

Tentative Rulings for March 26, 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

Begin at the next page

(20)

Tentative Ruling

Re: **Ramirez v. Chavez**
Superior Court Case No. 24CECG03557

Hearing Date: March 26, 2025 (Dept. 501)

Motion: by Defendant to Compel Responses from Plaintiff Jose Ramirez to Form Interrogatories, Set One, Special Interrogatories, Set One, and Request for Production, Set One

Tentative Ruling:

To grant. Within 10 days, plaintiff Jose Ramirez shall serve verified responses without objection to Form Interrogatories, Set One, Special Interrogatories, Set One, and Request for Production, Set One. To impose reasonable sanctions in the sum of \$1,005 against plaintiff Jose Ramirez and in favor of defendant, to be paid to defendant's counsel within 30 days of service of the order by the clerk.

If oral argument is timely requested, such argument will be entertained on Thursday, March 27, 2025, at 3:30 p.m. in Department 501.

Explanation:

On 10/31/2024, defendant propounded the aforementioned discovery on plaintiff Jose Ramirez. The same discovery was propounded on plaintiff Felisha Ramirez. Neither plaintiff has served any responses. Defendant filed motions to compel initial responses, with the motions directed at Felisha granted on 3/18/2024, and the motions directed at Jose set for 3/26.

Since no responses have been served, and the response deadline has clearly passed, an order compelling plaintiff to provide initial responses without objections (Code Civ. Proc., §§ 2030.290, subd. (a), 2031.300, subd. (a)), is warranted, and reasonable sanctions must be imposed (Code Civ. Proc., §§ 2023.010, subd. (d), 2023.030, subd. (a); *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404). As the court explained in its 3/18/2024 order granting the motions directed at Felisha, the court imposes sanctions accounting for 1.1 hours at \$250 per hour, plus the \$60 filing fee, against Jose.

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 3/21/2025.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***In re: Nylah Kan***
Superior Court Case No. 25CECG01038

Hearing Date: March 26, 2025 (Dept. 501)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To deny, without prejudice. Petitioner must file an amended petition, with appropriate supporting papers and proposed orders. (Super. Ct. Fresno County, Local Rules, rule 2.8.4.)

If oral argument is timely requested, such argument will be entertained on Thursday, March 27, 2025, at 3:30 p.m. in Department 501.

Explanation:

The Petition submitted does not include sufficient evidence to support finding the minor has recovered completely from her injuries and insufficient evidence to support the medical liens and costs to be paid from the settlement. As a result, the Petition is denied without prejudice.

The Petition at Item 7 indicates the claimant was evaluated by American Ambulance, Valley Children's Hospital, Clovis Pediatric Group, Community Pediatric Specialists, and Yang Universal Chiropractic. The records of Yang Universal Chiropractic are attached to the Petition as Attachment 8 and reflect treatment provided from September 6, 2023, through October 30, 2023. The last examination record on October 30, 2023, checks boxes indicating the patient was experiencing neck pain, mid-back pain, and low back pain and indicating range of motion loss in the cervical spine, thoracic spine and lumbar spine. There is no affirmative representation that the minor was no longer experiencing headaches and dizziness or tinnitus which have been listed as injuries caused by the accident. The records do not adequately demonstrate the minor's injuries identified in Item 6 of the Petition have resolved.

The Petition represents that there are two additional liens for medical treatment to be paid from the settlement at Item 12b(2) and (5). Documentation to support the lien amounts claimed and discounts given are requested.

Costs in the amount of \$400 are to be paid to the minor's attorney. There is no itemization to allow the court to determine the reasonableness of these costs being paid from the minor's settlement. Concurrent with the Petition, a waiver of fees and costs was filed and fees and costs were ordered waived. However, the order granting the waiver states that in the event the party settles for over \$10,000 the court will have a lien on the settlement in the amount of fees waived. The settlement for which petitioner is seeking approval exceeds \$10,000 and there is no indication that the \$435 in filing fees waived

for the Petition have been set aside to be paid from the settlement. If the petitioner intends for the fees to be paid from an alternate source it should be identified.

The Petition indicates that there is a guardianship of the minor's estate and the funds are to be deposited into a blocked account subject to withdrawal only upon authorization of the court. (Petn., Item 18a(2).) The order appointing the petitioner guardian ad litem is not the equivalent of creating a guardianship of the estate of the minor. The Petition at Item 18b(2) reflects that the money will be placed into a blocked account where there is no guardianship of the minor's estate. This error can be corrected in a subsequent submission.

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 3/24/2025.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: **Earl v. JD Home Rentals, et al.**
Superior Court Case No. 20CECG03380

Hearing Date: March 26, 2025 (Dept. 501)

Motion: by Defendants for Attorneys' Fees

Tentative Ruling:

To grant the motion for attorneys' fees and award \$1,500 in fees and \$5,002.70 in costs. Payment of both sums shall be made by plaintiff to defense counsel, Wilkins Drolshagen & Czesinski LLP, within 30 days of the clerk's service of this minute order.

If oral argument is timely requested, such argument will be entertained on Thursday, March 27, 2025, at 3:30 p.m. in Department 501.

Explanation:

Defendants JD Home Rentals and Bryce Hovannisian seek attorneys' fees in the amount of \$1,500. A Memorandum of Costs seeking \$5,002.70 in costs is also filed.

Defendants seek an award of attorneys' fees under Civil Code section 1717, which states, "[i]n any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs." (Civ. Code, § 1717, subd. (a).)

"Reasonable attorney's fees shall be fixed by the court, and shall be an element of the costs of suit." (Civ. Code, § 1717, subd. (a).) "The court, upon notice and motion by a party, shall determine who is the party prevailing on the contract for purposes of this section, whether or not the suit proceeds to final judgment. Except as provided in paragraph (2), the party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract. The court may also determine that there is no party prevailing on the contract for purposes of this section." (Civ. Code, § 1717, subd. (b)(1).)

Here, there was an attorneys' fees clause in the current existing version of the month-to-month rental agreement entered into between plaintiff and defendants, which provided that, "If any legal action or proceeding be brought by either party to enforce any part of this agreement, the prevailing party shall recover, in addition to all other relief, reasonable attorney's fees and costs." (Wilkins Decl., Ex. A, ¶ 11.) Plaintiff was served a Notice of Change of Terms of Tenancy on June 25, 2019, which amended paragraph 11 of the rental agreement to: "If any legal action or proceeding be brought by either party

to enforce any part of this agreement, the prevailing party shall recover, in addition to all other relief, reasonable attorney's fees not to exceed \$1,500.00, plus court costs." (*Id.*, at Ex. B.) Also, defendants are the prevailing party, since "Plaintiff failed to carry her burden of proof of establishing any breach of contract. . ." (Judgment, filed on Nov. 20, 2024, 1:23-25.)

Next, the court must determine a reasonable amount of fees to award to defendants. "[T]he trial court has broad authority to determine the amount of a reasonable fee. As we have explained: 'The "experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong"—meaning that it abused its discretion.'" (*PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1094–1095, internal citations omitted.)

"California law requires that attorneys' fee awards be 'fully compensatory.' In general, parties who qualify for a fee should recover compensation for 'all the hours reasonably spent, including those relating solely to the fee.'" (*Roth v. Plikaytis* (2017) 15 Cal.App.5th 283, 290, italics and internal citations omitted.)

"[T]he fee setting inquiry in California ordinarily begins with the 'lodestar,' i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate. 'California courts have consistently held that a computation of time spent on a case and the reasonable value of that time is fundamental to a determination of an appropriate attorneys' fee award.' The reasonable hourly rate is that prevailing in the community for similar work. The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided. Such an approach anchors the trial court's analysis to an objective determination of the value of the attorney's services, ensuring that the amount awarded is not arbitrary." (*Id.* at p. 1095, internal citations omitted.)

The party moving for fees bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates. (*Roth v. Plikaytis*, *supra*, 15 Cal.App.5th at p. 290.) "[T]he verified time statements of the attorneys, as officers of the court, are entitled to credence in the absence of a clear indication the records are erroneous." (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 396.) "By and large, the court should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case; after all, he won, and might not have, had he been more of a slacker." (*Moreno v. City of Sacramento* (9th Cir. 2008) 534 F.3d 1106, 1112.) Also, "[a] defendant 'cannot litigate tenaciously and then be heard to complain about the time necessarily spent by the plaintiff in response.' " (*International Longshoremen's & Warehousemen's Union v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal.App.4th 287, 304.)

In the present case, defendants seek \$1,500 in attorneys' fees, the maximum amount allowed pursuant to the Notice of Change of Terms of Tenancy. Counsel provides that his office has expended 52.5 hours of attorney time billed at an hourly rate of \$350 per hour. (Wilkins Decl., ¶¶ 6-7.) Mr. Wilkins has also submitted time records in support of the time billed in the case. No opposition is filed to dispute the fees sought are unreasonable in terms of the hourly rate of the number of hours incurred. Indeed, the rate

(41)

Tentative Ruling

Re: ***Delailah Lee v. Wade Dickinson, Medical Doctor***
Superior Court Case No. 23CECG03891

Hearing Date: March 26, 2025 (Dept. 501)

Motion: for Summary Judgment or Summary Adjudication by
Defendant Saint Agnes Medical Center

Tentative Ruling:

To grant the motion for summary judgment. Defendant Saint Agnes Medical Center 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.

If oral argument is timely requested, such argument will be entertained on Thursday, March 27, 2025, at 3:30 p.m. in Department 501.

Explanation:

Plaintiff, Delailah Lee (plaintiff), a minor by and through her guardian ad litem, Nancy Thao, sued three medical providers, including defendant Saint Agnes Medical Center (Saint Agnes). Plaintiff alleges a single cause of action for general negligence based on medical malpractice against the defendants in connection with the care and treatment provided to plaintiff during the admission of her mother, Nancy Thao, to Saint Agnes on September 27, 2020.

On a motion for summary judgment, a defendant as the moving party bears the initial burden of proof to show that a plaintiff cannot establish one or more elements of the challenged 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 by specific facts and not mere allegations. (*Ibid.*)

In a medical malpractice case, expert testimony is required unless the challenged conduct is within the common knowledge of laymen. (*Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 1001.)

California courts have incorporated the expert evidence requirement into their standard for summary judgment in medical malpractice cases. When a defendant moves for summary judgment and supports his motion with expert declarations that his conduct fell within the community standard of care, he is entitled to summary judgment unless the plaintiff comes forward with conflicting expert evidence. [Citations.]

(*Munro v. Regents of University of California* (1989) 215 Cal.App.3d 977, 984-985, internal quotation marks omitted.)

To support its motion, Saint Agnes submits declarations from two experts in the field of gynecology and obstetrics: Valerie Y. Huwe, R.N. (Nurse Huwe) and Kathryn J. Shaw, M.D. (Dr. Shaw). In their declarations, Nurse Huwe and Dr. Shaw state they have thoroughly reviewed the pleadings, medical records, diagnostic materials, images, and other discovery documents in this matter. Based on their review, Nurse Huwe and Dr. Shaw both opine that the Saint Agnes nursing staff complied with the standard of care at all relevant times, and no act or omission by the nursing staff caused or contributed to the injuries alleged by plaintiff.

Saint Agnes also presents the declaration of its Chief Medical Officer, John Evanko, M.D., to establish that the other named co-defendants, specifically, Wade Alden Dickinson, M.D. and Valley Women's Health Care Medical Group, were independent contractors and were not acting as agents or employees of Saint Agnes. Therefore, plaintiff cannot hold Saint Agnes liable on a theory of respondeat superior.

The evidence presented by Saint Agnes is sufficient to negate plaintiff's claims against it. Based on this showing, Saint Agnes has shown that plaintiff cannot establish an essential element of the claim for medical negligence—breach of duty. The burden then shifts to plaintiff to show the existence of a triable issue of material fact. On March 7, 2025, plaintiff filed a notice of non-opposition to the motion for summary judgment filed by Saint Agnes in exchange for a mutual cost waiver and a waiver of any potential malicious prosecution claims. Therefore, the court grants the motion.

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** 3/24/2025 .

(Judge's initials)

(Date)