Dept. 1
Civil Law and Motion Tentative Rulings for Friday, April 18, 2025, at 8:30 a.m.

If you wish to appear for oral argument, you must so notify the Court at (209) 533-6633 and (209) 588-2316, and all other parties by 4:00 p.m. on the court day preceding the hearing, consistent with CRC 3.1308. The tentative ruling will become the ruling of the Court if notice for oral argument has not been provided.

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1. CV66001 Chamberlin v. Oliver
Hearing on: Petition to Compromise Disabled Person's Claim
Moving Party: Plaintiffs
Tentative Ruling: Continued to May 23, 2025, for further submissions

This is a medical negligence and wrongful death action stemming from a failed hernia repair. The parties have resolved their dispute by way of a global settlement, pending approval by this Court of the portion affecting the compromise on behalf of the disabled co-plaintiff.

Standing. An agreement to compromise and release a personal injury claim belonging to a "person with a disability" (see Probate Code §3603) is not effective without court approval. See Probate Code §§ 2504(b), 3600 et seq. Although trial courts can appoint a guardian ad litem to assist a "person with a disability" to navigate the litigation process, "a court may not make an order or give a judgment pursuant to [§3600 et seq] with respect to an adult who has the capacity within the meaning of Section 812 to consent to the order and who has no conservator of the estate with authority to make that decision, without the express consent of that person." Probate Code §3613. In other words, while a GAL has authority to bind a child to a minor's compromise (see CCP §372(a) and Prob. Code §3500), there is no such automatic authority for a GAL to bind a "person with a disability" to a similar compromise. Either the "person with a disability" must give informed consent to the settlement, or – if that person does not have the required capacity to consent – the GAL must first establish a conservatorship of the estate. Although the GAL here might further contend that her referenced Power of Attorney authorizes her to negotiate this settlement on behalf of the "person with a disability," and while a properly executed POA *might* contain such power (see §4458), no party should reasonably expect a trial court to proceed on such representation without having first proven the existence and content of the POA (see §§ 4302, 4307). The POA is not attached. Counsel will need to supply Joan's actual consent, competence evidence, and/or the POA.

Merits. The petition must be verified, presented using the Judicial Council forms, signed by an attorney of record, and include a full disclosure of all information that has any bearing on the reasonableness of the settlement reached. See CRC 7.950; in accord, *Chui v. Chui* (2022) 75 Cal.App.5th 873, 903-904; *Pearson v. Superior Court* (2012) 202 Cal.App.4th 1333, 1337; *Espericueta v. Shewry* (2008) 164 Cal.App.4th 615, 627. According to the petition, the at-fault defendant had a maximum exposure of $600,000. See Civil Code §3333.2(g). After taking the defendant's deposition, the lawyers apparently recommended taking $500,000 to settle the claim, though the basis for that recommendation is unclear since it seems liability became relatively clear thereafter. See Clause Dec. Para. 4-8, 16. It is true that the lawyers had little (if any) economic losses to help bolster their settlement leverage, and perhaps they did not have enough delayed-reaction to move this case into the elder abuse realm, but since this Court

assumes that defendant received some confidentiality agreement as part of the settlement (no copy of the settlement agreement is provided), there should have been enough to push for that extra $100,000. At the very least, this Court would have preferred to see some effort from the lawyers to get that $100,00, rather than justifications. See Clause Dec. Paras. 16-17. However, all in all it was a good settlement and satisfies the "ballpark" standard engrafted into compromise petitions. Counsel will just need to supply the settlement agreement.

Fees and Costs. Finally, trial courts are required to review all of the information provided with the petition relating to requests for fees and costs to determine the reasonableness thereof. As noted, certain aspects of counsel's CRC 7.995 declaration leave the reader unsatisfied, like – for example – the number of hours actually expended on the file. Counsel states that he and three others in the office "worked on this case for more than a year" but apparently *took* only one deposition. With the exception of someone named Lisa, it appears that the only other depositions taken in the case were those of the plaintiffs. Counsel did some expert consulting, and some medical record reviewing, but all in all it seems unlikely that the firm invested more than 150 hours in the case. Counsel is requesting 33.33% of the gross recovery. Courts have discretion to award what is reasonable under the circumstances, and are not required to give blind allegiance to amounts set forth in contingency fee agreements. See Probate Code §3601(a); CRC 7.955(a)(2) and (b); CRPC 1.5; in accord, *Schulz v. Jeppesen Sanderson, Inc.* (2018) 27 Cal.App.5th 1167, 1175-1178; *Gonzalez v. Chen* (2011) 197 Cal.App.4th 881, 885-886; *Goldberg v. Superior Court* (1994) 23 Cal.App.4th 1378, 1382; *Ojeda v. Sharp Cabrillo Hospital* (1992) 8 Cal.App.4th 1, 17. Awarding counsel 33.33% of the gross recovery here would be tantamount to a rate of roughly $1,000/hr. – which his more than *twice* the going rate for seasoned lawyers in this rural community. Although counsel opines that this was a complex case of medical negligence, requiring the expertise of a seasoned bay area firm, this Court notes that the death certificate issued in this County all but guarantees favorable verdict against the defendant. This was an easy case to win, and probably should have been pulled in at the $600,000 mark. Under the circumstances, this Court is willing to approve a 25% contingency fee, to be drawn from the net recovery *after* costs, not beforehand.

2. **CV66330** **"Doe 1" v. Adventist Health System**
   Hearing on: Demurrer to SAC
   Moving Party: Defendant
   Tentative Ruling: Overruled; defendant to answer in 5 days

This is a personal injury action filed on behalf of seven unidentified women claiming that an individual in the defendant's employee used his position in the health care industry to take advantage of, and sexually abuse, adult women receiving services under his care (from 2007 – 2022). Plaintiffs described most of the incidents involving "massages" in which they were

entirely undressed, uncovered and touched "inappropriately" over the course of many separate sessions. These plaintiffs eventually came to learn of one another and decided to file suit.

Before the Court this day is a demurrer to the Second Amended Complaint on the singular ground that there is a misjoinder of parties. CCP §430.10(c). A "misjoinder" of parties occurs when plaintiffs lack sufficient unity of interest (see CCP §378) or when there is no common question of law or fact connecting the defendant(s) (see CCP §379). As noted in the Rutter Guide, "it is rare that this ground for objection appears on the face of the complaint. More frequently, defendant must raise it as a plea in abatement in the answer." Why do the authors feel that a misjoinder is rarely evident from the face of the pleading? Because a pleading is adequate if it contains a reasonably precise statement of the ultimate facts, in ordinary and concise language, and with sufficient detail to acquaint a defendant with the nature, source and extent of the claim. CCP §425.10. In other words, most complaints only include the ultimate facts, not all the minutia of evidentiary facts that might disclose something like a misjoinder. To complicate things, when the drafter decides to go further and throw in a bunch of evidentiary facts when ultimate facts would suffice, and those evidentiary facts end up illuminating a potential basis for demurrer, the evidentiary facts control. *Chen v. PayPal, Inc.* (2021) 61 Cal.App.5th 559, 571.

Back to the joinder concern. Before addressing the scant authority on the topic, it is helpful to step back and appreciate the landscape of the current debate. Since CCP §§ 379.5 and 1048 give the court sufficient power to streamline the case post-joinder, the idea of having "too many moving parts" is really a red herring. Joinder works, or not, based upon the willingness of the parties to put in the effort to keep things organized. There is certainly an economy of scale for everyone if all of the plaintiffs, and all of the defendants, are dealt with in a single case file. For example, the defense request to split every plaintiff into a separate case may require employees to be deposed seven different times, by the same law firm. In fact, since some of the plaintiffs know each other, and have spoken to each other, some of the plaintiffs may be deposed more than once (as a party, and as a witness). Splitting these cases into separate ones magnifies the costs to everyone, for no obvious benefit.

On to the law of joinder. Pursuant to CCP §378, "all persons may join in one action as plaintiffs if they assert any right to relief in respect of or arising out of the same *series of occurrences* and if *any question of law or fact common to all these persons* will arise in the action." (Excerpted for ease of comprehension.) Because there is an "outright preference for the economies of scale achieved by consolidating related cases into a single, centrally managed proceeding," permissive joinder under §378 is to be "broadly" and "liberally construed so as to prevent the diseconomy of a multiplicity of cases. [Thus], if there is a right to relief arising out of the same series of transactions, it is the plaintiffs who get to decide whether to join together

in a common action." *Peterson v. Bank of America Corp.* (2014) 232 Cal.App.4th 238, 248-249.

Since both sides have focused on *Moe v. Anderson* (2012) 207 Cal.App.4th 826, this Court will do the same. *Moe* first holds, and the parties here agree, that the sexual assault claims by the seven women should not be joined into a single lawsuit against the perpetrator because they were not part of the same transaction (though even that conclusion is slightly overstated). As to the negligent hiring concerns involving his employer, the Court in *Moe* found that "the same evidence with respect to Healthworks' hiring and supervision of Anderson will need to be adduced in separate lawsuits if joinder is not allowed" and that "plaintiffs were properly joined against Healthworks." *Id*. at 836.

The problem with *Moe*, beyond its notably brief analysis, is its lack of broad application to the case at bar, or to many other cases. The plaintiffs here contend that the employee was a problem going back to 2007, so the theory involving Adventist is more than just negligent hiring (failing to look into his background way back when) but also negligent supervising (while he was on the job for a very long time) and negligent retaining (keeping him after allegedly learning of his transgressions). In short: the "hiring" is alleged to have occurred at different times and in different locations; the "supervising" is alleged to have occurred at different times and in different locations (and likely by different managers over the years); and the "retaining" is alleged to have occurred at different times and in different locations (and likely by different managers over the years).

Nevertheless, *Peterson* – relying on a long line of published authority like *Anaya* (200 plaintiffs), *State Farm* (165 plaintiffs) and *Adams* (40 plaintiffs) – held that "it would be a major departure from California case law construing section 378 for us to uphold the trial court's demurrer for misjoinder" by not allowing 965 plaintiffs to join in a single lawsuit for fraud and wrongful foreclosure against several banks because there was a common business model employed by all defendants. The Court in *Peterson* acknowledged the sheer magnitude of the case, and the management difficulties keeping it all together, but offered inescapable explanations for why the plaintiffs' preference for joinder should control (*id*. at 253-254):

> "Two overall policies of the law are served by joinder in this instance. One is access to justice. To require these plaintiffs to file separately not only clogs up the courts, but also deprives them of economies of scale otherwise available under section 378. The second is the conservation of judicial resources. There is an obvious burden to the trial court if joinder is not allowed. Mass joinder here holds the promise of actually decreasing trial court case management time."

Those policies are just as applicable here. This court has every confidence it will be able to sift through the hyperbole and find the actual evidence (if any) of what defendant knew or should have known about the perpetrator before he was hired, and during his employment. These issues are common to all of the plaintiffs, regardless of whether each plaintiff is able to prove causation or damages. There is no reason to require an additional six separate lawsuits to be filed here, and no risk of management issues that this Court can see keeping them together. The more complicated question is whether the plaintiffs ever intend to allege that defendant is liable under the doctrine of *respondeat superior*, for in that instance a strong argument would exist to then join the claims against the employee as well. See, *e.g., Lisa M. v. Henry Mayo Newhall Memorial Hospital* (1995) 12 Cal.4th 291, 296; *Z.V. v. County of Riverside* (2015) 238 Cal.App.4th 889, 893-902.

Separately, defendant asks this Court to sustain a demurrer to the "negligence" cause of action because it is surplusage when compared to the similar cause of action for "negligent supervision." Although this Court is aware of some appellate authority suggesting, in dicta, that a demurrer is the proper vehicle for challenging redundant causes of action (see (*Dickinson v. Cosby* (2017) 17 Cal.App.5th 655 at 692, *Palm Springs Villas II Homeowners Assn., Inc. v. Parth* (2016) 248 Cal.App.4th 268 at 290, and *Hailstone v. Martinez* (2008) 169 Cal.App.4th 728 at 742), a review of CCP §430.10 fails to reveal any legal authority for sustaining a demurrer to a cause of action on the ground that it is redundant, duplicative, superfluous, or surplusage. Despite the *dicta*, the issue was squarely, and decidedly, addressed in *Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858 at 890:

> "[Redundancy] is not a ground on which a demurrer may be sustained. (See Code Civ. Proc., § 430.10.) A quarter-century ago the code authorized a motion to strike "irrelevant and redundant " matter from a pleading. (Former Code Civ. Proc., § 453, repealed 1982.) But the parallel provision now empowers the court only to "[s]trike out any irrelevant, false, or improper matter inserted in any pleading." (Code Civ. Proc., § 436, subd. (a).) The elimination of the reference to redundancy may have rested on the irreproachable rationale that it is a waste of time and judicial resources to entertain a motion challenging part of a pleading on the sole ground of repetitiveness. (See Civ. Code, § 3537 ["Superfluity does not vitiate"].)"

Blickman is the controlling authority on the topic, as it is the only appellate opinion to actually analyze the question. The fact that federal courts are allowed by express rule to dismiss redundant claims (FCRP 12(f)) is one of the many niceties uniquely enjoyed by federal courts.

Demurrer overruled. Defendant to answer in 5 days.

3. CV66421 Lockman v. Ardron

Hearing on: Motion to Strike Prayer for Punitive Damages
Moving Party: Defendant
Tentative Ruling: Denied, defendant to answer in 5 days

This appears to be a neighbor dispute between two local medical professionals (one osteopath, and the other ophthalmologist), the latter of whom apparently trespassed onto the property of the former for the ostensible purpose of investigating the former's burn pile. Plaintiff (the osteopath) alleges that he feared for his safety, unable to discern the identity of the unwelcomed ophthalmologist, and injured his knee during a spontaneous retreat from a perceived overhand right (possibly with a flashlight in hand) that did not land. Plaintiff alleges four causes of action, two of which (intentional trespass and assault) include a prayer for punitive damages. Defendant has moved to strike those prayers.

Pursuant to CCP §§ 435 and 436, a party may move for an order striking from a pleading "any irrelevant, false or improper matter" or "any part of any pleading not drawn in conformity" with laws, rules or orders. The motion is to be used sparingly, not as a line item veto. *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1683. Conclusions of law without factual support are insufficient to withstand pleading attack. See *Curcini v. County of Alameda* (2008) 164 Cal.App.4th 629, 650; *Smith v. Superior Court* (1992) 10 Cal.App.4th 1033. However, conclusions of law can sometimes suffice if other facts in the complaint give texture to the prayer. See *Monge v. Superior Court* (1986) 176 Cal.App.3d 503, 510; *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6. For that reason, courts often refer to a "heightened level of proof" required to keep a prayer for punitive damages in the operative pleading, which simply means that the evidentiary facts pled must be of such degree as to leave "no substantial doubt" that defendant's conduct was despicable and indicative of conscious disregard for the safety of others. *Scott v. Phoenix School, Inc.* (2009) 175 Cal.App.4th 702, 716; *Barton v. Alexander Hamilton Life Ins. Co. of America* (2003) 110 Cal.App.4th 1640, 1644.

What must be pled? Facts showing that defendant engaged in conduct that was "so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people [and] having the character of outrage frequently associated with crime." *Scott v. Phoenix Schools, Inc.* (2009) 175 Cal.App.4th 702, 716. Stated another way, "punitive damages are appropriate if the defendant's acts are reprehensible … [and which] could be described as evil, criminal, recklessly indifferent to the rights of the [plaintiff], or with a vexatious intention to injure." *Food Pro International, Inc. v. Farmers Ins. Exchange* (2008) 169 Cal.App.4th 976, 994-995. In addition to the nature of the act itself, there must be facts pled showing defendant's mindset, to wit: that the wrong was committed willfully or with

a design to injure (aka "intent to vex, injure or annoy"), as opposed to negligently or mistakenly. *Spinks v. Equity Residential Brianwood Apartments* (2009) 171 Cal.App.4th 1004, 1055; *Lackner v. North* (2006) 135 Cal.App.4th 1188, 1210. The plaintiff must show "that the defendant was aware of the probable dangerous consequences of his conduct, and that he willfully and deliberately failed to avoid those consequences." *Hoch v. Allied-Signal, Inc.* (1994) 24 Cal.App.4th 48, 61.

Trial courts are obligated to accept as true even the most improbable factual averments without regard to the pleader's ability to actually prove those facts. See *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872. Although the averments of a medical professional sneaking onto a neighbor's property at night to attack seems outlandish, those facts must be accepted as true. Taking plaintiff at his word, defendant came onto his property without his consent, at night, went into his backyard, carrying a flashlight, looking into the windows, and then approached plaintiff carrying what could have been used a blunt instrument to inflict injury, and there was a brief/silent confrontation between the two in which the *homeowner* was injured. If proven, a jury might find this behavior would justify an award of punitive damages, and as such it is sufficient to stand for now.

Motion to strike DENIED. Defendant to answer in 5 days.

4. **CV64790** **Sanford v. Eaton**
   Hearing on: Motion to Dismiss
   Moving Party: Defendants
   Tentative Ruling: Grant

This is a government tort claim brought by a prison inmate, alleging what amounts to gross negligence on the part of prison officials in permitting the widespread and unabated proliferation of Covid-19 in the prison population. On 01/19/2024, this Court sustained the defendants' demurrer to the operative pleading on the principle ground that the facts pled did not adequately show satisfaction of the prefiling claim presentation requirement as set forth in *DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, and *Willis v. City of Carlsbad* (2020) 48 Cal.App.5th 1104. Plaintiff was given 30 days leave to file a First Amended Complaint. Although notice was waived, defendant subsequently served its [proposed] notice of the ruling on 04/09/2024. Since that time, plaintiff has fallen off the radar, failing to file a First Amended Complaint and failing to inform this Court of any intention to proceed with the case. According to defendants, plaintiff is no longer incarcerated and his whereabouts are unknown.

Pursuant to CCP §581(f)(2) and CRC 3.1320(h), defendant is authorized to proceed via ex parte application to have a dismissal entered now that plaintiff has failed to timely plead after expiration of the time to amend following the sustaining of a demurrer. Moreover, caselaw mandates that any dismissal hereunder must be "with" prejudice, and so it shall be. See *Haidet v. Del Mar Woods Homeowners Association* (2024) 106 Cal.App.5th 530, 537; *Cano v. Glover* (2006) 143 Cal.App.4th 326, 331.

5. CV65320 Taylor v. Larson Farms
Hearing on: Motion to Compel Deposition and Reset MSC
Moving Party: Defendant
Tentative Ruling: See Discussion

This is a premises liability "slip and fall" case commenced by way of complaint nearly two years ago. A review of the court file suggests that very little has occurred to ready the case for trial in those two years, and there is presently before the Court a motion to compel plaintiff's deposition, an ex parte application to kick out the settlement conference, and an upcoming application by plaintiff's counsel to withdraw from the case. All in all, it seems to this Court that this dispute is no closer to resolution than it was a year ago.

On 02/28/2025, this Court agreed to move the trial date out on condition that plaintiff stipulate to sit for her deposition on 03/31/2025. Based on the amended papers before the Court, that deposition did not occur, despite defense counsel's willingness to permit the deposition proceed by remote technology. It is not clear to this Court *why* the deposition did not happen, but plaintiff's counsel hints at the fact that there appears to be a breakdown in the relationship between counsel and client causing a rift that cannot be worked around. Perhaps that is impeding the deposition prep, but counsel offers an alternative basis, to wit: plaintiff has some undisclosed health issues making a deposition difficult for her to participate in. As an aside, plaintiff's counsel asked that the hearing on this motion to compel be moved to the date set for the motion to withdraw so that all of the issues can be handled at once. That is a reasonable request. Therefore:

Mandatory settlement conference set for 05/16/2025 is hereby vacated.
Motion to compel deposition is hereby moved to 05/09/2025 at 8:30 a.m.
Plaintiff's counsel is ordered to give client notice hereof. Counsel is also advised to give client notice that this Court is considering escalated discovery sanctions since there was already an order to appear made at the 02/28/2025 hearing. As such, plaintiff is now facing issue/evidence/terminating sanctions.