Tentative Rulings for December 10, 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.***

24CECG01346 ***Michael Hamp v. Eric Bush***

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

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Tentative Rulings for Department 503

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Tentative Ruling

Re: ***Llamas v. Little League International, et al.***
Superior Court Case No. 24CECG01701

Hearing Date: December 10, 2024 (Dept. 503)

Motion: by Plaintiff for Trial Preference

Tentative Ruling:

To deny without prejudice. (Code Civ. Proc., § 36.)

Explanation:

Plaintiff moves for trial preference pursuant to Code of Civil Procedure section 36, subdivisions (a) and (e).

Plaintiff Alice Llamas indicates that she is 77 years old. Given her age, subdivision (a) might apply, but it requires a showing that the "health of the party is such that a preference is necessary to prevent prejudicing the party's interest in the litigation." (Code Civ. Proc., § 36, subd. (a)(2).)

Plaintiff provides that she fractured her femur as a result of a trip and fall that is the subject of this action. The fracture required surgical repair in April 2022. She also underwent heart bypass surgery in July 2022, and then spinal surgery in October 2024. She indicates that she is currently still recovering from the spinal surgery. Further, that her mobility is limited as she is unable to walk for more than a few minutes and without a cane or walker. For any further walking distances, she requires the assistance of a wheelchair. Her energy level is limited and she also cannot drive, as sitting in the car causes her hip pain, as she also previously sustained a hip fracture. (Llamas Decl., ¶ 5.) Plaintiff's counsel further provides in a declaration in support of the reply, that plaintiff's ability to stand is limited to 5-6 minutes and her ability to sit comfortably is limited to 20-25 minutes. (Stamper Decl., filed on December 02, 2024, ¶ 3.) Counsel indicates that plaintiff takes aspirin and prescription medication for pain, high blood pressure, thyroid on a daily basis. (*Id*., ¶ 4.)

However, it is not clear how plaintiff's mobility or other conditions support a finding that preference is "*necessary to prevent prejudicing*" plaintiff's interest in the litigation. Plaintiff has not shown that her conditions are life threatening or otherwise would prohibit her attendance at trial. Nor is there any showing as to why it is necessary or preferable to have trial shortly after plaintiff's very recent spinal surgery in October. It would seem more preferable for plaintiff to have some recovery time before trial, instead of jumping into trial shortly after surgery.

Nor is there a sufficient showing that plaintiff's condition warrants discretionary grant of trial preference pursuant to subdivision (e), which provides:

> Notwithstanding any other provision of law, the court may in its discretion grant a motion for preference that is supported by a showing that satisfies the court that the interests of justice will be served by granting this preference.

(Code Civ. Proc., § 36, subd. (e).)

The motion must be supported by declaration showing good cause to grant the motion. (Weil & Brown, *Cal. Practice Guide: Civil Procedure Before Trial* (TRG 2020) at § 12:272; Cal. Rules of Court, Rule 3.1335(b).) There is no showing of good cause here, since plaintiff has not established that her health or medical conditions warrant or require granting preference in trial setting.

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 12/9/24.
(Judge's initials) (Date)

(27)

Tentative Ruling

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

Hearing Date: December 10, 2024 (Dept. 503)

Motion(s): (1) Plaintiff's Demurrer to the Second Amended Answer of Defendants Westcare California, Inc. and Westcare Foundation, Inc.

(2) Plaintiff's Motion for Leave to File a First Amended Complaint

Tentative Ruling:

To overrule the demurrer to defendants' answer.

To grant the motion for leave to file a first amended complaint. The proposed amended complaint shall be filed within ten (10) days from the date of this order.

Explanation:

Demurrer to Answer

"A party against whom an answer has been filed may object, by demurrer as provided in Section 430.30, to the answer upon any one or more of the following grounds: (a) The answer does not state facts sufficient to constitute a defense (b) The answer is uncertain. As used in this subdivision, 'uncertain' includes ambiguous and unintelligible." (Code Civ. Proc., § 430.20, subd. (a), (b), paragraph breaks omitted.)

"Generally speaking, the determination whether an answer states a defense is governed by the same principles which are applicable in determining if a complaint states a cause of action." (*South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 732, internal citations omitted.) In determining the sufficiency of a complaint, the court is guided by well-established principles that the test is whether the pleader has succeeded in stating a cause of action - the court does not concern itself with the issue of pleader's possible difficulty or inability in proving the allegations of their complaint. (*Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 572; *Highlanders, Inc. v. Olsan* (1978) 77 Cal.App.3d 690, 697.) In essence, the court is guided by the principle that "[a] pleading is adequate so long as it apprises the defendant of the factual basis for the plaintiff's claim." (*McKell v. Washington Mut., Inc*. (2006) 142 Cal.App.4th 1457, 1469-1470, internal citations omitted.)

In addition, "[i]t has been consistently held that 'a plaintiff is required only to set forth the essential facts of his case with reasonable precision and with particularity sufficient to acquaint a defendant with the nature, source and extent of his cause of action. If there is any reasonable possibility that the plaintiff can state a good cause of

action, it is error to sustain a demurrer without leave to amend.' ... 'The particularity required in pleading facts depends on the extent to which the defendant in fairness needs detailed information that can be conveniently provided by the plaintiff; less particularity is required where the defendant may be assumed to have knowledge of the facts equal to that possessed by the plaintiff.' ... There is no need to require specificity in the pleadings because 'modern discovery procedures necessarily affect the amount of detail that should be required in a pleading.'" (*Doheny Park Terrace Homeowners Ass'n, Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099, internal citations omitted.) In other words, it is improper to allege affirmative defenses based on legal conclusions and facts supporting the asserted affirmative defenses must be alleged with as much detail as the facts supporting a cause of action. (*FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384.)

Also, a defendant is only required to plead facts to support true affirmative defenses. Where the defendant's defense amounts to only a denial or traverse of the plaintiff's causes of action, the defendant does not have to allege any additional facts beyond the facts already alleged in the complaint. "The phrase 'new matter' refers to something relied on by a defendant which is not put in issue by the plaintiff. [Citation.] Thus, where matters are not responsive to essential allegations of the complaint, they must be raised in the answer as 'new matter.' [Citation.] Where, however, the answer sets forth facts showing some essential allegation of the complaint is not true, such facts are not 'new matter,' but only a traverse." (*State Farm Mutual Auto. Ins. Co. v. Superior Court* (1991) 228 Cal.App.3d 721, 725.) "A defense which demonstrates that plaintiff has not met its burden of proof is not an affirmative defense. [Defendant's] attempt to prove that it provided a reasonable accommodation merely negates an element that [plaintiff] was required to prove and therefore was not an affirmative defense required to be pled in [defendant's] answer." (*Zivkovic v. Southern California Edison Co.* (9th Cir. 2002) 302 F.3d 1080, 1088, citations omitted.)

Plaintiff demurs to the first affirmative defense set forth in defendants' answer (Not. of Dem., at p. 2:8), however, that affirmative defense is based on legal theories premised on facts already alleged in plaintiff's complaint – it does not require defendants to allege "new matter" for support. Instead, it is a denial or traverse to the complaint, which does not require any new facts to be alleged. Furthermore, to the extent additional facts could be considered necessary, the amended answer provides additional facts alleging the perpetrator had been released from federal custody. (Sec. Amended Ans. ¶ 2.) Finally, the robust and thoughtful discussion in plaintiff's moving and reply papers indicate the degree to which plaintiff is aware of the legal authorities surrounding the subject affirmative defense. In other words, the subject affirmative defense does not comport with plaintiff's characterization of it as "knee-jerk and boilerplate." (Points & Auth. at p. 4:11.)

Therefore, the demurrer is overruled.

Motion for Leave to Amend

There is a strong policy in favor of amendment to allow resolution of similarly arising disputed matters within the same lawsuit. (*Glaser v. Meyers* (1982) 137 Cal.App.3d 770, 776-777; *Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939.) Accordingly, even where the

proposed theory is novel, the preferred practice is still to permit amendment and allow the amended pleadings to be tested in other appropriate proceedings, i.e. demurrer, judgment on the pleadings, etc. (*Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048; see also *College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 719 fn. 5.)

Plaintiff's proposed First Amended Complaint adds several causes of action, but each appears premised on the same dispute as described in the original complaint. Consequently, permitting amendment would appear to capture all the parties' claims and thus is consistent with principles of judicial economy. Furthermore, defendants have not appeared to have filed an opposition and thus do not assert any specific prejudice resulting from amendment - and even delay in bringing a motion to amend is usually not grounds for its denial unless a party has been prejudiced thereby. (*Kittredge Sports Co. v. Superior Court, supra,* 213 Cal.App.3d at p. 1048.) Finally, plaintiff has provided the proposed pleading and a declaration addressing the information required under rule 3.1324 of the California Rules of Court. Therefore, the motion is granted.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: jyh on 12/9/24.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Brown v. Dhaliwal, et al.***
Superior Court Case No. 23CECG00720

Hearing Date: December 10, 2024 (Dept. 503)

Motion: Petitions to Compromise Minors' Claims

Tentative Ruling:

To deny, without prejudice, the petitions to approve the compromised claims of minors Rayna Brown and Raylene Brown. Petitioner must file a second amended petition, with appropriate supporting papers and proposed orders for each minor plaintiff. (Super. Ct. Fresno County, Local Rules, rule 2.8.4.)

Explanation:

The petitions submitted by petitioner and guardian ad litem Marybel Lopez seek approval of settlements of personal injury claims of minor plaintiffs Rayna Brown and Raylene Brown against defendant Sarvjit Dhaliwal. There are several issues shared by the petitions that prevent approval of the settlements.

The petitions at Item 8 indicates each minors' injuries identified in the petition have resolved completely. The medical records attached with each petition do not reflect that either minors' injuries have resolved. The last medical report for Rayna Brown is from her chiropractor on October 27, 2022 and indicates she is being released from treatment with residual headaches necessitating future medical care. Although Rayna Brown appears to have received additional medical treatment after this date no other reports after this date are provided to support that Rayna Brown's injuries have resolved completely. Similarly, Raylene Brown's last medical report dated October 6, 2023 from Daniel Franc, M.D. Ph.D. indicates she continues to experience headaches and dizziness weekly and also diagnoses the minor with a traumatic brain injury. This diagnosis is not included as an injury at Item 7 of the petition for Raylene Brown. The medical records do not reflect either minors' injuries have resolved.

Item 12b(5) of the petitions indicate all medical treatment providers have agreed to reduce the balances owed for treatment rendered. None of the medical bills included with the petitions reflect these negotiated reductions. Additionally, the records included with the petition reflect treatment from providers not included in Item 12b(5) and attachment 12b(5). There is a bill for $1,400 indicating Rayna Brown received treatment from California Back & Pain Specialists which is not listed. Rayna Brown also has an invoice from 11 Funding, LLC for medical funding in the amount billed by Fresno Imaging Center/North West Imaging which would indicate these bills were paid using this medical funding service. This is not consistent with Item 12b(5) (b)(i) representing that Fresno Imaging Center has agreed to accept a reduced amount for the services provided. Raylene Brown received treatment from Saint Agnes Medical Center that is not included in the summary of medical expenses to be paid from the settlement. In a future

submission, the court will require evidence that each medical treatment provider has agreed to accept the sum represented in the petition at Item 12b(5) and all medical treatment providers are to be included in the petition.

The petitions both request $1,936.27 from the settlement to reimburse costs advanced for the litigation. Each petition includes $369.07 in filing fees for a total of $738.14 in filing fees. This is $303.14 over the single $435 filing fee incurred by plaintiffs reflected in the court's file. Each petition also includes $122.50 for "investigations." In a future submission, the court will require invoices to support the amount of filing fees and "investigations" being paid from the minors' settlements.

Neither petition included proposed orders granting the petitions or orders to deposit the funds. In a future submission, the court requests the proposed orders be submitted on the mandatory Judicial Council forms concurrently with the petitions.

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 12/9/24.
(Judge's initials) (Date)