

Tentative Rulings for June 13, 2024
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.

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Tentative Rulings for Department 501

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Tentative Ruling

Re: **Christopher Weddington v. Northern California Millwrights**
Superior Court Case No. 23CECG00587

Hearing Date: June 13, 2024 (Dept. 501)

Motion: Applications (Two) for Jennifer L. Campbell and Paul J. Lopach to Appear as Counsel *Pro Hac Vice*

Tentative Ruling:

To grant the applications of Jennifer L. Campbell and Paul J. Lopach to appear as counsel *pro hac vice* for defendant Actagro Holdings, LLC. The applicants have satisfied the requirements of California Rules of Court, rule 9.40. No appearances required.

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 6/6/2024.
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: **Wesley Wilson v. Martin McCubbin**
Superior Court Case No. 22CECG03648

Hearing Date: June 13, 2024 (Dept. 501)

Motion: Amended Motion by Plaintiffs for Judgment on the Pleadings

Tentative Ruling:

To grant plaintiffs' amended motion for judgment on the pleadings. The court intends to sign and enter the proposed judgment submitted by plaintiffs with their moving papers. No appearances are necessary.

Explanation:

Plaintiffs Wesley Wilson (Wilson) and Press Box, Inc. (Press Box) have dismissed most of the causes of action in their Complaint against defendant Martin McCubbin (McCubbin). One cause of action arising out of a bar fight caused by McCubbin in October 2022 remains for each plaintiff. For plaintiff Wilson, only the third cause of action for assault and battery remains. For plaintiff Press Box, only the sixth cause of action for private nuisance remains.

Meet and Confer

Before filing their amended motion for judgment on the pleadings, plaintiffs met their obligation to meet and confer.

Grounds for Judgment on the Pleadings

A motion for judgment on the pleadings can be made at any time before or during trial. The motion performs the same function as a general demurrer, and thus attacks defects disclosed on the face of the pleadings or by matters that can be judicially noticed. (*Martinez v. San Diego County Credit Union* (2020) 50 Cal.App.5th 1048, 1058.) If the moving party is the plaintiff, a motion for judgment on the pleadings may be made on the grounds "that the complaint states facts sufficient to constitute a cause or causes of action against the defendant and the answer does not state facts sufficient to constitute a defense to the complaint." (Code Civ. Proc., § 438, subd. (c)(1)(A).) When a motion for judgment on the pleadings is granted without leave to amend, "judgment shall be entered forthwith in accordance with the motion[.]" (Code Civ. Proc., § 438, subd. (h)(3).)

A motion for judgment on the pleadings by a plaintiff is unusual, but the same general principles apply to determine if an answer states a defense or a complaint states a cause of action:

Motions for judgment on the pleadings are usually made by defendants. In such instances the motion is the equivalent of a general demurrer, and on appeal from the judgment the appellate court will assume the truth of all facts properly pleaded in the complaint. Motions by a plaintiff for judgment on the pleadings, which are less common, are the equivalent of a demurrer to an answer, and the standard of review is obverse: the appellate court will assume the truth of all facts properly pleaded in the answer and will disregard the controverted allegations of the complaint. Such a motion must be denied if the defendant's pleadings raise a material issue or set up affirmative matter constituting a defense. Stated differently, where the answer, fairly construed, suggests that the defendant may have a good defense, a motion for judgment on the pleadings should not be granted.

(*Engine Manufacturers Assn. v. State Air Resources Bd.* (2014) 231 Cal.App.4th 1022, 1034, citations and internal quotation marks omitted.)

Request for Judicial Notice

Plaintiffs properly submit a request to take judicial notice (RJN) of the Complaint (ex. 1), the Answer (ex. 2), the court's order deeming plaintiffs' requests for admissions admitted (ex. 3), and the requests for admissions referenced in the court's order (ex. 4) in this action. The court grants the request to take judicial notice in all respects.

Merits

Plaintiff Wilson has demonstrated the Complaint's allegations include all elements for the third cause of action for assault and battery, including an allegation that McCubbin "cold cocked Wilson in the face. McCubbin's punch to Wilson's face was so destructive so as to break bones in Wilson's face." (Comp., pp. 2:26-3:2, capitalization omitted.) McCubbin has been deemed to have admitted all the elements of battery, including the monetary amounts flowing from the harm. (RJN exs. 3, 4 [Wilson's RFA Nos. 1-11].) Because every completed battery includes an assault (see *People v. Yeats* (1977) 66 Cal.App.3d 874, 878), McCubbin also has been deemed to have admitted all the elements of assault.

Plaintiff Press Box demonstrates the Complaint's allegations include all elements for a private nuisance, as set forth in Judicial Council of California Civil Jury Instructions (CACI) No. 2021. McCubbin has been deemed to have admitted all the elements of a private nuisance, including the monetary amounts flowing from the harm. (RJN exs. 3, 4 [Press Box's RFA Nos. 1-11].)

Because McCubbin has admitted all relevant allegations and has not requested leave to amend, there is no reasonable possibility that the defects can be cured by amendment. When there is no reasonable possibility of curing the defects, a motion for judgment on the pleadings is properly granted without leave to amend. (*Smiley v.*

Citibank (1995) 11 Cal.4th 138, 164, fn. 18.) Therefore, the court grants plaintiffs' amended motion for judgment on the pleadings.

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** 6/10/2024.
(Judge's initials) (Date)