Tentative Rulings for June 25, 2024
Department 502

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 Ruling

Re: ***Tracy Harmon v. Ron Lichtenstein, M.D.***
Superior Court Case No. 23CECG01106

Hearing Date: June 25, 2024 (Dept. 502)

Motion: By Defendants Anubhav Agrawal, M.D. and The Regents of the University of California for Summary Judgment

If oral argument is timely requested, such argument will be entertained on Thursday, June 27, 2024, at 3:30 p.m. in Department 502.

Tentative Ruling:

To grant defendants Anubhav Agrawal, M.D. and The Regents of the University of California's Motion for Summary Judgment. (Code Civ. Proc., § 437c(c).) Moving party is directed to submit to this court, within 5 days of service of the minute order, a proposed judgment consistent with the court's summary judgment order.

Explanation:

As the moving party, defendants bear the initial burden of proof to show that plaintiffs cannot establish one or more elements of their 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 via specific facts and not mere allegations. (*Id.*)

Where the moving party produces competent expert opinion declarations showing that there is no triable issue of fact on an essential element of the opposing party's claim (e.g. that a medical defendant's treatment fell within the applicable standard of care), the opposing party's burden is to produce competent expert opinion declarations to the contrary. (*Ochoa v. Pacific Gas & Elec. Co.* (1998) 61 Cal.App.4th 1480, 1487.)

In determining whether any triable issues of material fact exist, the court must strictly construe the moving papers and liberally construe the declarations of the party opposing summary judgment. (*Barber v. Marina Sailing, Inc.* (1995) 36 Cal.App.4th 558, 562.) Any doubts as to whether a triable issue of material fact exist are to be resolved in favor of the party opposing summary judgment. (*Ibid.*)

Lastly, "[f]ailure to file opposition including a separate statement of disputed material facts by not less than 14 days prior to the motion 'may constitute a sufficient ground, in the court's discretion, for granting the motion.'" (*Cravens v. State Bd. of Education* (1997) 52 Cal.App.4th 253, 257, quoting Code of Civil Procedure § 437c(c).)

Here, defendants rely on the declaration of Maurice Druzin, M.D., a board certified doctor of Obstetrics and Gynecology, with a subspecialty in Maternal-Fetal Medicine. (Druzin Decl., ¶ 4.) Dr. Druzin opined that Dr. Agrawal met the standard of care. (Id. at ¶ 14.) Dr. Druzin notes that plaintiff Harmon received very little prenatal care during her pregnancy, had a history of obesity, poorly controlled gestational diabetes mellitus and that the baby was macrosomic, which is associated with risk of complications including difficulty delivering, fetal trauma during birth, neonatal hypoglycemia, and respiratory problems. (Id. at ¶ 15.) Dr. Druzin asserts that Dr. Agrawal acted appropriately and quickly to deliver the baby and there were no delays or departures from the standard of care. (Id. at ¶ 16.) Lastly, based on his education, training, experience, and review of the medical records, Dr. Druzin opines that nothing Dr. Agrawal did or failed to do was a substantial factor in causing plaintiff's injuries or the baby's death. (Id. at ¶ 17.)

Here, each cause of action is based on a theory of medical negligence. Dr. Druzin's opinion is sufficient to shift the burden as to the existence of a triable issue of fact to the plaintiffs, as to each cause of action. Plaintiffs, however, neither filed an opposition nor an opposing statement of material fact, thus tacitly affirming the merits of defendants' motion. (*Cravens v. State Bd. of Education* (1997) 52 Cal.App.4th 253, 257.)

Where Dr. Angawal did not act negligently, defendant The Regents of the University of California also cannot be held liable under the doctrine of respondeat superior. (Judicial Council of Cal. Civ. Jury Instns. (Feb. 2024) CACI No. 3701.) Additionally, plaintiffs have not addressed the issue of their failure to allege compliance with the claims presentation requirement relevant to this public entity defendant. (Gov. Code, § 945.5.)

Therefore, the motion for summary judgment is granted.

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: KCK on 06/21/24.
(Judge's initials) (Date)

(24)

Tentative Ruling

Re: ***Nayisha Edwards v. Martin Vasquez***
Superior Court Case No. 21CECG01275

Hearing Date: June 25, 2024 (Dept. 502)

Motion: Defendant's Motion for Terminating Sanctions

If oral argument is timely requested, such argument will be entertained on Thursday, June 27, 2024, at 3:30 p.m. in Department 502.

Tentative Ruling:

To grant terminating sanctions and order this action dismissed pursuant to Code of Civil Procedure Section 2023.030, subdivision (d)(3). Defendant is directed to submit to this court, within 7 days of service of the minute order, a proposed judgment dismissing the action. Trial date set for September 30, 2024, is vacated, as are the related dates for Mandatory Settlement Conference and Trial Readiness. Plaintiff is further ordered to pay additional monetary sanctions to defendant Martin Vasquez in the amount of $750.00, payable within 20 calendar days of the date of this order, with the time to run from the service of this minute order by the clerk.

Explanation:

Once a motion to compel a party to comply with a discovery request is granted, continued failure to comply may support a request for more severe sanctions. Disobeying a court order to provide discovery is a misuse of the discovery process. (Code Civ. Proc., § 2023.010, subd. (g).)

In addition to other instances of plaintiff failing to cooperate with her discovery obligations, she has failed and refused to submit herself to being deposed by defendant. Defendant attempted to take plaintiff's deposition no less than 10 times before he resorted to filing a motion to compel deposition, which this court granted on March 21, 2024. The court ordered plaintiff to appear at a deposition on a date of defendant's choosing, upon being served with a Notice of Deposition. Defendant properly served a Notice of Deposition on plaintiff, but she again failed to appear. It appears from the information provided by plaintiff's counsel when moving for permission to withdraw as counsel, that plaintiff has been out of communication and therefore uninvolved with her lawsuit since at least the middle of 2023.

The imposition of terminating sanctions is a drastic consequence, one that should not lightly be imposed, or requested. (*Ruvalcaba v. Government Employees Ins. Co*. (1990) 222 Cal.App.3d 1579, 1581.) However, where lesser sanctions have been ordered, such as an order compelling compliance with discovery requests, and the party persists in disobeying, the party does so "at his own risk, knowing that such a refusal provided the court with statutory authority to impose other sanctions" such as dismissing the action. (*Id.* at p. 1583; *Todd v. Thrifty Corp.* (1995) 34 Cal. App. 4th 986 (appropriate to dismiss

action without resort to lesser sanctions where plaintiff had failed to respond to discovery and further failed to comply with the court's order compelling the requested discovery.)

These same considerations apply even where parties are representing themselves. Courts have routinely found that parties *in pro per* are treated the same as represented parties. (*Monastero v. Los Angeles Transit Co.* (1955) 131 Cal. App. 2d 156, 160-161; *Bianco v. CHP* (1994) 24 Cal.App.4th 1113, 1125-1126.) "[M]ere self-representation is not a ground for exceptionally lenient treatment. Except when a particular rule provides otherwise, the rules of civil procedure must apply equally to parties represented by counsel and those who forgo attorney representation." (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985; *Gamet v. Blanchard* (2001) 91 Cal.App.4th 276.)

Here, trial is a few months away and plaintiff has not participated in the litigation since at least mid-2023 (and likely a substantial amount of time before that). It appears she may have abandoned this litigation. There is no indication that making a lesser sanction order at this juncture would lead to plaintiff's compliance with the discovery process. On balance, in the face of plaintiff's repeated abuse of the discovery process, a terminating sanction is "appropriate to the dereliction" and does not "exceed that which is required to protect the interests of the party entitled to but denied discovery." (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 793.)

Monetary sanctions have been adjusted from the amount requested to account for the fact that no opposition was filed, so no time was needed to review it and draft a reply, or to appear at the hearing.

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: KCK on 06/21/24.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***Espiridion Sanchez v. CRST Expedited, Inc. / COMPLEX***
Superior Court Case No. 19CECG03266

Hearing Date: June 25, 2024 (Dept. 502)

Motion: By Defendants CRST Expedited, Inc., Thomas Lanting, Juan Gutierrez, and David Tandy for Judgment on the Pleadings, or, in the alternative, to Continue Stay

If oral argument is timely requested, such argument will be entertained on Thursday, June 27, 2024, at 3:30 p.m. in Department 502.

Tentative Ruling:

To deny.

Explanation:

"A motion for judgment on the pleadings performs the same function as a general demurrer, and hence attacks only defects disclosed on the face of the pleadings or by matters that can be judicially noticed." (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999; see also *Templo v. State of Calif*. (2018) 24 Cal.App.5th 730, 735 ["'motion for judgment on the pleadings is equivalent to a demurrer'"].) Standing can appropriately be tested by a general demurrer. (*County of Fresno v. Shelton* (1998) 66 Cal.App.4th 996, 1009.)

Moving defendants contend plaintiff has dismissed his individual claims alleged pursuant to the Labor Code's Private Attorney General Act (Lab. Code § 2698, et seq. ("PAGA")) and thus no longer possesses standing to pursue representative claims.

The United States Supreme Court has recently surmised that, "as we see it, PAGA provides no mechanism to enable a court to adjudicate non-individual PAGA claims once an individual claim has been committed to a separate proceeding … When an employee's own dispute is pared away from a PAGA action, the employee is no different from a member of the general public, and PAGA does not allow such persons to maintain suit." (*Viking River* Cruises, *Inc. v. Moriana* (2022) 596 U.S. 639, 663 (*Viking River*) internal citations omitted.)

Defendants here contend, essentially, that such reasoning precludes plaintiff's claim because his "standing is lost now that he has voluntarily dismissed and waived his individual PAGA claim." (Mot, at p. 12:22-23; 13: 18 [A PAGA plaintiff cannot "abandon his claims outright."].) In other words, in light of the dismissal, defendants conclude that plaintiff can no longer be considered an "aggrieved employee" qualified to maintain a PAGA action. (See Lab. Code, § 2699, subd. (c); *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73, 81-82 (*Kim*) ["only an aggrieved employee has PAGA standing …."].)

However, the quoted language from *Viking River* is dicta (*Mills v. Facility Solutions Group, Inc.* (2022) 84 Cal.App.5th 1035, 1064) and subject to future decisions by the California courts. (See *Viking River*, *supra*, 596 U.S. at p. 664 (conc. opn. of Sotomayor, J.) ["Of course, if this Court's understanding of state law is wrong, California courts, in an appropriate case, will have the last word."].)

Our California Supreme Court has recently evaluated California law to define the scope of the U.S. Supreme Court decision in *Viking River*. (*Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104.) The California Supreme Court concluded that "[a]rbitrating a PAGA plaintiff's individual claim does not nullify the fact of the violation or extinguish the plaintiff's status as an aggrieved employee…." (*Id.* at p. 1121.) Accordingly, "where a plaintiff has filed a PAGA action comprised of individual and non-individual claims, an order compelling arbitration of individual claims does not strip the plaintiff of standing to litigate non-individual claims in court." (*Id.* at p. 1123.)

The *Adolph* court also left undisturbed the pre-*Viking River* holding in *Kim, supra*, 9 Cal.5th 73 that a plaintiff's representative PAGA claim persists despite settlement and dismissal of the individual portion. (*Id*. at p. 94; see also *Adolph, supra,* 14 Cal.5th at pp. 1120-1121 ["[A]llowing post-violation events to strip an aggrieved employee of the ability to pursue a PAGA claim 'would add an expiration element to the statutory definition of standing.'"].) *Adolph* further noted with approval that such reasoning had been applied to allow a PAGA plaintiff to maintain representative standing even where the individual claims were time-barred. (*Id*. at p. 1121, citing *Johnson v. Maxim Healthcare Services, Inc.* (2021) 66 Cal.App.5th 924, 930 (*Johnson*).)

Defendants' motion dedicates an entire section to criticizing the Court of Appeal's "err[]" in *Johnson, supra,* 66 Cal.App.5th 924 describing it as "fatally flawed" and relying on a "false premise." (Mot. at pp, 17-18.) However, defendants cite no disapproving authority. To the contrary, the favorable treatment of *Johnson* by the *Adolph* court is plain. In addition, the reasoning of *Johnson* is consistent with that of *Kim*, which defendants ironically rely on in other sections.

The court finds *Adolph v. Uber Technologies, Inc.* applicable to the present matter such that plaintiff's dismissal of his individual PAGA claims did not strip his standing to pursue PAGA remedies in a representative capacity.

Therefore, the motion for judgment on the pleadings, and the alternative relief requested, is denied.

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: KCK on 06/21/24.
(Judge's initials) (Date)