Tentative Rulings for November 2, 2023
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: ***Martinez v. Holden et al.***
Superior Court Case No. 23CECG01428

Hearing Date: November 2, 2023 (Dept. 501)

Motion: Set Aside Order Vacating Complaint to Allow Filing of Complaint-in-Intervention

Tentative Ruling:

To grant. Within 10 days of service of the order by the clerk, Pacific Compensation Insurance Company shall file its proposed Complaint-in-Intervention. (Code Civ. Proc., §§ 387, subd. (a), 473, subd. (b).)

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 10/30/2023 .
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***In re Jru Soliman***
Superior Court Case No. 23CECG04172

Hearing Date: November 2, 2023 (Dept. 501)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To grant. Proposed Orders will be signed. No appearances necessary.

The court sets a status conference on Tuesday, February 6, 2024, at 3:30 p.m. in Department 501, for confirmation of deposit of the funds into a blocked account. If Petitioner files the Acknowledgment of Receipt of Order and Funds for Deposit in Blocked Account (MC-356), at least five court days before the hearing, the status conference will come off calendar.

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 (Judge's initials) on 10/30/2023 (Date).

(35)

Tentative Ruling

Re: ***In re Orlando Soliman III***
Superior Court Case No. 23CECG04173

Hearing Date: November 2, 2023 (Dept. 501)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To grant. Proposed Orders will be signed. No appearances necessary.

The court sets a status conference on Tuesday, February 6, 2024, at 3:30 p.m. in Department 501, for confirmation of deposit of the funds into a blocked account. If Petitioner files the Acknowledgment of Receipt of Order and Funds for Deposit in Blocked Account (MC-356), at least five court days before the hearing, the status conference will come off calendar.

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 10/30/2023.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***In re Jrake Soliman***
Superior Court Case No. 23CECG04174

Hearing Date: November 2, 2023 (Dept. 501)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To grant. Proposed Orders will be signed. No appearances necessary.

The court sets a status conference on Tuesday, February 6, 2024, at 3:30 p.m. in Department 501, for confirmation of deposit of the funds into a blocked account. If Petitioner files the Acknowledgment of Receipt of Order and Funds for Deposit in Blocked Account (MC-356), at least five court days before the hearing, the status conference will come off calendar.

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 10/30/2023.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***County of Fresno v. State of California***
Superior Court Case No. 23CECG01368

Hearing Date: November 2, 2023 (Dept. 501)

Motion: Defendant State of California's Demurrer to First Amended Complaint

Tentative Ruling:

To sustain the demurrer to the entire First Amended Complaint for lack of standing to sue, with leave to amend. Plaintiff shall file and serve a Second Amended Complaint, if any, within ten days of the date of service of this order. All new allegations shall be in **boldface**.

Explanation:

Defendant State of California ("the State") argues that plaintiff County of Fresno ("the County") has sued the wrong party[1] because it was the federal government and not the State that mandated the name change from "Sq__ Valley"[2] to "Yokuts Valley", the County has adequately alleged that the State passed AB 2022, which prohibited the use of the word "sq__" for geographic names and place names, and to change the names of places previous named "Sq__". The State points out that it was the Federal Board of Geographic Names ("BGN") that made the determination that the term "sq__" was offensive and derogatory, and that places with "sq__" in their names should be changed to another name. The BGN then made the determination to rename "Sq__ Valley" to "Yokuts Valley". (Defendant's Request for Judicial Notice, Exhs. A, B, C and D. The court intends to take judicial notice of all of the exhibits attached to the State's Request for Judicial Notice.) Thus, the BGN did take actions to rename places with the term "sq__", including Sq__ Valley.

However, the State then passed Assembly Bill 2022, which led to the enactment of Government Code section 8899.90, *et seq*. The purpose of AB 2022 was to rename places in California with the term "sq__" in their names. "The purpose of this chapter includes all of the following: [¶] (a) To prohibit the use of the word 'squaw' for geographic features and place names within the State of California. [¶] (b) To establish a process for the California Advisory Committee on Geographic Names to review and revise offensive names in the State of California and, as necessary, submit formal requests to the United

[1] The State describes this as a demurrer for lack of jurisdiction over the subject matter of the action under Code of Civil Procedure section 430.10, subdivision (a). However, the State actually appears to be demurring under section 430.10, subdivision (d), defect of misjoinder of parties, as it contends that plaintiff sued the wrong entity.

[2] The court acknowledges that the term "squaw" is considered to be racist, sexist and offensive to many people. Therefore, the court will use the term "sq__" in place of "squaw" wherever possible in its ruling.

States Board on Geographic Names to render decisions on proposed name changes." (Gov. Code, § 8899.90.)

"Beginning on January 1, 2025, the word 'squaw' shall be removed from all geographic features and place names in the State of California." (Gov. Code, § 8899.93, subd. (b).) Also, "[a] public agency shall no longer replace any sign, interpretive marker, or any other marker or printed material with the discontinued name containing the word 'squaw.'" (Gov. Code, § 8899.93, subd. (a).) "The committee shall create a process to receive and review individual petitions to change offensive or derogatory geographic features and place names, including, but not limited to, geographic features and place names containing the word 'squaw.'" (Gov. Code, § 8899.94, subd. (a)(2).)

Therefore, while the federal government began the process of renaming places with the term "sq__" in their names, the State was the entity that passed AB 2022 and ultimately mandated the name change for Sq__ Valley and other places in California. It is the State that is ultimately responsible for implementing the changes, including choosing a new name and replacing signs, markers, and printed materials with the term "sq__" in all places in California. As a result, the State has failed to show that the County has sued the wrong entity or that this court lacks jurisdiction over the County's claims.

On the other hand, it does appear that the County lacks standing to sue, as it is a political subdivision of the State of California that is not permitted to sue the State for violation of its constitutional rights. "As a general rule, a local governmental entity 'charged with the ministerial duty of enforcing a statute[ ] generally does not have the authority, in the absence of a judicial determination of unconstitutionality, to refuse to enforce the statute on the basis of the [entity's] view that it is unconstitutional.'" (*County of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798, 815, quoting *Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1082.)

"In the absence of state constitutional provisions safeguarding it to them, municipalities have no inherent right of self-government which is beyond the legislative control of the state. A municipality is merely a department of the state, and the state may withhold, grant or withdraw powers and privileges as it sees fit. However great or small its sphere of action, it remains the creature of the state exercising and holding powers and privileges subject to the sovereign will." (*City of Trenton v. State of New Jersey* (1923) 262 U.S. 182, 187, citation and footnote omitted.)

"The power of the state, unrestrained by the contract clause or the Fourteenth Amendment, over the rights and property of cities held and used for 'governmental purposes' cannot be questioned. In *Hunter v. Pittsburgh*, reference is made to the distinction between property owned by municipal corporations in their public and governmental capacity and that owned by them in their private or proprietary capacity, and decisions of this court which mention that distinction are referred to. In none of these cases was any power, right, or property of a city or other political subdivision held to be protected by the Contract Clause or the Fourteenth Amendment. This court has never held that these subdivisions may invoke such restraints upon the power of the state." (*Id.* at p. 188, citation and footnote omitted.)

"A municipal corporation is simply a political subdivision of the state, and exists by virtue of the exercise of the power of the state through its legislative department. The Legislature could at any time terminate the existence of the corporation itself, and provide other and different means for the government of the district comprised within the limits of the former city. The city is the creature of the state." (*City of Worcester v. Worcester Consol. St. Ry. Co.* (1905) 196 U.S. 539, 539; see also *City of Trenton v. State of New Jersey*, *supra*, 262 U.S. at pp. 189–190.)

Thus, political subdivisions like cities and counties usually lack standing to sue the state that created them for violations of constitutional rights. "The term 'standing' in this context refers not to traditional notions of a plaintiff's entitlement to seek judicial resolution of a dispute, but to a narrower, more specific inquiry focused upon the internal political organization of the state: whether counties and municipalities may invoke the federal Constitution to challenge a state law which they are otherwise duty-bound to enforce." (*Star-Kist Foods, Inc. v. County of Los Angeles* (1986) 42 Cal.3d 1, 5–6, footnote omitted.)

"Counties and cities must look to the state Constitution and the Legislature for their creation and delegated powers. Counties are 'merely ... political subdivision[s] of state government, exercising only the powers of the state, granted by the state, created for the purpose of advancing "the policy of the state at large ...." ' Though municipalities may enjoy a greater degree of autonomy with regard to local affairs, they too are subject to the sovereign's right to extend, withdraw or modify the powers delegated." (*Id.* at p. 6, citations omitted.)

"This legislative control over cities and counties is reflected in the well-established rule that subordinate political entities, as 'creatures' of the state, may not challenge state action as violating the entities' rights under the due process or equal protection clauses of the Fourteenth Amendment or under the contract clause of the federal Constitution. 'A municipal corporation, created by a state for the better ordering of government, has no privileges or immunities under the federal constitution which it may invoke in opposition to the will of its creator.' This rule's application beyond Fourteenth Amendment and contract clause challenges remains unsettled." (*Id.* at pp. 6–7, citations omitted.)

However, most courts have declined to read the "no standing" rule as an absolute bar to federal constitutional challenges by political subdivisions. (*Id*. at p. 7.) For example, courts have created exceptions for challenges based on the supremacy clause. (*Id*. at pp. 7-8.) In *Star-Kist*, the California Supreme Court held that challenges by political subdivisions under the commerce clause are also not barred by the "no standing" rule. (*Id*. at pp. 8-10.)

"[U]nder some limited circumstances, a public entity threatened with injury by the allegedly unconstitutional operation of an enactment may have standing to raise the challenge in the courts." (*County of San Diego v. San Diego NORML*, *supra*, 165 Cal.App.4th at p. 816.) "The other courts that have granted standing to local public entities to raise constitutional challenges to enactments they were otherwise bound to enforce have similarly done so in the limited context of enactments that imposed duties directly on or denied significant rights to the entity itself. However, the courts have declined to confer standing on the entity to raise constitutional challenges to

enactments that had no direct impact on the entity but instead affected only the entity's constituency." *(Id.* at p. 817, citations omitted.) Thus, in *County of San Diego v. San Diego NORML*, *supra*, the Court of Appeal found that the County only had standing to challenge the portions of the Medical Marijuana Program that imposed obligations on the counties under the theory that the law violated federal preemption. (*Id*. at p. 818.)

On the other hand, in *Native American Heritage Com. v. Board of Trustees* (1996) 51 Cal.App.4th 675, the Court of Appeal held that the "no standing" rule barred an attempted challenge by a California State University Long Beach, a state entity, to the authority of another state agency, the California Native American Heritage Commission, to seek an injunction to prevent harm to Native American sites of religious worship, which CSULB claimed violated the establishment clause of the First Amendment. "Plaintiffs appeal, arguing, among other things, that CSULB, as a state agency, lacks standing to assert such personal constitutional protections to challenge actions by another state agency regarding use of public resources. We agree with plaintiffs and reverse the judgment." (*Id.* at p. 678.)

The Court of Appeal examined the "no standing" rule and its exceptions, and found that none of the exceptions applied. "CSULB does not seriously dispute that, as a general rule, state agencies may not raise constitutional challenges to actions by other state agencies. While such standing has been conferred to vindicate structural rights, such as commerce clause and federalism disputes between state and federal governments, the general rule applies where, as here, the right is a first amendment right designed to protect individuals from government encroachment. In fact, California Constitution, article III, section 3.5, subdivision (a), prohibits an administrative agency from 'declar[ing] a statute unenforceable, or refus[ing] to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made [such] a determination ....'" (*Id.* at p. 683, citation omitted.)

The Court of Appeal also noted that, "[w]hile CSULB argues that its students are unable to litigate their First Amendment rights, they provide no explanation why this is so. The mere fact that litigation may be costly does not itself prevent such litigation. Many individual students challenge government actions on First Amendment grounds in reported cases, perhaps due to the willingness of organizations to do so pro bono. Moreover, CSULB students presumably are members of a student association, funded by fees, and the association thus could assert these rights. Indeed, the association appeared at the NAHC hearings and supported plaintiffs', not CSULB's, position. Thus, in this case, there is no bar to students asserting their constitutional challenges." (*Id.* at pp. 684–685.)

"We think this case falls within the general rule. The rights forwarded by CSULB are personal rights designed to protect individuals from governmental violations of their constitutional rights. They are not designed to be used as leverage by one state agency in a dispute with another agency about the appropriate use of state-owned land. Nothing prevents students, abutting property owners, or taxpayers from raising these challenges. This is not a situation where one agency's acts are so outrageous (e.g., the NAHC is not seeking to use the land to establish a concentration camp for political dissidents or minority groups) that the affected individuals would be too cowed to assert their rights." (*Id.* at p. 686.)

Thus, in general, while political subdivisions may assert violations of the supremacy clause, they do not have standing to assert constitutional violations of individual rights, which can only be asserted by private persons not government entities. "Other constitutional provisions, unlike the Supremacy Clause, do confer fundamental rights on individual citizens. The Fourteenth Amendment, for example, guarantees that all citizens enjoy equal protection of the laws and due process of law. These are not structural limitations on government power in the Supremacy Clause sense, but they are rights given to individual citizens which limit governmental power generally. Such rights accrue to individual citizens, not to units of government. Consequently, political subdivisions have no legitimate basis for asserting constitutional rights which are intended to limit governmental action vis-a-vis individual citizens." (*San Diego Unified Port Dist. v. Gianturco* (S.D. Cal. 1978) 457 F.Supp. 283, 290.)

However, some courts have permitted a political subdivision to bring a constitutional claim on behalf of its residents where the claim of the subdivision is a practical means of asserting the individual rights of its citizens. In *Sanchez v. City of Modesto* (2006) 145 Cal.App.4th 660, 674, the Fifth District Court of Appeal found that the City of Modesto had standing to assert an alleged violation of the equal protection clause on behalf of its residents under a limited exception to the "no standing" rule. The *Sanchez* court noted that, under *Singleton v. Wulff* (1976) 428 U.S. 106, "constitutional rights usually must be asserted by the person to whom they belong, but that a litigant may assert them on behalf of a third party under exceptional circumstances. In addition to the requirement that the litigant must sustain an injury of its own, two factual elements are relevant in determining whether the litigant should be allowed to assert a third party's rights. One tests whether the litigant and third party are related closely enough to ensure that the litigant's interest in asserting the right is genuine and its advocacy will be effective: [¶] 'The first [element] is the relationship of the litigant to the person whose right he seeks to assert. If the enjoyment of the right is inextricably bound up with the activity the litigant wishes to pursue, the court at least can be sure that its construction of the right is not unnecessary in the sense that the right's enjoyment will be unaffected by the outcome of the suit. Furthermore, the relationship between the litigant and the third party may be such that the former is fully, or very nearly, as effective a proponent of the right as the latter.' " (*Id.* at p. 675, quoting *Singleton v. Wulff*, *supra*, 428 U.S. at pp. 114-115.)

"The second element concerns the reasons why the third party is not asserting or cannot assert the right in question for itself: [¶] 'The other factual element to which the Court has looked is the ability of the third party to assert his own right. Even where the relationship is close, the reasons for requiring persons to assert their own rights will generally still apply. If there is some genuine obstacle to such assertion, however, the third party's absence from court loses its tendency to suggest that his right is not truly at stake, or truly important to him, and the party who is in court becomes by default the right's best available proponent.' " (*Sanchez, supra,* at p. 675, quoting *Singleton v. Wulff*, *supra*, at pp. 115-116.)

"We believe these courts have reasoned correctly in establishing an exception to the no-standing rule for those situations in which the usual standards for third-party standing are satisfied.… Although a local government has no equal protection rights of

its own to assert against the state, there is no reason why it cannot act as a mouthpiece for its citizens, who unquestionably have those rights, where the third-party-standing doctrine would allow it… [¶] The point of the no-standing rule is to prevent local governments, whether as plaintiffs or defendants, from using certain provisions of the federal Constitution to obtain invalidation of laws passed by their creator, the state. This notion has no application where the truly interested parties - citizens or constituents of the local government entity - undisputedly do have standing and the entity merely asserts rights on their behalf." (*Sanchez, supra,* at p. 676.) Thus, the Court of Appeal in Sanchez permitted the City of Modesto to sue on behalf of its citizens under the third-party standing exception to the general "no standing" rule.

In the present case, it is somewhat unclear which constitutional provisions the County is alleging that the State violated by mandating the name change. The first cause of action only vaguely refers to AB 2022 being "unconstitutional" and "unlawful" on its face and as applied, without explaining which constitutional provisions, amendments, or statutes AB 2022 violates. The second cause of action clarifies that AB 2022 violates the First Amendment rights of the residents of Sq__ Valley by forcing them to adopt a different name. Thus, the first and second causes of action appear to be duplicative of each other, as they are both apparently based on the same alleged violation of the First Amendment and they both seek the same relief. In any event, as discussed above, a subordinate political subdivision like a county generally lacks standing to bring a claim for violation of personal constitutional rights like First Amendment violations against the State that created it. Therefore, the County's claim is barred for lack of standing unless an exception to the "no standing" rule applies.

The County contends that it also has standing to sue the State under the third-party exception to the "no standing" rule, as it is bringing suit on behalf of the residents and business owners of Sq__ Valley, who have a strong interest in preserving the name of their community and not incurring the trouble and expense of changing the name to another name that they do not wish to adopt. The County claims that the name change violates the First Amendment rights of the residents of Sq__ Valley, who are being forced to use a name that they did not approve and do not wish to use.

It does appear that the County has met the first prong of the third-party standing exception, as it has a direct interest in asserting the rights of its citizens whose First Amendment rights are being affected by the name change, as well as having an interest in avoiding the cost and difficulty of replacing signs, markers, and printed materials that contain the word "Sq__" with another name. The County's interests here are inextricably intertwined with the interests of the residents of Sq__ Valley, who also would have to change their addresses and personal documentation to match the new name, as well as having to use that name for their community even though they do not wish to do so.

On the other hand, the County has not currently alleged any facts showing that the residents and business owners of Sq__ Valley cannot bring suit on their own behalf, or that there are any significant obstacles to their ability to sue the State to protect their own rights. While the County does not have to show that it would be impossible for the residents of Sq__ Valley to bring suit against the State, it does have to show that there is some substantial obstacle that would make it difficult for them to do so. (*Sanchez, supra*, at pp. 675-677.) Here, the County has not made any allegations that would tend to show

that the residents of Sq__ Valley face any substantial difficulties in bringing suit against the State. Therefore, the County has not shown that the third-party exception to the "no standing" rule applies here, and the court intends to sustain the demurrer to the entire First Amended Complaint for lack of standing to sue. However, the court will sustain the demurrer with leave to amend, as it is possible that the County might be able to allege additional facts showing that the residents of Sq__ Valley face substantial obstacles in bringing their own suit against the State.

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 10/30/2023.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re:	***Deena Lee v. Soljomar Rushdan*** Superior Court Case No. 23CECG00977
Hearing Date:	November 2, 2023 (Dept. 501)
Motion:	1) Defendants Soljomar and Cassandra Rushdan's Demurrer to the Complaint; 2) Defendant Casol Enterprises LLC's Demurrer to the Complaint

Tentative Ruling:

To overrule both demurrers. Defendants are granted 10 days' leave to file their Answer(s) to the Complaint. The time in which the Answer(s) can be filed will run from service by the clerk of the minute order.

Explanation:

The function of a demurrer is to test the sufficiency of a plaintiff's pleading by raising questions of law. (*Plumlee v. Poag* (1984) 150 Cal.App.3d 541, 545.) The test is whether plaintiff has succeeded in stating a cause of action; the court does not concern itself with the issue of plaintiff's possible difficulty or inability in proving the allegations of his complaint. (*Highlanders, Inc. v. Olsan* (1978) 77 Cal.App.3d 690, 697.) In assessing the sufficiency of the complaint against the demurrer, we treat the demurrer as admitting all material facts properly pleaded, bearing in mind the appellate courts' well established policy of liberality in reviewing a demurrer sustained without leave to amend, liberally construing the allegations with a view to attaining substantial justice among the parties. (*Glaire v. LaLanne-Paris Health Spa, Inc*. (1974) 12 Cal.3d 915, 918.)

In ruling on a demurrer, the court can consider only matters that appear on the face of the complaint or matters outside the pleading that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) No other extrinsic evidence can be considered. (*Ion Equipment Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 881.) Defendant requests the court take judicial notice of the complaint filed by plaintiff, which includes an unsigned copy of the first lease. Typically, the court accepts as true facts which appear in the exhibits attached to the complaint. (*Holland v. Morse Diesel Intern., Inc*. (2001) 86 Cal.App.4th 1443, 1446.) If the facts in the exhibits contradict the facts in the complaint, the facts stated in the exhibits take precedence. (*Ibid*.)

The Rushdans request the court sustain their demurrer to the first seven causes of action because they should not be considered landlords based on the terms of the lease. The unsigned copy of the original lease does label Casol Enterprises as the landlord. Plaintiffs have alleged a belief that all defendants were plaintiffs' landlords and have alleged that all defendants owned and managed the property. (Complaint, ¶¶ 3-4 and 10.) Plaintiffs also allege an agency relationship between the defendants. (Complaint, ¶ 7.) Civil Code section 1980 defines a landlord as "any operator, keeper, lessor, or

sublessor of any furnished or unfurnished premises for hire, or his or her agent or successor in interest." Here, defendants ask the court to assess the merits of plaintiffs' claims relying on *Inglis v. Garland* (1936) 19 Cal.App.2d Supp. 767, 773 for the general assertion that a lease is a private contract between the lessor and lessee. This is insufficient to establish that plaintiffs have failed to allege the causes of action which involve a landlord. While the attached lease on its face does label Casol Enterprises as the landlord, plaintiffs have alleged that the Rushdans were also the owners and managers of the property and alleged an agency relationship between Casol Enterprises and the Rushdans. Additionally, while the lease is an unsigned copy, the intended signatory for Casol Enterprises is Cassandra Rushdan. Defendants general assertion that a lease is a private contract between the lessee and lessor is insufficient to warrant the court finding the plaintiffs have failed to allege their first seven causes of action. The court overrules the Rushdans' demurrer to the first through seventh causes of action.

All defendants request the court sustain their demurrers as to the eighth cause of action for negligent misrepresentation. To plead negligent misrepresentation, plaintiffs must allege 1) an assertion of fact, 2) falsity of that assertion, 3) the representation was made with a lack of reasonable grounds for believing it be true, 4) the representation was made with the intent to induce plaintiffs' reliance, 5) plaintiffs were unaware of the falsity and justifiably relied on the truth of the representation, and 6) sustained damages as a result of that reliance. (*SI 59 LLC v. Variel Warner Ventures, LLC* (2018) 29 Cal.App.5th 146, 154.) Implied assertions are insufficient. (*Ibid*.) Negligent misrepresentation must be alleged with sufficient particularity, addressing how, when, where, to whom, and by what means the representations were made. (*Id*. at p. 155.)

Defendants assert that plaintiffs have not sufficiently alleged how the alleged misrepresentation harmed them. They argue that without an understanding of the changes to the lease, other than being month-to-month, there is no way to understand how the alleged misrepresentation harmed plaintiffs. Plaintiffs allege that the changes in the lease included clauses and policies which protected defendants from remedying issues at the property. (Complaint, ¶ 12.) While the second lease is not presented, its general effect is—protections that resulted in defendants not remedying problems with the property. The court overrules both demurrers as to the eighth cause of action.

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 10/31/2023.
(Judge's initials) (Date)

(03)

Tentative Ruling

Re: ***Gatica v. Valley Ag, Inc.***
Superior Court Case No. 19CECG03018

Hearing Date: November 2, 2023 (Dept. 501)

Motion: by Plaintiff for Class Certification

Tentative Ruling:

To grant plaintiff's motion for class certification.

Explanation:

Standards for Class Certification: "Class certification requires proof (1) of a sufficiently numerous, ascertainable class, (2) of a well-defined community of interest, and (3) that certification will provide substantial benefits to litigants and the courts, i.e., that proceeding as a class is superior to other methods. In turn, the community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*In re Tobacco II Cases* (2009) 46 Cal. 4th 298, 313.)

California case law requires that substantial evidence underlie a decision to certify. (*Richmond v. Dart Industries, Inc*. (1981) 29 Cal. 3d 462, 470.) "In particular, we must consider whether the record contains substantial evidence to support the trial court's predominance finding, as a certification ruling not supported by substantial evidence cannot stand." (*Lockhead Martin Corp. v. Superior Court* (2003) 29 Cal. 4th 1096, 1106.)

Plaintiff's Proposed Classes: In the present case, plaintiff seeks to certify four different sub-classes, which cover claims for unpaid rest periods, unpaid meal periods, wage statement violations, and waiting time penalties.

More specifically, the unpaid rest period class would cover all current and former non-exempt employees of Valley Ag who performed work on fields owned and/or operated by Valley Garlic in California and: (i) were paid on a piece-rate basis; and (ii) worked in excess of 3.5 hours on a single work day, during the time period August 20, 2015 through the present. Plaintiff alleges that defendants failed to pay its piece-rate employees who worked over 3.5 hours a day for rest breaks as required under Labor Code section 226.2.

The meal period class would cover all current and former non-exempt employees of Valley Ag who performed work on fields owned and/or operated by Valley Garlic in California and who: (i) worked at least one shift in excess of 5.0 hours without receiving a lawful first meal period; or (ii) worked at least one shift in excess of 10.0 hours without receiving a lawful second meal period; and (iii) were not paid an additional hour of meal

period premium pay at their regular rate of compensation for the meal period violation, during the time period August 20, 2015 through the present. Plaintiff alleges that defendants failed to provide meal periods for employees who worked over five hours in one shift, and failed to provide a second meal break to employees who worked over ten hours.

The proposed wage statement class would cover all current and former non-exempt employees of Valley Ag who performed work on fields owned and/or operated by Valley Garlic in California and received at least one wage statement from Valley Ag at any time from August 20, 2018 through the present. Plaintiff alleges that defendants failed to provide accurate wage statements that stated the name and address of Valley Garlic, which was a co-employer, as well as failing to accurately list all hours worked and wages earned, including for rest breaks.

Finally, the waiting time penalty class would cover all members of the Unpaid Rest Period Class and/or Meal Period Class, who separated their employment from Valley Ag at any time from August 20, 2016 through the present.

Numerosity and Ascertainability: "Ascertainability is achieved by defining the class in terms of objective characteristics and common transactional facts making the ultimate identification of class members possible." (*Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 918, internal quotations omitted; *Nicodemus v. St. Francis Mem. Hosp.* (2016) 3 Cal.App.5th 1200, 1212.)

"A class definition framed in objective terms that make the identification of class members possible promotes due process in at least two ways. Such phrasing puts members of the class on notice that their rights may be adjudicated in the proceeding, so they must decide whether to intervene, opt out, or do nothing and live with the consequences. This kind of class definition also advances due process by supplying a concrete basis for determining who will and will not be bound by (or benefit from) any judgment. Allowing a class to be defined in vague terms, by contrast, could blunt any invocation of res judicata by the defendant in subsequent lawsuits brought by persons attempting to relitigate issues decided in the earlier class proceeding. The outcome might resemble that which obtains when the 'one-way intervention' condemned by our decision in *Fireside Bank v. Superior Court* occurs — the defendant could be unfairly exposed to a succession of essentially duplicative class lawsuits." (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 980–981, citations omitted.)

There is no set number of class members needed to satisfy the numerosity requirement. "To be certified, a class must be 'numerous' in size such that 'it is impracticable to bring them all before the court.' (Code of Civ. Proc., § 382.) 'The requirement of Code of Civil Procedure section 382 that there be 'many' parties to a class action suit is indefinite and has been construed liberally.... No set number is required as a matter of law for the maintenance of a class action. [Citation.] Thus, our Supreme Court has upheld a class representing the 10 beneficiaries of a trust in an action for removal of the trustees.' [¶] 'The ultimate issue in evaluating this factor is whether the class is too large to make joinder practicable....'" (*Hendershot v. Ready to Roll Transportation, Inc.* (2014) 228 Cal.App.4th 1213, 1222, citations omitted.)

Here, plaintiff claims that the putative classes have approximately 9,600 to over 14,000 members, which is sufficiently large to meet the numerosity requirement. The class is also ascertainable based on a review of defendants' personnel records, which should show whether employees were paid on a piece-rate basis and whether they received rest and meal breaks. The payroll records should also show on their face whether or not they contain the information required by the Labor Code to identify all employers. Therefore, plaintiff has satisfied the numerosity and ascertainability requirements.

Defendants argue in opposition that the proposed classes are not ascertainable because the court would have to engage in a lengthy and complicated analysis of the records in order to determine whether the employees fall within the classes. However, it appears that the payroll statements and other documents will show on their faces whether the employees fall within the classes, since they will show whether they were paid on a piece-rate basis, whether they worked over 3.5 hours and received rest break pay, whether they worked over 5 hours and received a meal break, etc. Therefore, the proposed classes are ascertainable.

Defendants also contend that the proposed classes are not sufficiently numerous, since defendants paid many of their workers at an hourly rate or by salary rather than by piece-rate, and plaintiff has not shown how many piece-rate workers were not given timely meal or rest breaks or paid for missed breaks. However, plaintiff's evidence indicates that she and other workers on her crew were not given meal breaks within five hours of the start of their shifts, and that they did not receive pay for rest breaks. (Gatica decl., ¶ 3; Exhibit B to Manock decl., Gatica depo., p. 20:1-9.) Her crew alone was about 35 to 40 people. (*Gatica depo*., p. 20:1-9.) Defendants also admit that they employed many other people who worked in the fields picking garlic for Valley Garlic during the class period. (Chavez decl., ¶ 3.) Therefore, it appears that there were at least 35 to 40 people who would fall into the proposed classes, and potentially over 14,000. As a result, plaintiff has shown that the proposed classes are sufficiently numerous to make it impractical to try their claims individually.

Community of Interest: "[T]he community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*In re Tobacco II Cases* (2009) 46 Cal. 4th 298, 313.) "The focus of the typicality requirement entails inquiry as to whether the plaintiff's individual circumstances are markedly different or whether the legal theory upon which the claims are based differ from that upon which the claims of the other class members will be based." (*Classen v. Weller* (1983) 145 Cal. App. 3d 27, 46.)

Here, plaintiff has submitted evidence indicating that common issues of law and fact predominate over individual issues. Plaintiff alleges that she and other piece-rate workers suffered the same types of alleged Labor Code violations, including not being paid for rest breaks and not receiving meal breaks in a timely manner, as well as not receiving timely and accurate wage statements. (Gatica decl., ¶ 3.) While defendants contend that plaintiff has not shown that anyone other than herself suffered a rest break or meal break violation, plaintiff testified that she and the other members of her crew were not allowed to take meal breaks within five hours of starting their shifts. (Exhibit B to Manock decl., Gatica depo., pp. 40:1-4; 61:18-62:2; 66:19-24 [testifying her shift would

start at 4 a.m. and the food trucks did not arrive until between 9:30 and 10 a.m. The foreperson would not allow workers to take a meal break until the food trucks arrived.]) Defendants claim that plaintiff was unsure if any other workers were told that they could not take lunch until the food trucks arrived, as the foreperson only told her personally not to take a rest or a meal break before the trucks arrived. However, she has stated in her declaration that the foreman would only allow the crew to take a meal break when the food truck arrived. (Gatica decl., ¶ 3.) Therefore, plaintiff has presented sufficient evidence to show that she and the rest of her crew suffered a violation of their right to take a meal break within five hours of starting their shift, which is sufficient to establish that she has a common claim with the other proposed class members.

Likewise, plaintiff has presented substantial evidence to show that she and other proposed class members suffered rest break violations. Plaintiff and the other members of her crew were paid on a piece-rate basis. (Gatica decl., ¶ 3.) As a piece-rate worker, plaintiff and the other employees were entitled to compensation for rest breaks. (Labor Code, § 226.7, subd. (a)(3)(A).) The payroll records would indicate whether plaintiff received any rest break pay. (Ontiveros depo., pp. 47:22 – 48:6.) However, defendants' payroll records do not show that plaintiff was paid anything for her rest breaks on some weeks. (DuMond Report, pp. 6-8.) Other piece-rate employees were also allegedly not paid for their rest breaks during the class period, as their pay statements do not indicate any code for rest break payments. (Moen decl., Exhibit 8.) Therefore, plaintiff has shown that she has common rest break claims with multiple other proposed class members, and she has met the community of interest requirement with regard to the proposed rest break class.

Also, to the extent that defendants have argued that plaintiff has not established that they had a uniform policy or practice that was applied illegally, she is not required to do so in order to meet the standards for certification. "Nor was the court correct to require, at the certification stage, that plaintiffs demonstrate a 'universal practice' on the part of management to deny nursing staff the benefit of the Hospital's written break policy. The trial court failed to analyze the proper question - whether plaintiffs had articulated a theory susceptible to common resolution." (*Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal.App.4th 388, 407, footnote and citations omitted.) Here, plaintiff has articulated a theory that is amenable to class treatment, as she has presented evidence that defendants failed to pay multiple piece-rate employees for rest breaks on multiple occasions. Plaintiff alleges that she was not paid for rest breaks, despite being entitled to payment. Therefore, she has satisfied the community of interest requirement with regard to the proposed rest break class.

With regard to the proposed wage statement class, defendants have argued that, since plaintiff has not met her burden of showing that the meal and rest break claims are suitable for certification, the wage statement claim should not be certified either. However, as discussed above, plaintiff has presented substantial evidence to support certification of the meal and rest break classes, so there is also substantial evidence to support the wage statement class. Also, plaintiff has presented evidence that the defendants' wage statements were deficient under Labor Code sections 226(a) and 226.2(a)(2), because they did not include the names and addresses of all employers. Defects on the face of the wage statement are generally enough to establish an injury for the purposes of a class action based on the inaccurate wage statements. (*Jaimez v.*

Daihos USA, Inc. (2010) 181 Cal.App.4th 1286, 1306-1307.) "The fact that individualized proof of damages may ultimately be necessary does not mean, however, that Jaimez's theory of recovery is not amenable to class treatment. A common legal issue predominates the claim, and it makes no sense to resolve it in a piecemeal fashion." (*Id.* at p. 1307.)

Likewise, here plaintiff has presented evidence tending to show that the wage statements for all piece-rate workers were inaccurate, which supports her motion to certify the wage statement class by showing that there are common legal issues between the class members. Injury is also presumed whenever there are defects in the wage statements. (Labor Code, § 226, subd. (e)(1)(B).) It should be relatively easy to determine whether a class member has a valid claim or not by reference to their wage statements, as they will either contain the required information, or they will not. Therefore, common issues predominate in the wage statement claims over individualized issues of proof.

Likewise, the claims based on inaccuracies in the wage statements due to the alleged failure to include meal and rest break payments are also best suited to class determination. "Because plaintiffs' meal and rest period claims are suitable for class treatment, their theory that the wage statements failed to include premium wages earned for missed meal and rest periods also is suitable for class treatment." (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 960.)

Plaintiff has also shown that the waiting time penalty class is suitable for class certification as well. As discussed above, the meal and rest break claims are suitable for class certification. Since the waiting time class is derivative of the meal and rest break claims, the waiting time class should also be certified. "To the extent these claims [including waiting time penalties] were based on plaintiffs' overtime and/or meal and rest break claims, the court should have granted class certification on these claims." (*Bradley v. Networkers Internat., LLC* (2012) 211 Cal.App.4th 1129, 1156.)

Typicality of Plaintiff's Claims: Plaintiff has shown that her claims are typical of the proposed class members. Just like the other class members, she was a non-exempt piece-rate employee who allegedly suffered violations of her right to meal breaks within five hours of starting her shift, rest break payments, and accurate wage statements. Therefore, her claims are similar to the other proposed class members and the typicality requirement has been met.

Adequacy of Representation: Plaintiff and her counsel have presented substantial evidence showing that they are competent and qualified to represent the interests of the proposed class members here. (Gatica decl., ¶ 5; Moen decl., ¶¶ 2-7, Haines decl., ¶¶ 2-9, Schmidt decl., ¶¶ 2-7.) Plaintiff has raised similar claims to the other class members, and she denies having any conflicts of interest with the rest of the class. Class counsel are also highly experienced in class actions and there is no indication that they cannot vigorously and competently represent the interests of the class members. Therefore, the adequacy requirement has been satisfied.

Superiority of Class Certification: The court must finally address the question of "whether substantial benefits would accrue to both the litigants and the courts from class

treatment." (*Reese v. Wal-Mart Stores, Inc.* (1999) 73 Cal.App.4th 1225, 1229, citation omitted.) Plaintiff has shown that class treatment would be beneficial to the parties and the court, as plaintiff has raised wage and hour claims that would be difficult and expensive for employees to litigate on an individual basis. Such wage and hour claims are commonly brought as class actions due to the expense and impracticality of bringing individual claims. Also, a class action would avoid the risk of having multiple actions filed against the defendants, with the possibility of inconsistent rulings and judgments. Allowing the class action to proceed would also allow plaintiff to vindicate the social policies under the Labor Code, including the right to rest break pay, timely meal breaks, and accurate wage statements. Therefore, the court intends to find that allowing the action to proceed as a class action would be superior to forcing the employees to bring individual claims.

Plaintiff's Trial Plan: Plaintiff has also submitted a trial plan, as required under *Duran v. U.S. Bank N.A.* (2014) 59 Cal.4th 1, 29. Plaintiff's trial plan appears to be reasonable and shows that her claims can be tried based largely on wage statements, payroll records, and PMK witness testimony. The issues of the case are fairly narrow and manageable, so trial should not be overly complex or time-consuming. Therefore, the court intends to find that the class action appears to be manageable for trial.

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 11/1/2023.
(Judge's initials) (Date)