In addition, the fifth and sixth causes of action for violations of the California Family Rights Act (CFRA) (Gov. Code, § 12945.2) fail to allege facts that plaintiff was prevented from utilizing his statutory protections. Furthermore, to the extent plaintiff intends his FEHA allegations to serve as a predicate for his CFRA claims, the FEHA allegations are currently inadequate, as discussed above. Similarly, the FAC does not allege specific complaints or conduct sufficient to implicate the Labor Code statutes alleged in the eighth and ninth causes of action. Finally, given these inadequacies, there is insufficient basis for the wrongful termination cause of action and the request for punitive damages.

<u>Leave to Amend</u>

In response to a demurrer, amendment is liberally granted. (City of Stockton v. Superior Court (2007) 42 Cal.4th 730, 747.) Plaintiff's opposition asserts a variety of previously unpled facts, including several derived from an extrinsic work status report from a provider. To the extent these additional facts can be inserted in a cognizable pleading, plaintiff is granted the opportunity to file a second amended complaint.

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 Ruli	ng			
Issued By:	jyh	on	1/27/25	
-	(Judge's initials)		(Date)	

¹ Defendant also contends that plaintiff has not alleged an adverse employment action because he was told to "keep coming back." (Points & Auth. at p. 4:15-16.) However, plaintiff also alleges he was eventually terminated. (FAC, \P 17.)

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<u>Tentative Ruling</u>

Re: The State of California v. The Heirs and Devisees of T.R. Hayes

Superior Court Case No. 23CECG00712

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

Motion: Default Prove-Up

Tentative Ruling:

To grant. The court intends to sign the judgment and the order directing the clerk to accept the deposit for payment to the defendants, both of which were submitted on December 20, 2024.

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:	jyh	on	1/27/25		
-	(Judge's initials)		(Date)		