Dept. 1
Civil Law and Motion Tentative Rulings for Friday, September 13, 2024 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. **CV65224** **Garcia v. Sonora Community Hospital**
   Hearing on: Compel Depositions
   Moving Party: Defendant
   Tentative Ruling: Granted in Part; Denied in Part

This is a medical negligence case involving the development of skin lesions during a lengthy hospital stay. Before the court this day is a defense motion to compel the depositions of a party and three non-party percipient witnesses (plaintiff's family members). This is the second time that defendant has sought judicial intervention to take these seemingly-obvious depositions. As of today's date, the court file does not reflect any opposition filed by either plaintiff or any of the three non-party witnesses.

Plaintiff's Deposition - Grant

Service of a notice of deposition is effective to require a party or party-affiliated witness to attend and to testify. CCP §2025.280. A party may serve written objection to the deposition notice based upon an "error or irregularity" under Article 2 of the Code. CCP §2025.410. The differing grounds for objection are provided by statute, and include such things as the 10-day notice and 75/150 mile requirements. See CCP §§ 2025.210 - 2025.280. Unavailability for a date unilaterally selected is not one of the enumerated grounds for objecting to a deposition notice, but more importantly service of an objection does not stay the deposition. Article 2 (§ 2025.210 - 2025.280) does ***not*** contain any requirement that a deposition be scheduled after agreement is reached on the date. Even though professional courtesy dictates cooperating on deposition dates, the deponent has an affirmative obligation to file a motion to quash (for procedural errors) or a motion for protective order (to adjust the timing and/or location). CCP §2025.420(b). When a party or party-affiliated witness fails to appear for deposition, the traditional "meet and confer" requirement for discovery motions is substituted for a lesser "inquiry" declaration. CCP §2025.450(b)(2).

Based on the declaration of Attorney Ninke, there is no legal basis for withholding plaintiff's deposition, nor is there any legal basis for denying the motion to compel. As such, and in the absence of any motion for a protective order, plaintiff is ordered to appear in person for a deposition at a location mutually agreed-upon within the next 30 days. Her failure to appear, without just caused, may result in the subsequent imposition of issue/evidence sanctions. Although defendant is entitled to an award of monetary sanctions, no sanctions were requested.

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Non-Party Depositions – Deny w/o Prejudice

Proper personal service of a deposition subpoena obligates any deponent residing in the state at the time of service to appear, testify and produce documents responsive thereto. CCP §§ 1989, 2020.220(c). The mechanism for securing judicial intervention for a dispute involving a non-party deposition is a motion to compel "directing compliance with [the subpoena] upon those terms or conditions as the court shall declare." CCP §1987.1. The motion is to track CCP §2025.480 (see *Unzipped Apparel, LLC v. Bader* (2007) 156 Cal.App.4th 123, 127), which requires a meet and confer declaration, a separate statement, and a showing of "good cause" for documents sought. See CCP §2025.480(b); CRC 3.1345(a)(3)-(4); *Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, 223-224. In addition, CRC Rule 3.1346 requires that all moving papers supporting a motion to compel deposition responses or document production from a nonparty deponent "must be personally served on the nonparty deponent unless the nonparty deponent agrees to accept service by mail at an address specified on the deposition record." The general rules requiring service on counsel (CRC 1.21(a) and CRPC 2-100(A) and (B)) expressly apply only to represented "parties" and not represented "nonparties" or "individuals." Failure by the moving party to give proper notice to the deponent renders any subsequent court order voidable. *Parker v. Wolters Kluwer US, Inc.* (2007) 149 Cal.App.4th 285, 296; in accord, *Johnson v. E-Z Ins. Brokerage, Inc.* (2009) 175 Cal.App.4th 86, 98.

Based on the declaration of Attorney Ninke and the various attachments, this Court is unable to find that the non-parties have in fact designated plaintiff's counsel to serve as their attorney-in-fact for these discovery proceedings. In other words, serving the subpoenas on plaintiff's counsel, and the motion itself on plaintiff's counsel, is not enough to compel the actual attendance of non-parties at deposition. When an issue like this arises – attorney for party claiming a protective bubble around witnesses – the typical approach is to sanction the attorney under CCP §2023.010(c) or CCP §128.5 for failing to honor an agreement to utilize an informal version of discovery, but defendant has not sought such relief. Since there is no writing signed by the non-parties confirming counsel's authority to accept the subpoena on their behalf, or to receive notice of this motion for them, ther is no legal basis by which this Court can issue at order at this time compelling attendance at deposition of non-parties. Defense counsel will simply have to proceed in the ordinary course of events, which is feasible given the recent trial continuance.

Defendant to give notice.

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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2. CV64803 **Moore v. Edwards**
Hearing on: Motion to Enforce Settlement
Moving Party: Plaintiff
Tentative Ruling: Continued to 11/01/24 @ 8:30 a.m.

This case involves a complex commercial business dispute involving airplanes and airplane parts. To their credit, the parties have faithfully participated in extensive settlement talks throughout the course of this litigation. Although those efforts did not stop the parties from requiring one day of trial, the collective efforts culminated in a settlement reached and placed on the record in this department at the outset of day 2. A subsequent written settlement, signed by all, came to pass with the same terms.

The history of the case suggested perhaps that, even with a settlement, ongoing disputes would arise. They have. Before the Court this day is a motion by plaintiff to enforce that settlement agreement. A review of the court file fails to reveal any opposition to the motion, which suggests perhaps that defendants concede the obligation.

Pursuant to CCP §664.6, if parties to pending litigation give their personal consent in open court to a settlement, or agree to settle in a writing signed by them (or their attorneys of record), a trial court may enter judgment pursuant to the terms of that settlement. This statute was enacted to provide a summary procedure for specifically enforcing a settlement contract without the need for a new lawsuit. Not every settlement agreement is amenable to enforcement by way of this summary proceeding; sometimes, the parties will need to amend the operative pleading or file a new lawsuit. For example, settlements which either omit material terms or incorporate prospective conditions with "moving parts" are often ineligible for expedited summary treatment because the trial court is not allowed to interpret or resolve factual conflicts in this summary proceeding. See *In re Marriage of Assemi* (1994) 7 Cal.4th 896, 905, 911; *Machado v. Myers* (2019) 39 Cal.App.5th 779, 790-791; *Leeman v. Adams Extract & Spice, LLC* (2015) 236 Cal.App.4th 1367, 1375; *Khavarian Enterprises, Inc. v. Commline, Inc.* (2013) 216 Cal.App.4th 310, 328-329; *Lindsay v. Lewandowski* (2006) 139 Cal.App.4th 1618, 1624; *Terry v. Conlan* (2005) 131 Cal.App.4th 1445, 1459.

At issue here is defendant Roger Edwards' obligation to tender $175,000 to plaintiff. There is no dispute that defendant agreed to this settlement amount, and no dispute that defendant has yet to honor that agreement despite agreeing to do so "within 90 days of [March 7, 2024]." Based on the signed agreement, all five defendant have agreed to allow judgment to be entered against them – with the gross amount of the judgment ($585,000) exceeding the settlement amount by more than a factor of 3. Due to the

significant difference between the amount of settlement and the amount of judgment to be entered, this Court must determine whether the judgment amount bears a "reasonable relationship to the range of actual damages that the parties could have anticipated would flow from a breach." *Ridgely v. Topa Thrift Loan Assn.* (1998) 17 Cal.4th 970, 976-977; in accord, *Graylee v. Castro* (2020) 52 Cal.App.5th 1107, 1113-1114; *Vitatech Internat., Inc. v. Sporn* (2017) 16 Cal.App.5th 796, 808-814; *Jade Fashion & Co., Inc. v. Harkham Industries, Inc.* (2014) 229 Cal.App.4th 635, 648-649; *Greentree Financial Group, Inc. v. Execute Sports, Inc.* (2008) 163 Cal.App.4th 495, 499-500. Since there is nothing in the settlement agreement suggesting that $585,000 in damages is conceded to be in the ballpark if the case were to proceed to trial and resolve in plaintiff's favor, and nothing in the supporting papers even addressing the Civil Code §1671 issue, supplemental briefing will be required. All papers addressing the §1671 issue must be filed/served by 10/18/24.

Plaintiff to give notice.

3. CV66073 Williams v. Harman Management Corporation
Hearing on: Demurrer to SAC
Moving Party: Defendant
Tentative Ruling: Overruled

This is a representative (class action and PAGA) case involving alleged wage/hour violations taking place at Kentucky Fried Chicken ("KFC") on Mono Way. Before the Court this day is a demurrer to the operative pleading (Second Amended Complaint) and all nine (9) causes of action stated therein.

A demurrer presents an issue of law regarding the sufficiency of the allegations set forth in the complaint. *Lambert v. Carneghi* (2008) 158 Cal.App.4th 1120, 1126. The challenge is limited to the "four corners" of the pleading (which includes exhibits attached and incorporated therein) or from matters outside the pleading which are judicially noticeable under Evidence Code §§ 451 or 452. The complaint is read as a whole: material facts properly pleaded are assumed true; contentions, deductions or conclusions of fact/law are not. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Jenkins v. JP Morgan Chase Bank, NA* (2013) 216 Cal.App.4th 497, 506. In general, 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. The degree of detail required depends on the extent to which the defendant in fairness needs such detail which can be conveniently provided by the plaintiff. Less particularity is required when the defendant ought to have co-extensive or superior knowledge of the facts. *Leek v. Cooper* (2011) 194 Cal.App.4th 399, 413.

According to defendant, all of the causes of action are uncertain (CCP §430.10(f)), and none of them state sufficient facts to constitute a cause of action (CCP §430.10(e)). Conceptually, it is hard to reconcile the contention that the claims are both unintelligible and legally insufficient.

A demurrer for uncertainty will be sustained only where 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. In other words, a cause of action is uncertain if the inclusion of seemingly mis-placed words muddle the pleading in such a way as to make it impossible to discern the essential facts upon which a determination of the controversy depends. Defendant does not claim that the nine (9) causes are action are too ambiguous to decipher; instead, defendant argues that the nine (9) causes of action were expressly included in a prior written settlement agreement, establishing a clear waiver defense. How would defendant know that the nine (9) claims here are the exact same claims waived in the prior settlement if the claims here are too amorphous to understand? The claims in the Second Amended Complaint are not uncertain, and the demurrer on that basis is overruled.

Defendant next contends that each of the nine (9) causes of action included within the Second Amended Complaint fail to state sufficient facts to constitute legal claims. Where the demurrer is based on the pleading not stating facts sufficient to constitute a cause of action, the rule is that 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. Critically, not every fact which ultimately supports a cause of action needs to be pled, and 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. Even for claims which must be pled with particularity (like fraud, defamation, elder abuse, statutory violation), a pleader can get away with less precision when it appears from the nature of the allegations that the demurring party is sufficiently

informed. See *Cansino v. Bank of America* (2014) 224 Cal.App.4th 1462, 1469. Again, defendant does not claim that the claims are legally deficient; instead, defendant claims that there exists an absolute affirmative defense to the nine (9) claims? The claims are not legally insufficient, and the demurrer on that basis is overruled.

What is actually going on here? On 11/22/22, plaintiff signed a one-page "General Release of All Claims" in favor of defendants in exchange for $500.00. The release covers all of plaintiff's *individual* claims associated with the conditions of his employment at KFC. Because he has no individual dog in the fight, and is unable to read/understand legal agreements, he is presumably unqualified to serve as a class representative … but not necessarily barred from serving as the PAGA representative. Plaintiff contends that he has a learning disability and signed the release under duress without the benefit of reading/understanding its legal import. The circumstances surrounding its presentment and execution do raise some potential flags, but the burden rests with plaintiff to restore the consideration given and establish rescission of the release agreement. See *Village Northridge Homeowners Association v. State Farm Fire & Casualty Co.* (2010) 50 Cal.4th 913. Assuming, for present purposes only, that the release agreement is currently binding on plaintiff, it may ultimately impact his standing to pursue eight (8) of the nine (9) causes of action. However, how is something like this relevant at the pleading stage?

Defendant contends that trial court are authorized to take judicial notice of settlement agreements in order to sustain a demurrer directed at the sufficiency of a cause of action (430.10(e)), citing *Scott v. JPMorgan Chase Bank* (2013) 214 Cal.App.4th 743, and *Performance Plastering v. Richmond American Homes of California, Inc.* (2007) 153 Cal.App.4th 659. *Scott* did not involve a settlement agreement, and *Performance* involved a settlement agreement only to the extent of determining that plaintiff had standing to sue as a third-party beneficiary. Neither case stands for the proposition that a trial court is free to dismiss a case *at the pleading stage* merely because it appears as though there may already exist a settlement agreement between the parties. However, there is plenty of authority for that proposition on summary judgment. See, *e.g.*, *Skrbina v. Fleming Companies* (1996) 45 Cal.App.4th 1353, 1366-1367. In that case, the Court made plain that "a written release extinguishes any obligation covered by the release's terms, provided it has not been obtained by fraud, deception, misrepresentation, duress, or undue influence [and that] when a person with the capacity of reading and understanding an instrument signs it, he is, in the absence of fraud and imposition, bound by its contents, and is estopped from saying that its provisions are contrary to his intentions or understanding; but it is also a general rule that the assent of a party to a contract is necessary in order that it be binding upon him, and that, if the circumstances

of a transaction are such that he is not estopped from setting up his want of assent, he can be relieved from the effect of his signature if it can be made to appear that he did not in reality assent to it." *Id*. In other words, there is no place on the pleadings to rule that the release is binding, and it really ought to wait for summary adjudication. See also *Daneshmand v. City of San Juan Capistrano* (2021) 60 Cal.App.5th 923, 933-934. In addition, because settlement agreements are subject to possible rescission, the best defendants could hope for here is an order sustaining the demurrer with leave to amend (to plead around the apparent estoppel/waiver defense). See *Carrillo v. County of Santa Clara* (2023) 89 Cal.App.5th 227, 234-236. Since plaintiff's plead-around is now evident, this seems an exercise in futility.

Demurrer overruled. The PAGA cause of action is adequately pled in its own right. Plaintiff to give notice. Defendants to answer in 5 days.

4. CV65100 Woodruff v. Armstrong
Hearing on: Withdraw as Counsel
Moving Party: Counsel for Plaintiff
Tentative Ruling: See discussion

This is a personal injury action, stemming from an automobile accident occurring in this county on 08/23/22. Before the Court this is another motion by plaintiff's counsel to withdraw from the case. Although these motions are typically unopposed (there being a perceived tactical advantage to trial against an unrepresented party), plaintiff is strongly opposed to the withdrawal motion.

Every motion to withdraw must set forth sufficient detail to permit a trial court to discharge its duty of inquiry regarding the grounds for the motion. Courts have a duty of inquiry regarding the grounds for the motion, and are not required to accept at face value vague, unsupported or uncertain representations as to reasons why an attorney wants out. Counsel has a corresponding duty to respond and to describe the general nature of the issue, within the confines of any privilege. The degree of detail is on a sliding scale against counsel's candor and trustworthiness. See *Flake v. Neumiller & Beardslee* (2017) 9 Cal.App.5th 223, 230; *Manfredi & Levine v. Superior Court* (1998) 66 Cal.App.4th 1128, 1134-1136; *Aceves v. Superior Court* (1996) 51 Cal.App.4th 584, 592-593. Counsel's MC-052, in conjunction with his separate declaration, provides very little information from which to glean the genuine need to withdraw. Counsel makes passing reference to the client not following advice, which has impacted reciprocal trust, but then states that any more detail would be covered by the attorney-client privilege. Not so. This Court is not asking for counsel to disclose *the content* of any communications with

the client, only an explanation for why – at this very late stage of the case – they can no longer work with one another. Barren references to CRPC 3-700 (which has not been on the books since 2020) is insufficient. Since courts are to review these on a sliding scale of candor and transparency, this Court is unwilling to grant the motion without a further explanation.

Second, all papers in support of the motion must be personally delivered to the client, or mailed to the client's "current" address (as confirmed within last 30 days). CRC 3.1362(d)(2) requires the attorney to serve the papers on the client at an address which was actually confirmed to be accurate within the preceding 30 days. If that address cannot be confirmed, and counsel can show due diligence, service can be made to the client's last known address and on the clerk of the court. CCP §1011(b) and CRC 3.252. Counsel indicates that the client was served via U.S. Mail at his last known address, but that counsel was unable to confirm the current accuracy of that address. The only thing counsel did was call a last known phone number. Counsel fails to advise whether that call resulted in a voicemail recording belonging to the client, a person answering for the client, or a person answering stating that the number did not belong to the client. It was plaintiff's disappearance which formed the basis for counsel's recent application to continue trial and opposition to the recent discovery motions. It cannot be that counsel is unable to reach the client for purposes of discovery and trial preparation (or substitution of counsel), but had success doing so for this motion. Given counsel's previous representations made herein that plaintiff has been missing for quite some time, counsel will be required to effectuate personal service via a skip trace.

Finally, a proper motion to withdraw may be denied when it is reasonably foreseeable that the client would suffer prejudice, such as when the unrepresented client would be unable to fairly respond to dispositive motions. CRPC 3-700(A)(2); *Mossanen v. Monfared* (2000) 77 Cal.App.4th 1402, 1409. This request to withdraw is being made in the face of discovery orders and a fast-approaching trial date, with no bona fide explanation for why the file appears to have been placed on counsel's back burner. There has been no discovery conducted by plaintiff's counsel, no proper disclosure of experts, no posting of jury fees, and – it seems – no genuine intention of appearing in Tuolumne County for a trial.

The Court will entertain an in camera hearing, with parties and counsel present, to ascertain the basis for the motion further.