Tentative Rulings for July 18, 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.

21CECG02359 ***Amarjit Singh v. Fast Carrier Inc.***

22CECG03216 ***Bryson Mummert v. Tyson Farmer***

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 502

Begin at the next page

(20) **Tentative Ruling**

Re: ***In Re: Imidacloprid Cases***
Superior Court Case No. 22JCCP05241

Hearing Date: July 18, 2024 (Dept. 502)

Motion: (1) Demurrer by Horizon Growers Cooperative, Inc., Horizon Nut, LLC, Joel Perkins to First Amended Cross-Complaint of Nutrien AG Solutions, Inc.

(2) By Nutrien AG Solutions, Inc., Loveland Products, Inc., and Steve Mendonca to File Cross-Complaint Against Horizon Growers Cooperative, Inc., Horizon Nut, LLC, Joel Perkins

(3) By Nutrien AG Solutions, Inc., for Leave to File Second Amended Cross-Complaint Against Horizon Growers Cooperative, Inc., Horizon Nut, LLC, Joel Perkins

Tentative Ruling:

(1) To overrule the demurrer to the First Amended Cross-Complaint ("FACC"). (Code Civ. Proc., § 430.10, subd. (e).)

(2) To grant Nutrien AG Solutions, Inc., Loveland Products, Inc., and Steve Mendonca, leave to file a cross-complaint in the context of the complaint brought by Hillman Ranches, LLP. The proposed cross-complaint shall be filed within 10 days of service of the order by the clerk.

(3) To grant leave to amend the cross-complaint. Nutrien shall file the proposed Second Amended Cross-Complaint within 10 days of service of the order by the clerk.

Explanation:

(1) Demurrer

> It is not sufficient, for purposes of indemnification, for a defendant simply to claim someone else caused all or part of the plaintiff's damages. To state a claim for indemnification, a defendant must allege that the same harm for which he may be liable is properly attributable—at least in part—to the alleged indemnitor. [Citation.] If a defendant believes the plaintiff's injuries were the result of a different harm altogether, he may argue the point to the jury and escape liability if successful. Absent some claim of mutual liability for the same harm, however … an indemnification will not lie. [Citation.]

(*Molko v. Holy Spirit Assn.* (1988) 46 Cal.3d 1092, 1127-28.)

Where two alleged tortfeasors (the proposed indemnitor and the indemnitee) have allegedly committed two wholly different wrongs, with no nexus or connection

between them that makes it proper to shift the loss, equitable indemnity is not an appropriate relief. (*Munoz v. Davis* (1983) 141 Cal.App.3d 420, 420.)

As to the first cause of action, Nutrien alleges that both Horizon Growers and Perkins were in a fiduciary relationship with the members of Horizon Growers, including M.C. Watte Ranches ("Plaintiff") and Brian Watte ("Watte"), and they violated these duties. (FACC ¶¶ 70-72.)

Demurring parties contend that the FACC does not allege facts showing that Horizon Growers and Perkins are jointly and severally liable for the underlying harm (i.e., the excessive Imidacloprid residue levels). A claim for equitable indemnity claim does not lie where two tortfeasors allegedly commit two wholly different wrongs, with no nexus or connection between the two that makes it proper to shift the loss. (See, *Munoz, supra,* 141 Cal.App.3d at p. 425.) The "defendant must allege that the *same harm* for which he may be held liable is properly attributable … to the alleged indemnitor." (*Id.* at p. 1127, emphasis added.) Nutrien does not allege that Horizon Growers or Perkins contributed to the excessive Imidacloprid levels in the pistachio crops. Rather, Nutrien alleges that Horizon Growers and Perkins breached a duty to purchase the unmarketable nuts. Cross-defendants contend, therefore, that the FACC does not allege joint and several liability for a single, indivisible harm.

However, Plaintiff and Watte seek damages from Nutrien that, according to Nutrien, would not have been sustained had Horizon Growers and Perkins not breached their obligations under the Member Agreement. A joint legal obligation supporting equitable indemnity generally exists where the actions of two tortfeasors "combine to create one indivisible injury," which is "compensable against" either of them. (*Gem Developers v. Hallcraft Homes of San Diego, Inc.* (1989) 213 Cal.App.3d 419, 431.) Whether the damages were caused by the Imidacloprid adulteration or Horizon Growers/Perkins' breach of fiduciary duty or contractual obligation to purchase the pistachios, the damages are the same. There is one indivisible injury – the lost profits from inability to sell the pistachio crop at issue. The claims asserted by Plaintiff and Watte and those asserted by Nutrien's cross-complaint relate to the same alleged damage: the unmarketability of the pistachios. Accordingly, the demurrer to the first cause of action is not sustained on this ground.

Cross-defendants again argue that the equitable indemnity claims violate public policy. Courts have declined to permit cross-complaints equitable indemnity where (1) it would be clearly and potentially disruptive of a special relationship that exists between a plaintiff and a cross-defendant-especially one characterized as fiduciary in nature such as between an association and its members-and (2) where the cross-complainant could achieve equivalent relief through affirmative defense. (See *Lauriedale Associates, Ltd. v. Wilson* (1992) 7 Cal.App.4th 1439, 1444-46; see also *Jaffe v. Huxley Architecture* (1988) 200 Cal.App.3d 1188.)

A special fiduciary relationship exists between the member-growers, including Plaintiff and Watte, and Horizon Growers (as well as Perkins in his role as CEO of the cooperative). (See FAAC ¶¶ 70, 71.) The court sustained the prior demurrer on the ground that Nutrien's cause of action for equitable indemnity would disrupt the fiduciary

relationship between Horizon Growers and Perkins as the alleged fiduciaries, and plaintiff and Watte.

Cross-defendants rely on *Jaffe* and *Lauriedale, supra*, for application of this principle. In both cases there was an identity of interest between the plaintiff or claimant and the proposed indemnitor. In *Lauriedale*, a contractor was sued by a condominium association. The contractor sought indemnity from individual members of the association. There was no need to bring the individual association members into the lawsuit where the association was already a party to the lawsuit and was already going to be responsible for the actions of its members. (*Lauriedale*, *supra*, 7 Cal.App.4th at p. 1445.) In *Jaffe*, the claimant was an apartment complex association, and the indemnitee sought indemnity from the association's directors. Because the actions of the board are legally the actions of the association, any arguments about the board members responsibility for the damages could be directly asserted against the association as a defense to the association's claims. (*Jaffe, supra*, at 200 Cal.App.3d p. 1190.) Here there is no such unity of interest.

Accordingly, the court intends to overrule the demurrer to the first cause of action.

The demurrer to the second cause of action against Horizon Nut and Joel Perkins is barred by Code of Civil Procedure section 430.41, subd. (b), which provides:

> A party demurring to a pleading that has been amended after a demurrer to an earlier version of the pleading was sustained shall not demur to any portion of the amended … cross-complaint … on grounds that could have been raised by demurrer to the earlier version of the … cross-complaint … .

This cause of action was included in the original Cross-Complaint, but demurring cross-defendants did not demur to the cause of action previously. They cannot do so now. Accordingly, the demurrer to the second cause of action is overruled.

Finally, cross-defendants contend that there is no basis for imposing liability on Perkins as the CEO of Horizon Nut and Horizon Growers. Generally speaking, an officer or director is not personally liable for a corporation's actions. (*Frances T. v. Village Green Owners Assn.* (1986) 42 Cal.3d 490, 505-506.) But directors may be liable to third persons injured by their own tortious conduct regardless of whether they acted on behalf of the corporation and regardless of whether the corporation is also liable. (*Frances T v. Village Green Owners Assn.* (1986) 42 Cal.3d 490, 504.)

Here, the FACC alleges that Perkins was an officer of both Horizon Growers and of Horizon Nut, and that he owed fiduciary duties to Horizon Growers *and its members* (including M.C. Watte and Brian Watte) to place their interests in receiving full payment for their pistachios over the interests of the third party paying for those pistachios. (FACC ¶¶ 71, 72.) The FACC alleges that Perkins had a conflict of interest as the head of both entities (FACC ¶ 20) and that he breached his fiduciary duty to Horizon Growers and the Wattes by not obtaining payment from Horizon Nut or otherwise protecting the Wattes' interest in the pistachios (FACC ¶¶ 73, 80-81). In light of the allegations of a fiduciary duty owed by Perkins, and breach of that duty, there is a basis to hold Perkins liable for the

injuries suffered by M.C. Watte and Brian Watte. Accordingly, the demurrer as to Perkins individually is overruled as well.

(2) Leave to File Cross-Complaint

Defendants Nutrien, Loveland Products, Inc., and Steve Mendonca seek leave to file a cross-complaint against seeking equitable indemnification against Horizon Growers, Horizon Nut and Perkins. This is in the context of the action brought by Hillman Ranches, LLP ("Hillman").

A defendant may file a cross-complaint against third parties if the claims asserted against it and the claims it asserts against the third parties arise out of the same transaction. (Code Civ. Proc., § 428.10, subd. (b)(1).) A defendant must obtain leave of court to file a cross-complaint after the trial date is set. (Code Civ. Proc., § 428.50, subd. (c).) "Leave may be granted in the interest of justice at any time during the course of the action." (*Id*., subd. (c).)

"…[D]efendants may cross-complain against any person from whom they seek equitable indemnity. Defendants need only allege that the harm for which they are being sued is attributable, at least in part, to the cross-defendant." (Weil & Brown, *Cal. Practice Guide: Civ. Proc. Before Trial* (TRG 2022) ¶ 6:529.) "Cross-complaints for comparative equitable indemnity would appear virtually always transactionally related to the main action." (*Time for Living, Inc. v. Guy Hatfield* (1991) 230 Cal.App.3d 30, 38.)

Clearly the claims asserted in the proposed cross-complaint arise out of the same transaction as the claims asserted against them in Hillman's complaint. There is no opposition to the motion. Accordingly, the court intends to grant the motion.

(3) Leave to Amend Cross-Complaint

Nutrien seeks leave to file a Second Amended Cross-Complaint to add a third cause of action for equitable indemnity against Horizon Nut and Perkins.

A defendant may file a cross-complaint against third parties if the claims asserted against it and the claims it asserts against the third parties arise out of the same transaction. (Code Civ. Proc., § 428.10, subd. (b)(1).) A defendant must obtain leave of court to file a cross-complaint after the trial date is set. (Code Civ. Proc., § 428.50, subd. (c).) Leave may be granted in the interest of justice. (*Ibid*.)

As discussed above, Nutrien already has a cross-complaint on file against the Horizon parties. It seeks to add an additional count against Horizon Nut and Perkins, adding an additional theory for equitable indemnity, on the grounds that under the Management Agreement, Horizon Nut and The Horizon Management Team, including Perkins as CEO, stepped into the shoes of Horizon Growers and thereby assumed the fiduciary duties Horizon Growers owed its members.

"The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading ... " (Code Civ. Proc., § 473, subd. (a)(1).) The

court's discretion will usually be exercised liberally to permit amendment of the pleadings. (See *Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939.)

In moving to amend a pleading, the moving party "must" file a declaration that specifies: (1) the effect of the amendment, (2) why the amendment is necessary and proper, (3) when the facts giving rise to the amended allegations were discovered, and (4) the reasons why the request for amendment was not made earlier. (Cal. Rules of Court, Rule 3.1324(b).) Counsel's declaration satisfies these requirements.

There is no prejudice in asserting this additional theory of liability against Horizon Nut and Perkins. It is a slight expansion of the claims already asserted in the cross-complaint.

The Horizon parties oppose the motion, contending that the added cause of action fails to state facts sufficient to state a cause of action. While leave to amend can be denied where a proposed amendment fails to state a valid cause of action (see *California Cas. Gen. Ins. Co. v. Superior Court* (1985) 173 Cal.App.3d 274, 280-281), the court generally will not consider the validity of the proposed amended pleading in deciding whether to grant leave to amend (see *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048; *Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 760). The grounds on which Horizon parties contend the amendment fails to state a cause of action are duplicative of the arguments made in support of their demurrer, which the court rejects as set forth above. Accordingly, the court intends to grant leave to amend.

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 07/17/24 .
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Teresa Tarazi v. Robert Pimental, PHD***
Superior Court Case No. 23CECG00190

Hearing Date: July 18, 2024 (Dept. 502)

Motion: Defendants' Demurrer to Fifth Cause of Action

Tentative Ruling:

To sustain defendants' demurrer to the fifth cause of action for failure to engage in the interactive process, as the plaintiff has failed to state facts sufficient to constitute a valid cause of action. To deny leave to amend.

Explanation:

The Fifth District Court of Appeal has ordered this court to consider the defendant SCCCD's argument that plaintiff has not stated a valid cause of action for failure to engage in the interactive process with regard to her request for religious accommodation, as Government Code section 12940, subdivision (*l*)(1) does not expressly state that the employer must engage in the interactive process where the employee requests religious accommodation. (May 9, 2024 Order on Writ of Mandate, p. 1.) As directed by the Court of Appeal, this court set the matter for hearing on the issue of whether a cause of action for failure to engage in the interactive process will lie in religious discrimination cases and ordered the parties to submit supplemental briefing on the issue. The parties have now filed supplemental briefs addressing the issue.

The defendants rely heavily on the fact that the language of Government Code section 12940, subdivision (*l*)(1) does not include any mention of the "interactive process", and therefore they argue that the court should not impose a requirement that is not expressly imposed by the statute. Plaintiff, on the other hand, notes that, while section 12940(*l*)(1) does not include language requiring the employer to engage in the interactive process, it does require the employer to "explore any other available reasonable alternatives means of accommodating the religious belief." (Govt. Code, § 12940, subd. (*l*)(1).) The California form jury instruction for failure to accommodate religious beliefs also requires the employer to explore reasonable alternatives to accommodate the employee's religious beliefs. (CACI No. 2560.) Plaintiff contends that this language is essentially the same as requiring an interactive process. Plaintiff also cites to several federal cases interpreting Title VII and the Americans with Disabilities Act as containing a requirement to engage in the interactive process, even though those statutes also do not expressly state that the employer has to "engage in the interactive process" with regard to an employee's request for an accommodation.

First, there is no dispute that section 12940, subdivision (*l*)(1), does not include an express provision that requires the employer to "engage in the interactive process" in order to find a reasonable accommodation of the employee's religious beliefs. However, section 1240(*l*)(1) does provide an exception for liability for failure to accommodate the employee's request for a religious accommodation if "the employer … demonstrates

that it has explored any available reasonable alternative means of accommodating the religious belief or observance, … but is unable to reasonably accommodate the religious belief or observance without undue hardship, … on the conduct of the business of the employer …." (Govt. Code, § 12940, subd. (*l*)(1).) The California form jury instructions for religious discrimination cases also state that one of the elements of a claim is that "defendant did not explore available reasonable alternatives of accommodating plaintiff, including excusing plaintiff from duties that conflict with plaintiff's religious belief or permitting those duties to be performed at another time or by another person, or otherwise reasonably accommodate plaintiff's religious belief." (CACI No. 2560, italics added.)

As the Court of Appeal has noted, the lack of an express requirement to engage in the interactive process for religious discrimination cases under section 12940(*l*)(1) contrasts with the language of section 12940, subdivision (n), the disability discrimination statute, which does contain an express requirement to engage in the interactive process. "It is an unlawful employment practice… [f]or an employer … to *fail to engage in a timely, good faith, interactive process* with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical or mental disability or known medical condition." (Gov. Code, § 12940, subd. (n), italics added.) Thus, it is unlawful for an employer to fail to engage in the interactive process in disability discrimination cases. There is no similar language for religious discrimination cases under section 12940, subdivision (*l*)(1).

The fact that the Legislature included an express requirement to engage in the interactive process for disability claims, but not for religious discrimination claims, suggests strongly that the Legislature did not intend to create a separate cause of action based on the failure of an employer to engage in the interactive process where the employee requests a religious accommodation. The court may not insert additional terms into a statute which are not already present, and instead it must simply interpret the statute based on the terms contained therein. "In the construction of a statute or instrument, the office of the Judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all." (Code Civ. Proc., § 1858.) Therefore, the court will not impose a requirement to engage in the interactive process for religious discrimination claims that is not clearly reflected in the language of section 12940(*l*)(1).

Plaintiff argues that section 12940(*l*)(1) and the California jury instructions both state that an employer has a duty to accommodate an employee's religious beliefs, unless the employer has explored reasonable alternatives and has been unable to find a reasonable accommodation that does not unduly burden the employer. (Govt. Code, § 12940, subd. (*l*)(1), CACI No. 2560.) Plaintiff contends that this is tantamount to a requirement that the employer engage in the interactive process where the employee requests a religious accommodation. In addition, plaintiff cites to several federal cases interpreting Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act, which have held that an employer has a duty to engage in the interactive process even though those statutes do not include an express requirement to engage in the interactive process.

"Because of the similarity between state and federal employment discrimination laws, California courts look to pertinent federal precedent when applying our own statutes." (*Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 354, citations omitted.)

It is true that federal courts have inferred a requirement for an employer to engage in the interactive process in religious and disability discrimination cases, despite the fact that the ADA and Title VII do not expressly require the employer to engage in the interactive process. "Generally speaking, there are no affirmative duties for employers to act under the federal employment discrimination statutes, but the law demands more of employers in the disability- and religious-discrimination contexts. Indeed, the ADA and Title VII's provisions for religious discrimination both require employers to reasonably accommodate employees' disabilities and religious observances. In these types of cases, the employer has a heightened duty to engage the employee in the interactive process to identify a reasonable accommodation." (*Suvada v. Gordon Flesch Co., Inc.* (N.D. Ill., Sept. 13, 2013, No. 11 C 07892) 2013 WL 5166213, at *10, citations omitted.)

"Title VII of the Civil Rights Act of 1964 requires that employers provide reasonable accommodation to employees who have religious beliefs that conflict with their employment responsibilities, unless the employer can show that the accommodation would either unduly burden the employer or other employees." (*E.E.O.C. v. AutoNation USA Corp.* (9th Cir. 2002) 52 Fed. Appx. 327, 328, citations omitted.) "This court has recognized that 'Title VII is premised on bilateral cooperation.' An employee, therefore, has a 'concomitant duty ... to cooperate in reaching an accommodation [under Title VII].' An employee's 'correlative duty to make a good faith attempt to satisfy his needs *through means offered by the employer'* arises after the employer takes the ' "initial step' towards accommodating [the employee's] conflicting religious practice' by suggesting a possible accommodation." (*Id*. at p. 329, citations omitted, italics in original.)

"This statutory and regulatory framework, like the statutory and regulatory framework of the Americans with Disabilities Act (ADA), involves an interactive process that requires participation by both the employer and the employee." (*Thomas v. National Ass'n of Letter Carriers* (10th Cir. 2000) 225 F.3d 1149, 1155, citations omitted.)

However, the federal courts have discussed the requirement of an interactive process in the context of the employee's claim for failure to accommodate their religious beliefs or disability, not in the context of a separate cause of action for failure to engage in the interactive process. (*Thomas, supra*, at p. 1155; *E.O.C. v. AutoNation USA Corp., supra*, 52 Fed. Appx., at pp. 328-329.) In other words, the requirement to engage in the interactive process is one of the elements of a failure to accommodate cause of action, rather than the basis for a separate cause of action for failure to engage in the interactive process. (*Ibid*.) Under the federal burden shifting procedure, the employee has the initial burden of showing that they have a religious belief that conflicts with an employment requirement, that they informed the employer of their belief, and that the employer fired the employee for failure to comply with the conflicting employment requirement. (*Thomas, supra,* at p. 115.) The burden then shifts to the employer to either conclusively rebut the plaintiff's prima facie case, show that it offered a reasonable accommodation, or show that it was unable to accommodate the employee's religious needs without undue hardship. (*Id*. at p. 1156.) The requirement to engage in the interactive process is part of the employer's burden of defeating plaintiff's case for failure to accommodate. It is not a separate cause of action unto itself.

Therefore, the cases cited by plaintiff do not support her contention that she can state an entirely separate cause of action here for failure to engage in the interactive process. As discussed above, the language of section 12940(*l*)(1) indicates that an employer can show that it is not liable for failure to accommodate an employee's request for a religious accommodation if it shows that it explored reasonably available alternative accommodations and determined that there were no reasonable accommodations for the employee's religious beliefs that would not impose an undue hardship on the employer. (Govt. Code, § 12940, subd. (*l*)(1).) Thus, the provision allowing an employer to explore reasonably available alternative accommodations appears to be intended to allow the employer to rebut the employee's initial prima facie showing that she requested an accommodation and that it was denied. In other words, section 12940(*l*)(1) appears to adopt the same type of burden-shifting procedure used by federal courts in disability and religious discrimination cases rather than creating an entirely new cause of action for failure to engage in the interactive process. (*Thomas, supra*, at p. 1156.)

Here, plaintiff has already alleged a separate cause of action for failure to accommodate her religious beliefs. (See Complaint, Sixth Cause of Action.) Therefore, the fifth cause of action is duplicative of the sixth cause of action. Since there is no statutory basis for a separate cause of action for failure to engage in the interactive process with regard to religious beliefs, the court intends to sustain the demurrer to the fifth cause of action for failure to state facts sufficient to constitute a cause of action. Furthermore, there does not appear to be any reasonable possibility that plaintiff could amend her claim to cure the defect, as there is no basis in Government Code section (*l*)(1) for a separate claim for failure to engage in the interactive process. As a result, the court intends to sustain the demurrer without leave to amend.

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 07/17/24.
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Marque Davis v. Jason Edward Denney, MD***
Superior Court Case No. 23CECG00961

Hearing Date: July 18, 2024 (Dept. 502)

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

Tentative Ruling:

To grant the defendant's 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.

Explanation:

Plaintiffs, Marque Davis and Candyce Davis, sued several medical providers, including defendant Saint Agnes Medical Center (SAMC), after Mr. Davis underwent aggressive chemotherapy based on an alleged misdiagnosis. Plaintiffs state causes of action for medical malpractice and loss of consortium. SAMC's motion for summary judgment is unopposed.

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, SAMC submits the expert testimony of Kristie White, M.D. In her declaration, Dr. White states she reviewed and considered plaintiffs' complaint, the

medical records for Mr. Davis from SAMC for the hospital admissions in question, the May 2020 pathology specimens for Mr. Davis, and his medical records from Stanford. Dr. White opines that SAMC's non-physician staff complied with the standard of care in all respects in the care and treatment of Mr. Davis.

SAMC also presents the declaration of John Evanko, M.D., the Chief Medical Officer for SAMC, to establish that all of the treating physicians for Mr. Davis were independent contractors and were not acting as agents or employees of SAMC. Therefore, plaintiffs cannot hold SAMC liable on a theory of respondeat superior.

SAMC's evidence is sufficient to negate plaintiffs' claims against it. Based on this showing, SAMC has shown that plaintiffs cannot establish an essential element of the claim for medical negligence—breach of duty. The burden then shifts to plaintiffs to show the existence of a triable issue of material fact. On July 9, 2024, plaintiffs filed a notice of non-opposition, expressly stating they do not oppose the motion for summary judgment filed by SAMC in this matter. Therefore, the court grants SAMC's 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: KCK on 07/17/24.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***David Nanez, III v. California Kidds Pediatric Dentistry***
Superior Court Case No. 22CECG02854

Hearing Date: July 18, 2024 (Dept. 502)

Motion: Petition to Approve Compromise of Disputed Claim of Minor

Tentative Ruling:

To continue the hearing on this petition to Thursday, August 8, 2024, at 3:30 p.m. in Department 502. Petitioner must file a supplemental declaration explaining why it is in the best interests of the minor for the funds to be placed into a blocked account as opposed to an annuity. The declaration must be filed by Thursday, July 25, 2024 at 5:00 p.m.

Explanation:

A petition for court approval of a compromise of a minor's disputed claim "must contain a full disclosure of all information that has any bearing upon **the reasonableness** of the compromise, covenant, settlement, or disposition." (Cal. Rules of Court, rule 7.950, emphasis added.)

Petitioner must explain why placing the funds into a blocked account instead of an annuity, as originally proposed, is the most reasonable option in the best interests of the minor.

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 07/17/24.
(Judge's initials) (Date)