Tentative Rulings for March 12, 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.***

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

25CECG00452 ***In Re: J.G. Wentworth Originations, LLC*** **is continued to Thursday, March 13, 2025 at 3:30 p.m. in Department 403.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

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Tentative Ruling

Re: ***In re: Yaret Lopez and Yulissa Lopez***
Superior Court Case No. 24CECG05371

Hearing Date: March 12, 2025 (Dept. 403)

Motion: Petitions to Compromise Claims of Minors

If oral argument is timely requested, it will be entertained on Thursday, March 13, 2025, at 3:30 p.m. in Department 403.

Tentative Ruling:

To deny both petitions without prejudice. Petitioner must file an amended petition, with appropriate supporting papers and proposed orders, and obtain a new hearing date for consideration of the amended petition. (Super. Ct. Fresno County, Local Rules, rule 2.8.4.)

Explanation:

The petitions submitted for minor claimants Yaret Lopez and Yulissa Lopez do not include sufficient information regarding the injuries, medical treatment, and medical bills for the court to evaluate. The petitions filed February 19, 2025 are identical to those that were the subject of the court's January 7, 2025 order and do not address any of the deficiencies identified in the previous order. As a result, the petitions are again denied without prejudice.

The petitioner has not attached any medical treatment records as evidence of the injuries and treatment described in Items 6 and 7 of the petitions. The petitions at Item 8 indicate each minor has recovered completely from her injuries, however there is no medical report included as Attachment 8 to support this assertion.

Although the petition identifies specific treatment received by each minor, the petition at Item 12b(5) has not been completed to summarize the billing for the medical treatment. The petitions indicate there are no statutory or contractual liens for the payment of the minors' medical expenses. (Petn., Item 12b(5)(a).) Although there may be no balance owed, or insurance has paid for the treatment, petitioner must provide evidence that no medical treatment provider is to be paid from the settlement. In the event the minors' treatment was paid by a health insurer, including Medi-Cal, or from an automobile insurance policy's medical payments coverage, these payments are ordinarily subject to reimbursement where a third party is liable for the injuries treated. Documentation supporting the waiver of the insurer's lien or other evidence that no medical liens or bills are to be paid from the settlement amount to the minor is necessary.

The petitions indicate that the settlement amount of $30,000 is to be apportioned equally to three claimants. The petitions do not include Attachment 11b(6) stating the reasons for the apportionment in this manner. The petitions indicate the petitioner, Yaret

Alvarez Ochoa also has a claim but the nature of the claim is not described in the required attachments, 11b(2) and 11b(3).

Lastly, the petitions at 18b(5) request the $10,000 balance of the settlement for each minor be paid to the parent, presumably petitioner Yaret Alvarez Ochoa. Where the petition proposes the funds to be delivered to the minor's parent as specified in Probate Code sections 3401-3402, as here, the parent is required to provide a verified declaration that "the total estate of the minor, including the money or other property to be paid or delivered to the parent, does not exceed five thousand dollars ($5,000) in value." (Prob. Code, § 3401, subd. (c), emphasis added.) No such declaration was provided and it does not appear it can be provided considering the amount to be paid to the parent exceeds $5,000. The settlement funds exceed the amount that can be paid directly to the parent of the minor and the court cannot approve this disposition as requested.

The petitioner is requested to submit completed amended petitions, including all attachments, and orders and to obtain a new hearing date.

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: lmg on 3-11-25.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***McGivern v. Fresno Community Hospital and Medical Center***
Superior Court Case No. 22CECG03762

Hearing Date: March 12, 2025 (Dept. 403)

Motion: Demurrer to Complaint

If oral argument is timely requested, it will be entertained on Thursday, March 13, 2025, at 3:30 p.m. in Department 403.

Tentative Ruling:

To sustain Fresno Community Hospital and Medical Center's demurrer to the first cause of action, with leave to amend. (Code Civ. Proc. § 430.10, subd. (e).) Plaintiffs are granted 10 days leave to file the First Amended Complaint, which will run from service of the clerk of the minute order. New allegations/language must be set in **boldface** type.

Defendant's Requests for Judicial Notice are granted.

Explanation:

The function of a demurrer is to test the sufficiency of a plaintiff's pleading by raising questions of law. (*Plumlee v Poag* (1984) 150 Cal.App.3d 541, 545.) The truth of the facts alleged in the complaint are assumed true as well as the reasonable inferences that may be drawn from those facts. (*Miklosy v. Regents of University of California* (2008) 2 Cal.4th 876, 883; see also *Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1168 [actual reliance in support of a fraud claim reasonably inferable from the plaintiff's complaint]; Code Civ. Proc., 452 ["In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties."].)

A general demurrer, "admits the truth of all material factual allegations in the complaint;" the plaintiff's "ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court …." (*Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 496; *Stella v. Asset Management Consultants, Inc.* (2017) 8 Cal.App.5th 181, 190 ["We assume the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded and matters of which judicial notice has been taken."].)

Where statutory claims are plead, they must be plead with particularity. (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 410.)

Plaintiffs have filed a putative class action alleging violations of the California Invasion of Privacy Act (CIPA) and the Confidentiality of Medical Information Act (CMIA). Defendant Fresno Community hospital and Medical Center demurs generally to the first cause of action alleging violations of CIPA. The moving papers indicate that during the

meet and confer process, plaintiffs agreed to voluntarily dismiss their second cause of action alleging violations of CMIA. The second cause of action is not the subject of the demurrer and has not been dismissed from the complaint.

First Cause of Action: Violations of California Invasion of Privacy Act

Penal Code section 631, subdivision (a), provides in pertinent part:

> Any person who, by means of any machine, instrument, or contrivance, or in any other manner,
>
> [1] intentionally taps, or makes any unauthorized connection, whether physically, electrically, acoustically, inductively, or otherwise, with any telegraph or telephone wire, line, cable, or instrument, including the wire, line, cable, or instrument of any internal telephonic communication system, or
>
> [2] who willfully and without the consent of all parties to the communication, or in any unauthorized manner, reads, or attempts to read, or to learn the contents or meaning of any message, report, or communication while the same is in transit or passing over any wire, line, or cable, or is being sent from, or received at any place within this state; or
>
> [3] who uses, or attempts to use, in any manner, or for any purpose, or to communicate in any way, any information so obtained, or
>
> [4] who aids, agrees with, employs, or conspires with any person or persons to unlawfully do, or permit, or cause to be done any of the acts or things mentioned above in this section, is punishable [under this Section].

(Pen. Code § 631, subd. (a), numeric clause designations added for ease of reference.)

The statute contains three operative clauses protecting against "three distinct and mutually independent patterns" of conduct": (i) "intentional wiretapping," (ii) "willfully attempting to learn the contents or meaning of a communication in transit over a wire," and (iii) "attempting to use or communicate information obtained as a result of engaging in either of the two previous activities." (*Tavernetti v. Superior Court* (1978) 22 Cal.3d 187, 192.) The fourth clause creates liability for those who aid and abet a violation of any of the first three clauses.

Plaintiffs in the case at bench allege they are users of defendant's website and used the website to search for medical information, services and physicians, schedule appointments and pay for medical services. (Complaint, ¶ 100.) Plaintiffs allege these communications with defendant were simultaneously sent to Facebook (now "Meta") without plaintiffs' consent via a cookie created by Facebook Pixel embedded in the website. (*Id*. at ¶¶ 29-40.) Defendant is alleged to have knowingly allowed the communications to be disclosed to Facebook via Facebook Pixel, thereby aiding and abetting in the disclosure of the communications to Facebook in violation of Penal Code section 631, subdivision (a). (*Id*. at ¶¶ 26-27, 42, 76.) In order to state a cause of action for

aiding and abetting, plaintiffs must adequately allege a violation of the first, second, or third clauses of section 631(a).

Defendant challenges the sufficiency of the allegations stating a violation of CIPA in three respects. First, defendant argues the communications alleged are not "content" for purposes of finding a violation under the second clause. Second, the allegations as to Facebook's interception of the communications in transit are argued to be insufficient to state a violation of the second clause. Third, the allegations as to Facebook's use or attempt to use the information in the communications is insufficient to state a violation under the third clause of the statute.

Defendant asserts that a user's browsing activity on a public facing website cannot, as a matter of law, support plaintiff's claims of disclosure of content of substantive communications to third-party, Facebook. Defendant relies on primarily authorities designating webpages a user visited or the doctors' names on those pages are not the "content" of a communication for a CIPA violation, but are record information. (*Doe v. Cedars-Sinai Health Sys. et al*. (Cal. Super. June 5, 2024) No. 22STCV41085, 2024 WL 3303516, at *5.) Plaintiffs assert their allegations that particular search queries, selected physicians, and phone numbers called through the website and recorded in the cookie connected to the user of the website are sufficient "content" to convey what was communicated by the plaintiff user to the defendant through the website. (*St. Aubin v. Carbon Health Technologies, Inc*. (N.D. Cal., Oct. 1, 2024, No. 24-CV-00667-JST) 2024 WL 4369675, at *5; *In re Meta Pixel Healthcare Litig.* (N.D. Cal. 2022) 647 F.Supp.3d 778, 795.)

> "Contents" refers to the "intended message conveyed by the communication"—it does not include record information regarding the characteristics of the message that is generated in the course of the communication. *In re Zynga Priv. Litig.*, 750 F.3d 1098, 1106 (9th Cir. 2014). For instance, contact information provided as part of a sign-up process constitutes "content" because this information is the subject of the communication. *Id.* at 1107 ("Because the users had communicated with the website by entering their personal medical information into a form provided by the website, the First Circuit correctly concluded that the defendant was disclosing the contents of a communication."). And while a URL that includes "basic identification and address information" is not "content," a URL disclosing a "search term or similar communication made by the user" "could constitute a communication" under the statute. *Id.* at 1108–09.

(*In re Meta Pixel Healthcare Litigation*, *supra*, 647 F.Supp.3d 778, 795.)

Plaintiffs allege defendant disclosed "the *information they entered on the website*, the pages they viewed, the physicians they viewed, the physicians they called, the appointments they scheduled, and the locations of those appointments to Facebook via Facebook Pixel." (Complaint, ¶ 76, emphasis added.) Not all the alleged disclosures appear to fall within the definition of "content" for purposes of a CIPA violation. However, the complaint alleges search queries entered into the website are among the communications disclosed (¶¶ 40, 100) and such actions appear consistent with the type of content that could convey a message to defendant. The representative plaintiffs each

allege they used the website to search for clinics and physicians. (*Id*. at ¶¶ 65-70.) Accordingly, the Complaint adequately alleges "content" of a communication, and not merely record information, have been disclosed via Facebook Pixel.

Defendant challenges the allegations as lacking specificity as to what content was disclosed. The court is satisfied that the specific search query captured by the cookie, as demonstrated in the exemplar at Paragraph 40 of the Complaint, satisfies the "content" requirement. (*In re Meta Pixel Healthcare Litigation*, *supra*, 647 F.Supp.3d 778, 795.)

Defendant additionally challenges whether plaintiffs have sufficiently pleaded that the communication was intercepted "in transit" by Facebook. The Complaint alleges the communications with a user's Facebook ID are simultaneously sent to Facebook via Facebook Pixel. (Complaint, ¶ 29.) Defendant argues what is described is not an interception but two separate communications, one between the defendant's website and the user and one between the user and Facebook through the embedded Pixel code. (*Smith v. Facebook, Inc*. (N.D. Cal. 2017) 262 F.Supp.3d 943, 951.) Beyond a description of the communication as "simultaneous" there are no allegations as to when or how the third party *intercepts* the communications in transit. (*St. Aubin v. Carbon Health Technologies, Inc.*, *supra*, 2024 WL 4369675, at *6.) The allegations do not sufficiently allege how these disclosures are made simultaneously to Facebook such that they are intercepted, rather than communicated independently. As a result, the Complaint does not state a violation of the second clause of section 631(a).

In order to state a violation of the third clause of section 631(a) Plaintiff must allege Facebook used or attempted to use the contents of the intercepted communications. In addition to inadequately pleading the interception of the communication in transit, there is no clear allegation within the Complaint regarding Facebook's use or attempted use of the communications. As such, no violation of the third clause is stated.

As the Complaint does not sufficiently plead an underlying violation of CIPA by Facebook, the cause of action against defendant alleging the aiding and abetting of such a violation is likewise not stated. The court intends to sustain the demurrer to the first cause of action with leave to amend.

Defendant requests the court order the second cause of action dismissed based on plaintiffs' voluntarily agreement to do so during the meet and confer process. The second cause of action is not the subject of the demurrer and the court lacks authority to order its dismissal.

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: lmg on 3-11-25.
(Judge's initials) (Date)