Dept. 1
Civil Law and Motion Tentative Rulings for Friday, March 28, 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. **CV65805** **Ath v. McEvoy**
   Hearing on: Status of Settlement/Dismissal
   Moving Party: N/A
   Tentative Ruling: N/A

This is a personal injury action involving a motor vehicle accident. On 01/30/2025, plaintiff caused to be filed herein an Unconditional Notice of Settlement of the Entire Case. Pursuant to CRC 3.1385(b), "the court must dismiss the entire case 45 days after it receives notice of settlement unless good cause is shown why the case should not be dismissed." Today (Friday) is 57 days since receipt of the Notice of Settlement, and no good cause is shown for delaying dismissal. As such, the case is hereby dismissed with prejudice. However, as a courtesy to the parties, this Court will of its own accord reserve jurisdiction for the limited purpose of enforcing the terms of any existing settlement agreement. Plaintiff is ordered to give notice.

2. **CV66417** **Bado v. Mile High Ski Club**
   Hearing on: Motion to Serve Summons via Publication
   Moving Party: Plaintiff
   Tentative Ruling: MOOT

This is an action for adverse possession. Before the Court this day is an application for permission to serve the defendant via publication. Although the application for noticed for hearing this day, plaintiff included with the noticed motion an ex parte application to shorten time – prompting this Court's early review of the papers. That early review already resulted in a denial without prejudice, and a suggestion to counsel to first exhaust other service efforts, including Notice and Acknowledgement. There being no additional papers filed since that order denying, the noticed motion is deemed MOOT.

3. **CV66223** **John v. Skyline Place Senior Living et al**
   Hearing on: Demurrer and Strike to First Amended Complaint
   Moving Party: Defendants
   Tentative Ruling: Sustained, 30 days leave to amend

This is a wrongful death and elder abuse case. It is alleged that Jean Diana John (hereinafter "decedent"), had a precipitous change/decline in her overall functioning (vomiting, lack of appetite, dizziness, confusion) over the course of 44 hours which the staff at Skyline Senior Living failed to recognize/appreciate. Decedent's family secured a medical transfer to the local Adventist Health emergency room, where decedent was assessed as having a serious brain bleed and a skull fracture. Decedent was transferred to a trauma facility in Modesto, which effectively concluded that decedent was at end-stage dementia. Soon thereafter,

decedent was transferred to a private hospice provider in Stanislaus. Decedent passed away from acute respiratory failure, secondary to "non-traumatic head injury." The death certificate does not list dementia as a contributing factor.

Before the Court this day is a demurrer and motion to strike filed by co-defendants Milestone Retirement and Skyline Place. The demurrer is procedurally defective in that it purports to be directed at specified portions of plaintiffs' first (elder abuse) cause of action (see 2:12-14), but it is reasonably understood that the demurrer is intended to attack the whole of the first and fourth (willful misconduct) causes of action. The motion to strike, on the other hand, is directed at plaintiffs' various damage prayers. Since plaintiffs appeared to have no trouble navigating the intended scope of the motions, this Court will overlook the technical defects.

Demurrer to FAC

With the original pleading, this Court pointed out a holistic issue with standing. Since that time, plaintiffs have cured the issue by bringing onboard all of the heirs.

With the revised pleading, the first and fourth causes of action now include significantly more *evidentiary* facts, but the issue with the original pleading was not solely the quantum of evidentiary facts pled but also the lack of ultimate facts to support the type of claims being asserted in this case. Have plaintiffs done better? Yes, and no.

To state a claim under the Elder Abuse Act, the plaintiff must plead with particularity facts sufficient to permit a trier of fact to conclude by clear and convincing evidence that each defendant in the action:

(1) assumed a significant measure of ongoing responsibility for attending to one or more of an elder's basic needs that an able-bodied and fully competent adult would ordinarily be capable of managing without assistance;
(2) failed to provide for the elder's basic needs such as hygiene, nutrition, hydration, shelter, safety, and medication;
(3) while deliberately disregarding a high probability that injury will occur (more than mere inadvertence, incompetence or failure to take precautions);
and
(4) proximately causing harm to the elder as a result thereof.

See *Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148, 158; *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 783; *Delaney v. Baker* (1999) 20 Cal.4th 23, 32; *Kruthanooch v. Glendale Adventist Medical Center* (2022) 83 Cal.App.5th 1109, 1134-1135;

Cochrum v. Costa Victoria Healthcare, LLC (2018) 25 Cal.App.5th 1034, 1049-1050; *Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 406-407.

The first element is presumptively satisfied by the mere fact that the facility evaluated and accepted decedent. See 22 Cal.C.Regs. §§ 87452-87463, 87605-87704. Defendants do not contend otherwise. In fact, defendants readily concede that decedent was in their "excellent" care for almost four months.

As to the second element (the actus reus), plaintiffs allege that "defendants" (collectively) failed to provide for decedent's "basic needs" by failing to monitor her and recognize signs of distress over the course of 2½ days. Plaintiffs do not allege that defendants withheld hygiene, nutrition, hydration, shelter, safety, medication, care or comfort – at least not in the traditional sense. What plaintiffs are concerned about is that defendants apparently did not tend to decedent with sufficient alarm or concern, at least not until she was discovered post-stroke lying face-down in her bed. The physiological signs she was demonstrating in the days leading up to the discovery of her, face down in bed, in the morning on 12/06/22, surely seemed – in hindsight – to suggest that she may have been experiencing small, pre-stroke TIAs in the evening of 12.04/22 and perhaps midday on 12/05/22. Since decedent was in defendants' custodian care during those days, there is no question that elder abuse could include the failure to call 911 if doing so was *absolutely* warranted. The parties ascribe different degrees of culpability to the decision not to call 911, but in order for plaintiffs to take advantage of the enhanced remedies available for elder abuse, it is necessary for plaintiffs to at least plead facts that would leave no room for substantial doubt that staff believed decedent would suffer harm by their decision not to call 911. In other words, 9 of 12 must be of the reasoned opinion that it was egregious to watch decedent suffer, opine what that suffering might mean, send faxes to a physician after-hours, and decide not to call 911. Is it failing to take precautions, or a conscious disregard? It is impossible to say. However, the new allegations set forth in Paragraphs 30-37, if true, are sufficient to show that the defendants failed "to provide medical care for physical and mental health needs" and failed "to protect from health and safety hazards" (§15610.57(b)) *not* by failing to actually provide specialized medical care, but rather by failing to summon specialized medical providers to evaluate decedent when she was clearly not herself and her physician was presumed not to be sitting at the fax machine. In other words, if it was concerned enough to contact a doctor at all, it was concerning enough to contact someone who would actually answer the call.

In it important to note, for present purposes, that defendants have not demurred to the first cause of action on either the third (mens rea) or the fourth (causation) elements of the cause of action, and for that reason this Court shall not drill down deep into those two areas. However, these concerns are relevant to the prayer for punitive damages and will be addressed in detail

there. For present purposes, this Court would be remiss if it failed to at least draw attention to the fact that decedent's overall condition did not easily permit a reliable conclusion that greater vigilance by the staff on 12/04/22 or 12/05/22 would more likely than not have increased the quality or duration of decedent's life.

Plaintiffs have satisfied their pleading burden as it pertains to a claim for elder abuse against the individuals taking care of decedent. However, plaintiffs are not suing any of those individuals. Plaintiffs are only suing the corporate employing entities, and for that there is an additional element that must be met. As explained in *Covenant Care* (at 790), to the extent the plaintiffs seeks to hold a corporate defendant liable for the acts or omissions of its employee, the plaintiffs must also plead facts showing that the employer "authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice." See W&I Code §15657(c).

Plaintiffs allege first that defendants had a "managing agent" on site who directly participated in the decision to withhold summoning medical responders for decedent. These facts are set forth in FAC Para 33, 34 and 57. Plaintiffs allege that Taleen Sayyed, Director of Health Wellness at the Sonora location, is a managing agent. In order to qualify as a managing agent, plaintiffs would have to allege facts showing that Ms. Sayyed exercised substantial and independent authority and judgment over significant aspects of the business such that her decisions would ultimately determine corporate policy. *White v. Ultramar* (1999) 21 Cal.4th 563, 576-577; *Colucci v. T-Mobile USA, Inc.* (2020) 48 Cal.App.5th 442, 451-454. The operative pleading is bereft of such averments, and given that the FAC alleges that Milestone is in Vancouver, Washington, there is reason to believe that Ms. Sayyed is not one of its managing agents.

Plaintiffs next allege that defendants had an "executive director" on site who directly participated in the decision not to compel sufficient staffing to meet the requirements for nighttime safety checking of residents every 1-2 hours (as set forth in the Residence and Care Agreement). These facts are set forth in FAC Para 54-60. The staffing issue is an obvious red herring in this case because the plaintiffs are not claiming that decedent was neglected as a result of insufficient staffing. Quite the contrary, plaintiffs are alleging that there was sufficient staffing, but that the staffing was untrained and functionally inept. The suggestion that more staff would have meant more bed checks is meaningless if decedent was asleep in her bed all night. Since decedent was found in her bed, one has to conclude that after she fell, she was able to get herself back into bed without any assistance, so additional bed checks would have yielded no benefit. Thus, this issue is a nonstarter.

Finally, plaintiffs allege that defendants had a direct business model designed to hire knowingly unfit individuals to work in the facility, with a conscious disregard of a known risk that these unfit individuals would be unable to properly distinguish circumstances in which medical assistance should be summoned. These facts are set forth in FAC Para 48-61. There are no actual facts set forth to support this remarkable contention, and decedent's stay at the facility for four months belies the suggestion that the staff was unfit to care for her needs. This too appears to be a red herring tossed in with the hope of having something stick.

As attacked, the demurrer to the elder abuse cause of action must be sustained once again. Since plaintiffs are not suing individuals, plaintiffs shall be given one last chance to plead an elder abuse claim against corporate employers. Since plaintiffs likely have no facts to show direct involvement by a managing agent, or advance knowledge of employee unfitness, it seems that plaintiffs' only chance would be via ratification. (Plaintiffs referred to ratification repeatedly, but in fact offered no facts or argument on the topic.) Plaintiffs shall be allowed 30 days leave to amend.

As for the fourth cause of action for willful misconduct, this Court noted previously that there is a dispute amongst courts and scholars as to whether "willful misconduct" is actually a cause of action (as opposed to an aggravated form of negligence). This dispute, which was recognized in *Nalwa v. Cedar Fair, LP* (2012) 55 Cal.4th 1148 (at 1163 n.8), has its roots in pre-comparative fault jurisprudence as an exception to the harshness of the contributory negligence "all or nothing" rule. Since the abolition of contributory negligence, the concept of willful misconduct has very limited application. The court in *Berkley v. Dowds* (2007) 152 Cal.App.4th 518, concluded with apparent ease (at 526) that willful misconduct is not a stand-alone cause of action. The court in *Doe v. United States Youth Soccer Association, Inc.* (2017) 8 Cal.App.5th 1118, 1140, followed *Berkley* in noting that "willful misconduct is not a separate tort from negligence." Similar, the court in *Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, described a cause of action labeled "willful misconduct" as a version of professional negligence. *Id*. at 413. Neither party accepted the implied invitation to address the issue, and instead decided to merge the claim into the elder abuse cause of action. Either way, since it has the same elements as elder abuse, but does not include the enhanced remedies, it is meaningless in this case. Since plaintiffs made no effort to fight for it, the demurrer will be sustained without leave to amend.

Motion to Strike

The motion to strike is, once again, moot.

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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4. CV65832 Hawkins et al v. CA Department of Transportation

Hearing on: Trial Continuance
Moving Party: Plaintiff
Tentative Ruling: HEARING REQUIRED

This is a personal injury action arising out of an automobile accident. Before the Court this day is a defense motion to continue the current trial date. There is no opposition.

This case was commenced on 01/17/2024 with the filing of the complaint. Defendants did not first appear in the action until 03/18/2024. At the initial Case Management Conference on 05/17/2024, both sides agreed to have trial set for 12/02/2024. Since the initial CMC, the parties apparently decided that they needed far more time to ready this case for resolution than first anticipated.

Because trial continuances are strongly disfavored, any request to continue a trial must be supported by an affirmative showing of good cause, and must be made as soon as possible once the necessity for a continuance is discovered. See CRC 3.1332; *Reales Investment, LLC v. Johnson* (2020) 55 Cal.App.5th 463, 468-469. Every motion for continuance "is addressed to the sound discretion of the trial court;" however, "the refusal of a continuance which has the practical effect of denying the applicant a fair hearing is reversible error." *Oliveros v. County of Los Angeles* (2004) 120 Cal.App.4th 1389, 1395; in accord, *Hamilton v. Orange County Sheriff's Department* (2017) 8 Cal.App.5th 759, 766. The factors which a trial court is to consider when weighing the various interests implicated include:

(1) The proximity of the current trial date (three months away);
(2) Whether there were any previous continuances (one prior);
(3) The length of the continuance requested (> 90 days);
(4) The availability of alternative means to address the problem that gave rise to the motion or application for a continuance (diligent discovery and better dialogue between the attorneys);
(5) The prejudice that parties or witnesses will suffer as a result of the continuance (none shown);
(6) If the case is entitled to a preferential trial setting, the reasons for that status and whether the need for a continuance outweighs the need to avoid delay (none);
(7) The court's calendar and the impact of granting a continuance on other pending trials (none);
(8) Whether trial counsel is engaged in another trial (no contentions made);
(9) Whether all parties have stipulated to a continuance (there have);
(10) Whether the interests of justice are best served by a continuance, by the trial of the matter, or by imposing conditions on the continuance (unclear); and

(11) Any other fact or circumstance relevant to the fair determination of the motion or application (none apparent).

Counsel advises that a continuance is required because plaintiff is still not done with her treatments, and the parties are not set for mediation until May. Based on a totality of the circumstances, and the fact that this case has not yet reached the 18-month presumptive deadline under the Fast Track guidelines (see TCSC Rule 2.06.0), a continuance to complete discovery and participate fully in mediation is reasonable. See CCP §§ 2024.020(b), 2024.050. Counsel shall appear and select new pre-trial conference and trial dates, which shall be firm and immoveable absent an imposition of monetary sanctions under CCP §177.5.

5. CV63591 Redick v. Sonora Police Department
Hearing on: *insedit quisquiliarum*
Moving Party: Plaintiff
Tentative Ruling: See Below

This is a type of "malicious prosecution" case filed by an individual who was charged with, but never prosecuted for, shoplifting. The sordid details have been supplied in various prior written rulings, and are not necessary to repeat here except to note that the criminal complaint (CRF58586) languished for almost two years, only to be voluntarily dismissed by the DA when questions arose about ID'ing Mr. Redick on the supplied in-store video. Unsatisfied with just the voluntarily dismissal, Mr, Reddick filed civil lawsuits against Lowe's, the District Attorney, the jail, the County and the Sonora PD (see CV63539, CV63591, CV63592, and CV63593). Due to a remarkably unfortunate series of clerical mishaps back in 2021, Mr. Redick was able to secure defaults in those cases for a combined total of $107,733,000.00. When the local agencies learned what had occurred, it took very little for this Court and legal research to see (and correct) the miscarriage. Since that time, Mr. Redick has waged unrelenting warfare in a singular effort to regain a taste of those fraudulent defaults. In so doing, he has now crossed the line from zealous advocate to vexatious litigant, as will be discussed in conjunction with the various "motions" set for hearing before the Court this day.

Although the common definition of a vexatious litigant is someone who regularly files bogus lawsuits against anyone, the definition can also include a person who (1) repeatedly relitigates any issue of fact or law already decided involving the same defendant or (2) repeatedly engages in frivolous behavior in the litigation of one particular case. See CCP §391(b)(2)-(3). Here is where plaintiff excels.

As a preliminary matter of housekeeping, on 07/13/2021, all of the parties herein stipulated to consolidating for all purposes CV63592 and CV63593 into CV63591, with the latter case

serving as the lead. (CV63539 had already been removed to federal court by that time.) So, papers filed and actions taken in any of the three cases were experienced in all three, and therefore can be considered as part of the total package.

Here are the "main" unmeritorious papers that Mr. Redick has filed in these cases:

- Proof of Service on Sonora Police Department (02/18/2021). POS does not state in Para 4 that the service package included summons, complaint, or civil case cover sheet. POS does not state in Para 5 the name of the individual served, or the address where the service took place. Finally, plaintiff used POS-040, which is expressly *not* for service of a summons (as clearly stated on Page 3). See Minute Order dtd 08/23/21.
- Proof of Service on Tuolumne County Jail (02/18/2021) and Tuolumne County District Attorney Office (02/18/2021). POS does not state in Para 4 that the service package included summons, complaint, or civil case cover sheet. POS does not state in Para 5 the name of the individual served, or the address where the service took place. Finally, plaintiff used POS-040, which is expressly *not* for service of a summons (as clearly stated on Page 3). See Minute Order dtd 08/23/21.
- Request for Entry of Default against Sonora Police Department in the amount of $33,000,000.00 (04/07/2021). Despite the requirement to mail a copy to the defendant (CCP §587), Para 6 does not indicate service to the defendant at all.
- Request for Entry of Default against Tuolumne County Jail and the Tuolumne District Attorney Office in the amount of $33,000,000.00 (04/07/2021). Despite the requirement to mail a copy to the defendant (CCP §587), Para 6 does not indicate service to the defendant at all. In addition, this was filed after counsel for Tuolumne County already made a CCP §430.41 appearance, violating *Fasuyi v. Permatex* (2008) 167 Cal.App.4th 681, 701.
- Document title motion to strike defendant's answer to defendant's motion to set aside default and plaintiff's memorandum of points in support thereof (06/28/2021)
- Opposition to Defendant's motion to set aside entry of default, stating that agreement to set aside default was on condition that defendant agree to settle on plaintiff's terms and that plaintiff was "told" that serving Board of Supervisors was sufficient (04/20/2021);
- Petition for Writ of Certiorari to lift the stay imposed here while the case against Lowe's proceeds in federal court (12/28/2022);
- Motion to reinstate the defaults previously entered (but subsequently set aside) involving the defendants (10/21/2024);
- Appeal to the 5th Appellate District (F088816) regarding trial court's refusal to reinstate defaults. Order is not appealable.
- Ex parte application to stay proceedings to permit review by the California Supreme Court (02/10/2025), filed just two months after plaintiff filed a motion to lift the stay and resume litigation in the case (11/26/2024)

- Motion to strike trial court proceedings pending review of writ of supersedes for review before the California Supreme Court (02/10/2025);
- Emergency motion to compel, motion to dismiss, and notice of intent to appeal regarding trial court's alleged failure to specially-set plaintiff's ex parte application to stay the trial court proceedings (02/11/2025)
- Notice of writ of mandate, transfer request for stay of proceedings (02/13/2025);
- Petition for writ of mandate with the 5th Appellate District (F089344). Summarily dismissed same day it was filed.
- Cover sheet emergency petition for writ of mandate and motion to disqualify Judge Seibert (02/26/2025);
- Plaintiff's conditional objection to case management conference and notice of jurisdictional challenge (02/26/2025);
- Plaintiff's motion for summary judgment (filed 02/28/2025), set for hearing the same date it was filed, naming Judge Seibert as one of the defendants as well as the Judge assigned to decide the motion. There is no separate statement of undisputed fact. There is no memorandum of points and authorities.
- Petition for writ of mandate with the 5th Appellate District (F089475). Summarily dismissed one week after it was filed.
- Plaintiff's "Final Legal report and Settlement Demand" indicating that "the merits of this case have been conclusively resolved in favor of plaintiff [and that] the defendants have been found liable for malicious prosecution" and that plaintiff demands $151.6 million in order to settle and avoid further lawsuits (extortion). Filed 03/04/2025. This "notice" is accompanied by a "motion" set for hearing this date (03/28/2025), and includes as new defendants Verizon and Google.
- "Emergency motion to immediately remove this case from the County of Tuolumne and Judge Kevin M. Seibert's Jurisdiction, stay proceedings, and reaffirm consolidation of cases; request for criminal investigation into the judicial misconduct and violations of due process to all parties and their attorneys of record" (03/10/2025).
- Motion for default judgment (03/11/2025);
- Motion to stay and postpone case management conference and all related proceedings (03/19/2025);
- Ex Parte Motion to Stay and Postpone the Case Management Conference (CMC) and All Related Proceedings; and for Entry of Default Judgment and Sanctions for Procedural Noncompliance (03/21/2025)

In the above list, one can see that he has repeatedly asked this Court to reinstate his bogus defaults at least three times, and has already asked both the Court of Appeals and the California Supreme Court to intervene (without success). Mr. Redick has also asked this Court on at least five different occasions for a stay in the proceedings, hoping to drag these cases out

indefinitely. Mr. Redick's behavior in these consolidated cases is quite patently designed to cause unnecessary delay, to run up the legal fees for this County to "punish" it for charging him with shoplifting, and, to most reasonable observers, to make a mockery of the judicial system by filing papers replete with completely unmeritorious claims and contentions.

As noted, plaintiff has filed scores of unmeritorious motions – which makes him a vexatious litigant. He has also engaged in tactics that are "totally and completely without merit or for the sole purpose of harassing an opposing party." See CCP §§ 128.5, 391(b)(3). Of course, this Court's impression that Mr. Redick is a vexatious litigant is not "deemed to be a determination of any issue in the litigation or of the merits thereof" (CCP §391.2), and if Mr. Redick could simply color in the lines of his malicious prosecution action this Court would certainly keep an open mind on the merits, but rather than color in the lines Mr. Redick seems wildly obsessed with chasing defaults that he was never entitled to in the first instance, and which no court would ever condone in a prove-up hearing after default. Even though defendants herein have not asked this Court to have plaintiff declared a vexatious litigant, there is nothing in the statutory scheme to suggest that a trial court lacks the authority to initiate the process *sua sponte*. See, *e.g., Karnazes v. The Lauriedale Homeowners Association* (2023) 96 Cal.App.5th 275, 281 ["an appellate court may declare a litigant vexatious in the first instance"]. However, since plaintiff was not provided notice that this issue was being considered by this Court, this Court will give plaintiff an opportunity to be heard before a formal order is entered. All of plaintiff's "motions" set for hearing this day (strike trial court proceedings, disqualify Hon. Seibert, declare plaintiff the winner, confirm settlement demand, stay litigation, continue CMC, transfer case to another county) are denied with prejudice.

6. CV66392 Ruibal v. FCA US, LLC
Hearing on: Review Hearing
Moving Party: N/A
Tentative Ruling: Stay Imposed

This is a "lemon law" case. On 12/26/2024, defendant removed the action to the United States District Court for the Eastern District of California based on diversity of citizenship. In so doing, this Court has now been presumptively divested of subject-matter jurisdiction unless and until a clerk of the federal court serves an order for remand. See 28 USC §1446(d); *ClipperJet Inc. v. Tyson* (2019) 38 Cal.App.5th 521, 527-529. The case here shall be stayed indefinitely until further order. Plaintiff is free to voluntarily dismiss without prejudice.