Tentative Rulings for December 18, 2024
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.***

23CECG00657 ***Rodger Tiffin v. Monsanto Company***
(Please refer to the tentative ruling below, as the appearance requirement only applies to one of the seven applications.)

24CECG02012 ***Lorenzo Garcia v. Bruce Hudson, Jr.*** **(Dept. 501)**

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 begin at the next page)

Tentative Rulings for Department 501

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(46)

Tentative Ruling

Re: ***Rodger Tiffin v. Monsanto Company***
Superior Court Case No. 23CECG00657

Hearing Date: December 18, 2024 (Dept. 501)

Motion: Applications (Seven) to Admit Counsel *Pro Hac Vice*

Tentative Ruling:

To grant the applications of (1) Lee M. Popkin, (2) Claire N. Abrahamson, (3) Eugenio A Duron-Carielo, and (4) David N. Sneed to appear as counsel *pro hac vice* for defendant Monsanto Company. The applicants have satisfied the requirements of California Rules of Court, rule 9.40. No appearances required for these applicants.

To grant the applications of (1) Matthew E. Brown and (2) Ericka L. Downie to appear as counsel *pro hac vice* for defendants Monsanto Company and Pleasant Valley Hardware Corp. d/b/a Coalinga Hardware. The applicants have satisfied the requirements of California Rules of Court, rule 9.40. No appearances required for these applicants.

To require an appearance by Kara M. Flageollet regarding the application of John Michael Kalas, to ensure compliance with California Rules of Court, rule 9.40(d)(5).

Explanation:

"The application must state … [t]he title of each court and cause in which the applicant has filed an application to appear as counsel pro hac vice in this state in the preceding two years, the date of each application, and whether or not it was granted…." (Cal. Rules of Court, rule 9.40(d)(5).)

The application of John Michael Kalas indicates that Mr. Kalas has been admitted as counsel pro hac vice in one other California State Court matter. While Mr. Kalas provides the name of the case and a case number, neither the application nor Mr. Kalas' declaration indicates in which Superior Court the case was/is located, nor the date of application.

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 12/16/2024.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***John Doe v. John Spatafore***
Superior Court Case No. 21CECG03118

Hearing Date: December 18, 2024 (Dept. 501)

Motion: by Defendant Community Hospital of Central California for Summary Adjudication

Tentative Ruling:

To overrule the objections to the declaration of Ricardo Avelar and to grant the motion as it relates to the six issues identified. The prevailing party is directed to submit to this court, within 5 days of service of the minute order, a proposed judgment consistent with the court's summary adjudication ruling.

Explanation:

Summary Adjudication

"A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (Code of Civ. Proc., § 437c subd. (f)(1); see also *Catalano v. Superior Court* (2000) 82 Cal.App.4th 91, 97 [piecemeal adjudication prohibited.].)

In determining a motion for summary judgment or adjudication, "'we view the evidence in the light most favorable to plaintiffs'" and "'liberally construe plaintiffs' evidentiary submissions and strictly scrutinize defendant['s] own evidence, in order to resolve any evidentiary doubts or ambiguities in plaintiffs' favor.'" (*McDonald v. Antelope Valley Community College Dist.* (2008) 45 Cal.4th 88, 96-97, citations omitted.) The court does not weigh evidence or inferences (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 856), nevertheless, "'[w]hen opposition to a motion for summary judgment is based on inferences, those inferences must be reasonably deducible from the evidence, and not such as are derived from speculation, conjecture, imagination, or guesswork.'" (*Waschek v. Department of Motor Vehicles* (1997) 59 Cal.App.4th 640, 647, citation omitted; Code Civ. Proc., § 437c, subd. (c).)

"A defendant bears the burden of persuasion that 'one or more elements of' the 'cause of action' in question 'cannot be established,' or that 'there is a complete defense' thereto (*Aguilar v. Atlantic Richfield Co., supra,* 25 Cal.4th at p. 850.) In particular, for purposes of summary adjudication, "[a] defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action." (Code Civ. Proc., §437c, subd. (p)(1).)

Defendant Community Hospitals of Central California's ("CHCC") motion for summary adjudication is framed around the five causes of action directed against it and the prayer for punitive damages. As set forth below, the motion can be granted, as to the six issues identified, on two different grounds asserted in the motion.[1]

Protection of Individually Identifiable Health Care Information

A health care provider's liability under the Confidentiality of Medical Information Act (CMIA) (Civ. Code, § 56 et seq.) requires the plaintiff prove "that the confidential nature of the plaintiff's medical information was breached as a result of the health care provider's negligence." (*Regents of University of California v. Superior Court* (2013) 220 Cal.App.4th 549, 570.) In addition, liability requires more than indexed identifying information – the released information must link individual identification with medical histories, conditions or treatment. (*Eisenhower Medical Center v. Superior Court* (2014) 226 Cal.App.4th 430, 437 [writ of mandate granted setting aside denial of summary adjudication because released information contained only indexed personal identifying information *without* corresponding medical histories, conditions or treatment.].)

Plaintiffs' operative pleading alleges that it was "confirmed" that defendant John Spatafore ("Spatafore") "improperly shared" plaintiffs protected health information (as that term is defined in Civ. Code, § 56.06, subd. (f)) to "cyber attack and stalk" plaintiffs. (See Second Amended Complaint "SAC" ¶¶ 14, 15.) As it relates to CHCC, the SAC premises liability on its "provid[ing] Spatafore with unrestricted access to [p]laintiffs' confidential medical records and information, the tools to embark on a nearly month's long campaign from CHCC to unlawfully disseminate the information …." (SAC, ¶33.)

Plaintiffs' opposition to CHCC's motion contends that "it is undisputed that Plaintiffs' personal identifying information was published throughout the internet by Spatafore while at CHCC" (Opp. at 3:27-28) and plaintiffs effectively concede that "CHCC's motion largely turns on if they can establish that there is no triable issue of material fact regarding whether Spatafore accessed Plaintiffs' confidential medical information." (Opp. at 2:27-28.)

CHCC's motion for summary adjudication asserts evidence in the form of a declaration from its Senior Vice President and Chief Information Officer who "participated in an investigation of Spatafore's activities" following the receipt of the search warrant encompassing Spatafore's activity on CHCC's computer systems. (E.g. Mat. Fact, nos. 21 and 22; Saff, Decl. at ¶ 6.) *That investigation did not produce evidence of Spatafore's access of plaintiffs' medical information during the relevant time period.* (*Ibid*.) In addition, CHCC also asserts a declaration from its Manager of the Privacy Program, which explains that CHCC's electronic health record system ("Epic") can be investigated by generating an access log. (E.g. Mat. Fact, no. 22; Avelar, Decl. ¶3.) When this investigation process was performed using Spatafore's unique qualifications

[1] CHCC's issue No. 5: contains multiple contentions, the cause of action which it is directed (defamation) can be disposed on the vicarious liability/ratification grounds alone.

and plaintiffs' records, no indications of unauthorized access was discovered. (*Id*. at ¶¶ 5-7.)

Plaintiffs oppose this evidence, contending it fails to include analysis whether Spatafore "could mask/spoof" his identify. (Add. Mat. Facts, No. 4.) Plaintiffs appear to infer that the absence of a computer program attuned to "masking/spoof" credentials would indicate unauthorized access. (Opp. at p. 4:9.) Plaintiffs, however, have produced no evidence indicating that masking/spoofing was attempted or even possible in Epic. Furthermore, although plaintiffs note that Spatafore had been reprimanded for falsifying payroll records, there is no link between the falsified payroll records and masking/spoofing Epic access. Similarly, there is no evidence offered that another search of a missing laptop would reveal pathways used to access Epic or that Det. Mares would have discovered such pathways if he had not suspended his investigation. (See Mares, Decl. ¶ 18 [stating he did not investigate whether Spatafore "had accessed medical records through the EPIC system."].) Accordingly, that Spatafore accessed Epic through masking/spoofing is not an inference deducible from the evidence. (*Waschek v. Department of Motor Vehicles, supra,* 59 Cal.App.4th 640, 647, citation omitted [To withstand summary adjudication, inferences must not be "derived from speculation, conjecture, imagination, or guesswork.'"].)

Consequently, plaintiffs have not produced evidence that Spatafore accessed their protected records on Epic – or any other medium – sufficient to raise triable issues of fact on the issues identified in CHCC's motion.

Respondeat Superior/Ratification/Negligent Supervision

Although ratification and respondeat superior theories may support employer derivative liability for an employee's actions, there must be evidence that the employer treated the employee's conduct as its own. (*Delfino v. Agilent Technologies, Inc*. (2006) 145 Cal.App.4th 790, 810-811.) In essence, "'[i]f an employee's tort is personal in nature, mere presence at the place of employment and attendance to occupational duties prior or subsequent to the offense will not give rise to a cause of action against the employer under the doctrine of respondeat superior.'" (*Id*. at p. 813.)

It is undisputed that Spatafore had a specific job title with defined responsibilities (Undisputed Material Fact ("UMF") no. 34) and that he commenced his campaign against plaintiffs after receiving the jaywalking citation off site. (UMF, nos. 69-80.) Plaintiffs' opposition nevertheless contends that "[*c]learly*, employment that includes access to confidential patient medical information creates the risk that employees will commit torts such as invasion of privacy and defamation, at issue in this lawsuit …." (Opp. at 8:24-27.) However, as set forth above, there is no evidence that Spatafore accessed plaintiffs' records contained in Epic. In addition, it cannot be reasonably inferred that Spatafore's conduct toward plaintiffs fell within the scope of his job duties, especially considering the undisputed defined job responsibilities. In essence, Spatafore's isolated vendetta against plaintiffs - which arose solely from a non-work offsite confrontation - materially differs from the rampant inpatient abuse and intraoffice jealousy held foreseeable in *MaLachlan v. Bell* (9th Cir., 2001) 261 F.3d 908, 912 and *Samantha B. v.*

Aurora Vista Del Mar, LLC (2022) 77 Cal.App.5th 85, 108 – the two cases primarily relied upon by plaintiffs. (Opp. at p. 9.)

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 12/17/2024.
(Judge's initials) (Date)