

Dept. 1

Civil Law and Motion Tentative Rulings for Friday, May 23, 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.

2. CV65508 **Bennett v. Golden Living Congregate**
Hearing on: Demurrer and Motion to Strike
Moving Party: Defendants Mukhopadhyay and Rodriguez
Tentative Ruling: Demurrer sustained 30 days leave to amend

This personal injury case involves allegations of custodial neglect and sexual assault of a gravely disabled resident at a senior care facility in Jamestown. Before the Court this day is a motion by defendants Mukhopadhyay and Rodriguez to strike from the operative First Amended Complaint various averments and prayers relating to attorney fees, punitive damages, alter ego allegations, fraud, and unfair business practices. Also before the Court this day is a demurrer by those same defendants, directed at the whole of the First Amended Complaint and to each of the five causes of action contained therein.

Before addressing the motions in detail, both sides agree that the reference to “injunctive relief” in the operative pleading – whether that reference should constitute a stand-alone cause of action or merely a prayer for relief – is now “moot” in light of Mr. Bennett’s passing. Neither the motion to strike nor the demurrer specifically addressed anything called “injunctive relief” – but it does appear to this Court that the fourth cause of action for “retaliation” based upon an allegedly unlawful eviction might have been the intent behind any request for injunctive relief. Of course, this Court should not have to guess at what plaintiffs are trying to plead for these purposes, so to make it simple for all, this Court will presume for present purposes that plaintiff’s confession that the eviction issue is “moot” because Mr. Bennett now longer resides on site means that the retaliation cause of action is longer being pursued and that the demurrer to the fourth cause of action ought to be sustained with leave to amend.

On to the challenged causes of action and averments.

A demurrer is a legal challenge to the adequacy of a pleading, not a challenge to the validity of the claims themselves. See *Greif v. Sanin* (2022) 74 Cal.App.5th 412, 426. The most common challenges happen to be the ones asserted here, to wit: failure to state and uncertainty. CCP §§ 430.10(e) and (f). As to the former, if upon a consideration of all the facts stated it appears that the plaintiff is entitled to any relief at the hands of the court against the defendants, the complaint will be held good, although the facts may not be clearly stated or may be intermingled with a statement of other facts irrelevant to the cause of action shown. *New Livable California v. Association of Bay Area Governments* (2020) 59 Cal.App.5th 709, 714; *Wittenberg v. Bornstein* (2020) 51 Cal.App.5th 556, 566. In other words, a general demurrer for failure to state a cause of action must be overruled, if the pleading states, however inartfully, facts disclosing some right to relief. *Weimer v. Nationstar Mortgage, LLC* (2020) 47 Cal.App.5th 341, 352. As to the latter, a demurrer for uncertainty will be sustained only where

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the complaint is so bad that the defendant cannot reasonably determine what issues must be admitted or denied, or what counts or claims are directed against him or her. See *A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695; *Chen v. Berenjian* (2019) 33 Cal.App.5th 811, 822; *Lickiss v. Financial Industry Regulatory Authority* (2012) 208 Cal.App.4th 1125, 1135; *Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616.

Defendants herein take issue with the causes of action for elder abuse, negligence and breach of contract. According to defendants, these causes of action are not adequately pled against them because there are no direct averments made against “Doe 1” or “Doe 2” and as such they have no idea what they are alleged to have done. Plaintiffs, on the other hand, contend that these defendants have been added to the case as alter egos of the entity-defendant, and that their liability (if any) is premised solely on principles of vicarious, rather than direct, liability. The confusion appears to lie in the pleading standard for alter ego allegations.

The alter ego doctrine arises when a plaintiff comes into court claiming that an opposing party is using the corporate form unjustly and in derogation of the plaintiff's interests. In certain circumstances the court will disregard the corporate entity and will hold the individual shareholders liable for the actions of the corporation. To recover on an alter ego theory, a plaintiff need not use the words *alter ego*, but must allege sufficient facts to show a unity of interest and ownership, and an unjust result if the corporation is treated as the sole actor. Conditions under which the corporate entity may be disregarded vary by circumstance, but courts often consider commingling of funds, personal use of corporate assets, disregard of corporate formalities, inadequate corporate records, lack of employees, offices, or operating funds, and inadequate capitalization. An allegation that a person owns all of the corporate stock and makes all of the management decisions is insufficient by itself to cause the court to disregard the corporate entity, and therefore insufficient by itself to warrant inclusion of individuals in the lawsuit merely on an alter ego basis. See *Lopez v. Escamilla* (2022) 79 Cal.App.5th 646, 650; *A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 696; *Leek v. Cooper* (2011) 194 Cal.App.4th 399, 415.

A careful review of the “alter ego” allegations in the First Amended Complaint reveal a number of issues. First, Para 21 describes both “direct liability” for all “defendants” – which presumably includes “doe” defendants” – and some kind of vicarious joint enterprise liability (not true alter ego) as between all of the “management defendants” – which include the named and unnamed defendants – some of whom might also qualify as the alter ego of Golden Living Congregate. Paras 21-24 are particularly difficult to follow because no one individual or group of individuals are specifically alleged to be the alter egos of any particular corporate entity; instead, plaintiffs are alleging a group of individuals working together (aka enterprise liability) and then alleging that one or more control the entity – which, as noted above, is insufficient to

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support the allegation for alter ego liability. This case has been in litigation for over two years now, giving plaintiffs plenty of time to connect the dots and stand on a pleading that is easier to track and which allows the defendants to better understand the theories of liability they will be expected to defend against at trial.

The demurrer for failure to state alter ego is sustained with 30 days leave to amend. Since the opposition brief appears to stand on the alter ego averments, there is no need for this Court to wade into the other secondary issues raised in the demurrer. However, a cautionary note is warranted. If the pleader would focus on the necessary ultimate facts only, the allegations in this case can be easily covered in a Second Amended Complaint spanning no more than 15 pages maximum. Contrary to plaintiffs' assertion, this is not a particularly complex case – it is a rather common elder abuse case, and does not require as much verbiage and hyperbole to get past the pleading stage.

The motion to strike is MOOT.

8. CVL66157	Wells Fargo Bank v. Stevens
Hearing on:	Judgment on the Pleadings
Moving Party:	Plaintiff
Tentative Ruling:	Denied without prejudice

This is a garden-variety collections case. The amount in controversy is just over \$10,000. Defendant is represented by counsel, who appears to have abandoned defendant shortly after filing an initial CMC statement in late 2024. Plaintiff has secured an order deeming case-dispositive RFAs against defendant admitted, and is now seeking a judgment on the pleadings. This is commonplace in collections cases to secure the RFAs, then proceed with a MJOP, hoping to avoid the time-consuming MSJ route. It is an imperfect solution to a routine problem, which is frequently bogged down with issues raised in an answer. Why? Because a MJOP by a plaintiff must show (1) that the complaint states facts sufficient to constitute a viable claim against the defendant and (2) that the answer does not state facts sufficient to constitute a defense thereto. See CCP §438(c). The motion for judgment on the pleadings must address *both* the complaint *and* the answer, and very frequently the motion only addresses the complaint. The motion here is a good example – focused 100% on the complaint and no mention at all of the answer on file. Moreover, the meet and confer effort (CCP §439) was woefully inadequate since the meet and confer did not identify specific allegations, legal support or facts/law relevant to the motion. There was no effort to generate a meeting “in person, by telephone, or by video conference” and since opposing counsel has been MIA for quite some time, a phone call would have been the minimum effort required.