Tentative Rulings for July 18, 2024
Department 503

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)

<u>Tentative Rulings for Department 503</u>

Begin at the next page

(27)

Tentative Ruling

Re: ***Patricia F. v. Westcare California, Inc.***
Superior Court Case No. 24CECG00632

Hearing Date: July 18, 2024 (Dept. 503)

Motion: Defendants Westcare California, Inc. and Westcare Foundation, Inc.'s Demurrer to the Complaint

Tentative Ruling:

To overrule. Demurring defendants shall file their responsive pleadings within ten (10) days from the date of this order.

Explanation:

A demurrer challenges defects apparent from the face of the complaint and matters subject to judicial notice. (*Blank v. Kirwan* (1985) 30 Cal.3d 311, 318.) A general demurrer is sustained where the pleading is insufficient to state a cause of action or is incomplete. (Code Civ. Proc., § 430.10, subd. (e); *Estate of Moss* (2012) 204 Cal.App.4th 521, 535.) In considering a demurrer, the court assumes the truth of the facts properly plead. (*Hoyem v. Manhattan Beach City Sch. DIst.* (1978) 22 Cal.3d 508, 517; *Serrano v. Priest* (1971) 5 Cal.3d 584, 591.)

Demurring defendants contend plaintiff's first cause of action for negligence is insufficiently plead because demurring defendants owed plaintiff no duty under the auspices of *Beauchene v. Synanon Foundation, Inc.*(1979) 88 Cal.App.3d 342, 348 (*Beauchene*). *Beauchene* involved a convicted person's "eloping" from a private rehabilitation institution and subsequent "'crime spree.'" (*Id*. at p. 345.) In particular, the First District considered a negligence claim brought by a victim shot in the arm by the defendant 13 days after he left the program. (*Ibid*.)

Beauchene and its progeny have consistently held that private rehabilitation institutions do not owe a duty to the <u>general public</u> for the injurious acts of <u>escaped</u> residents because to do so would "detrimental[ly] effect prisoner release and rehabilitation programs." (*Beauchene, supra,* 88 Cal.App.3d at p. 348; accord, *Rice v. Center Point, Inc.* (2007) 154 Cal.App.4th 949, 956; *Cardenas v. Eggleston Youth Center* (1987) 193 Cal.App.3d 331, 335-336.) In essence, the same policy underlying absolute immunity for public entities in relation to escaped prisoners, escaped persons, or persons resisting arrest (Gov. Code, § 845.8), also applies to private institutions. (*Beauchene, supra*, 88 Cal.App.3d at p. 348.)

However, unlike the acts by an escapee in *Beauchene*, plaintiff here alleges injury by an adjoining resident who shared a bathroom with plaintiff. (Complaint, ¶ 15.) The absence of door locks or other security devices between the adjoining rooms allowed the alleged perpetrator undetected access to plaintiff and an opportunity to commit the alleged assault. (Id. at ¶¶ 22 - 24.) Demurring defendants rely on *Beauchene* and its

progeny, yet, offer no authority applying that reasoning to assaults by co-residents. Plaintiff, on the other hand, notes the settled principle that, in relation to harm committed by co-prisoners, "there is a special relationship between jailer and prisoner which imposes a duty of care on the jailer on the prisoner." (*Giraldo v. Department of Corrections & Rehabilitation* (2008) 168 Cal.App.4th 231, 252-253.)

Considering plaintiff's allegation that she was harmed by a co-resident, not an escapee, demurring defendants' contention that a duty does not exist does not appear supported by their asserted authorities. Furthermore, plaintiff's allegations (which must be accepted as true) tend to show unrestricted and undetected access between adjoining residents such that the alleged assault could reasonably be found to be foreseeable. (*Tarasoff v. Regents of University of California* (1976) 17 Cal.3d 425, 434-435 ["The most important of [the] considerations in establishing duty is forseeability."].)

Therefore, the demurrer is overruled.

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: jyh on 7/10/24 .
(Judge's initials) (Date)

(36)

<u>Tentative Ruling</u>

Re: ***Doe v. Wilkins, et al.***
Superior Court Case No. 22CECG02432

Hearing Date: July 18, 2024 (Dept. 503)

Motions (x5): by Plaintiff to Quash Subpoenas

Tentative Ruling:

To grant in part. The subpoenas served on Clovis Community Medical Center and Clovis Community Medical Center/Business Office are limited to records relating to the alleged genital infection between the dates of 1986 – 1991, inclusive. Also, the subpoenas served on Claremont Graduate University/Student Health Services, Illana Sharaun, and Randall Robinson are limited to records relating to plaintiff's mental health from 1986 to present.

Explanation:

This is a personal injury action for damages arising from childhood sexual abuse. Plaintiff alleges that she received consultation, examination, or treatment for a genital infection on or about Spring 1989 at Clovis Community Medical Center, and therapy from: (1) Claremont Graduate University Student Health Services on or about Spring 1992; (2) Dr. Randall Robinson on or about Summer 1992; and (3) Ilana Sharaun on or about 2000-2003. (See Resp. to Form Rog. No. 6.4 in Ex. 1 to Shukry Decl.) Further, in response to CUSD's Form Interrogatories, Set One, No. 6.2, which asks plaintiff to "[i]dentify each injury [she] attribute[s] to the INCIDENT and the area of [her] body affected…", plaintiff alleges that she has suffered "severe and permanent injuries (the full extent of such injuries are still being ascertained), which include are not limited to [*sic*] emotional distress and mental suffering including feelings of being violated, shame, anxiety, panic attacks, depression, feelings of being unsafe, trust issues, relationship/intimacy issues, loss of self-esteem, trouble sleeping, nightmares, fear, and post-traumatic stress." (See Resp. to Form rog. No. 6.2 in Ex. A to Reddington Decl.)

On September 12, 2023, Clovis Unified School District ("CUSD") issued subpoenas for plaintiff's medical records on her healthcare providers, (1) Clovis Community Medical Center; (2) Clovis Community Medical Center/Business Office; (3) Claremont Graduate University/Student Health Services; (4) Illana Sharaun; and (5) Randall Robinson. Thereafter, on December 11, 2023, CUSD filed motions compelling the non-party medical providers' compliance with the subpoenas. The motions were denied without prejudice on procedural grounds. On April 22, 2024, CUSD re-issued the subpoenas to the same medical providers. These subpoenas seek all records relating to plaintiff.

A plaintiff "may not withhold information which relates to any physical or mental condition which they have put in issue by bringing the lawsuit." (*Britt v. Superior Court* (1978) 20 Cal.3d 844, 864.) "[W]hile [plaintiffs] may not withhold information which relates

to any physical or mental condition which they have put in issue by bringing this lawsuit, they are entitled to retain the confidentiality of all unrelated medical or psychotherapeutic treatment they may have undergone in the past." (*Id.* at p. 864, fn. omitted.)

Where it is argued that the privacy protection is waived by the filing of a lawsuit, the compelling interest is shown only where the material sought is directly relevant to the litigation. (*Id.* at p. 859.) The party seeking constitutionally protected information through discovery bears the burden of showing the direct relevance of the information sought. (*Davis v. Superior Court* (1992) 7 Cal.App.4th 1008, 1017.) Even where discovery of private information is found to be directly relevant to the issues of the litigation, it is not automatically allowed; for such discovery to be permitted, the court must engage in a careful balancing of the compelling public need for discovery against the fundamental right of privacy. (*Binder v. Superior Court* (1987) 196 Cal.App.3d 893.)

"Mere speculation as to the possibility that some portion of the records might be relevant to some substantive issue does not suffice." (*Davis, supra,* 7 Cal.App.4th at p. 1017.) In *Davis*, the defendant sought "any and all medical or hospital records relating to the care and treatment of petitioner to date." The court found the request overbroad because "[defendant] has made no attempt to limit the request to specific matters directly relevant to [plaintiff]'s pain and suffering from the physical injuries. [Plaintiff] has established that the records do not concern treatment for the injuries for which she claims damages." (*Id.* at pp. 1017-1018.)

Although most of plaintiff's motion to quash focuses on protecting her privacy interest in her sexual history with third parties (which without proper explanation does not appear relevant to the records requested in the subpoenas), plaintiff at least mentions her interest in protecting her unrelated medical records. Since plaintiff does not provide an explanation for why the medical records are likely to infringe on her right to privacy of her sexual history and the right to privacy of third parties, the court only addresses plaintiff's privacy interest in protecting her medical records unrelated to this action.

Here, the subpoenas are overbroad because they seek all medical records of plaintiff without limitation as to body part, condition or time. It is sufficiently clear that plaintiff's alleged injuries are based on her genital infection and mental conditions. While plaintiff has alleged a broad range of mental conditions, defendants have not shown good cause for the records relating to plaintiff's physical condition (outside of records relating to the alleged genital infection). Additionally, CUSD has not shown good cause for the lack of limitation as to time. There is no showing of a need for all medical records for plaintiff's entire life. Plaintiff stated that she was treated for a genital infection on or about Spring 1989 at Clovis Community Medical Center, and sought therapy for her mental conditions on or around Spring-Summer 1992 and again in 2000-2003. Plaintiff further describes that her mental suffering is severe and permanent, and the full extent of such injuries are still being ascertained.

Accordingly, the court intends to grant the motion in part, limiting the subpoenas to: (1) records between the date range of 1986 – 1991 (approximately three years before and after the alleged treatment of the infection) from Clovis Community Medical Center and Clovis Community Medical Center/Business Office, relating to the alleged genital

infection; and (2) records dating back to 1986 from Claremont Graduate University/Student Health Services, Illana Sharaun, and Randall Robinson, relating to plaintiff's mental health.

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: jyh on 7/16/24 .
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***J.C. v. Fresno Unified School District et al.***
Superior Court Case No. 23CECG03952

Hearing Date: July 18, 2024 (Dept. 503)

Motion: by Plaintiff J.C. for Trial Preference

Tentative Ruling:

To grant.

Explanation:

Plaintiff J.C. ("Plaintiff") seeks preferential setting of trial under Code of Civil Procedure section 36, subdivision (b). Code of Civil Procedure section 36, subdivision (b) provides, in pertinent part:

> A civil action to recover damages for wrongful death or personal injury shall be entitled to preference upon the motion of any party to the action who is under 14 years of age unless the court finds that the party does not have a substantial interest in the case as a whole.

Here, Plaintiff submits evidence demonstrating that Plaintiff is under 14 years of age. (Trujillo Decl., ¶ 3.) Plaintiff further submits that, as the only plaintiff party, Plaintiff has a substantial interest in the case as a whole. (*Id.*, ¶ 4.) Accordingly, preference is mandatory. (Code Civ. Proc. § 36, subd. (b).)

Defendant Fresno Unified School District ("Defendant") opposes. In opposition, Defendant relies on series of cases interpreting the intersection between Code of Civil Procedure section 36 and other statutes, such as the 5-year limit to bring the case to trial, or cases that have been coordinated. Defendant however concedes that no other statutes are in conflict that would require the harmonizing considerations put forth in Defendant's cited authority. Rather, "subdivision (b) is mandatory; accordingly… the trial court does not have discretion to deny trial preference to a party under 14 who has a substantial interest in the litigation." (*Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 696.)

Defendant submits that to grant trial preference would be a denial of due process. Defendant relies on *Western Steamship Lines, Inc. v. San Pedro Peninsula Hospital*, which is inapposite. (*Western Steamship Lines, Inc. v. San Pedro Peninsula Hospital* (1994) 8 Cal.4th 100.) There, the issue was whether a judgment was binding to an indemnitor where the indemnitor had no opportunity to defend the action. (*Id.* at p. 118.) The authority did not consider the constitutionality of the present statute of Code of Civil Procedure section 36. Defendant further relies on *Peters v. Superior Court*; however, the opinion expressly does not address the issues of due process. (*Peters v. Superior Court*

(1989) 212 Cal.App.3d 218, 227.) Additionally, the court there specifically found that the Legislature intended Code of Civil Procedure section 36, subdivision (b) to be mandatory. (*Id.* at pp. 223-224.)

Finally, Defendant argues that Plaintiff fails to demonstrate good cause as required by California Rules of Court, rule 3.1335(b). Good cause is sufficiently demonstrated by and through Code of Civil Procedure section 36.

Based on the above, the motion for trial preference is granted. Accordingly, trial shall be set not more than 120 days from the date of this order. (Code Civ. Proc. § 36, subd. (f).)

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: jyh on 7/16/24 .
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Vasquez v. Micare California, P.C.***
Case No. 23CECG01242

Hearing Date: July 18, 2024 (Dept. 503)

Motion: Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement

Tentative Ruling:

To continue the hearing on the motion for preliminary approval of the class action and PAGA settlement to August 22, 2024 at 3:30 p.m. in Department 503. The stipulated order granting plaintiff leave to file her first amended complaint, which includes a PAGA cause of action, has now been signed and entered. Plaintiff shall file her first amended complaint within ten days of the date of service of this order.

Explanation:

Plaintiff's motion for preliminary approval of the class action and PAGA settlement is premature, as she has not yet filed her first amended complaint which contains the PAGA cause of action. Plaintiff also has not yet dismissed the Imagine 360 defendants from the action.

The stipulated order granting plaintiff leave to file her first amended complaint has now been signed. Therefore, plaintiff needs to file her first amended complaint and dismiss the Imagine 360 defendants from the action before the court can grant preliminary approval of the settlement. As a result, the court intends to continue the matter to August 22, 2024 to give plaintiff time to file her first amended complaint.

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: jyh on 7/16/24.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Singh v. Singh***
Superior Court Case No. 22CECG01712

Hearing Date: July 18, 2024 (Dept. 503)

Motion: Motion to be Relieved as Counsel

Tentative Ruling:

The court intends to deny plaintiff counsel's motion to be relieved as counsel, without prejudice.

Explanation:

Counsel's declaration indicates the current address for his client was confirmed by mailing communications to his last known address and to the client's email that has been used to communicate with him throughout the representation. (Declaration, Item 3b.(1)(d).) The declaration indicates none of these communications have been returned. The declaration does not confirm any additional efforts to locate the current address for the client.

Counsel has not adequately confirmed the client's current address. "As used in this rule, 'current' means that the address was confirmed within 30 days before the filing of the motion to be relieved. Merely demonstrating that the notice was sent to the client's last known address and was not returned or no electronic delivery failure message was received is not, by itself, sufficient to demonstrate that the address is current." (Cal. Rules of Court, rule 3.1362, subd. (d).)

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: jyh on 7/16/24 .
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Mulligan v. Salam, M.D., et al.***
Superior Court Case No. 22CECG00199

Hearing Date: July 18, 2024 (Dept. 503)

Motion: Petition to Compromise Claim of Minor

Tentative Ruling:

To deny without prejudice. In the event that oral argument is requested minor is excused from appearing.

Explanation:

The Petitioner and Guardian ad Litem proposes to deposit $285,000 of the minor's net settlement into an annuity, set to begin paying out on the minor's 18th birthday, and she also proposes the remaining $1,003,757.29 to be transferred into a special needs trust pursuant to Probate Code section 3604. The court generally approves of this arrangement, since this will ensure that receipt of this money will not disqualify the minor from receiving the public benefits he may now need due to his disabilities. However, Petitioner must show that she has first filed, with the Probate Department, a Petition under Probate Code sections 3600-3613 to establish and fund the special needs trust. The Probate Court is better suited to confirm that the Trust complies with California Rules of Court, Rule 7.903, to ensure that the notice required by Probate Code section 3611, subdivision (c) is given, and to provide for the ongoing court supervision of the trust.

Once the probate petition has been granted, petitioner can then petition this court for approval of the compromise of the minor's claim. When doing so, the court would also like assurance that petitioner has been given sufficient advice on how to proceed in the event the minor continues to need to qualify for public assistance once he turns 18, since in that event the anticipated lump sum annuity payments may cause him to be disqualified from such needs-based assistance.

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: jyh on 7/16/24 .
(Judge's initials) (Date)

(24)

Tentative Ruling

Re: ***Gonzales v. Contreras***
Superior Court Case No. 23CECG02610

Hearing Date: July 18, 2024 (Dept. 503)

Motion: Petition to Approve Compromise of Disputed Claim of Minor

Tentative Ruling:

To grant. Order signed. No appearances necessary.

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: jyh on 7/16/24 .
(Judge's initials) (Date)