

Tentative Rulings for July 24, 2024

Department 4

**To request oral argument, you must notify Judicial Secretary
Vanessa Siojo at (760) 904-5722
and inform all other counsel no later than 4:30 p.m.**

This court follows California Rules of Court, Rule 3.1308 (a) (1) for tentative rulings (see Riverside Superior Court Local Rule 3316). Tentative Rulings for each law & motion matter are posted on the Internet by 3:00 p.m. on the court day immediately before the hearing at <https://www.riverside.courts.ca.gov/OnlineServices/TentativeRulings/tentative-rulings.php>. If you do not have Internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

To request oral argument, no later than 4:30 p.m. on the court day before the hearing you must (1) notify the judicial secretary for Department 4 at (760) 904-5722 and (2) inform all other parties of the request and of their need to appear telephonically, as stated below. If no request for oral argument is made by 4:30 p.m., the tentative ruling **will become the final ruling** on the matter effective the date of the hearing. **UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.**

COUNSEL AND SELF-REPRESENTED PARTIES ARE ENCOURAGED TO APPEAR AT ANY LAW AND MOTION DEPARTMENT TELEPHONICALLY WHEN REQUESTING ORAL ARGUMENTS.

TELEPHONIC APPEARANCES: On the day of the hearing, call into one of the below listed phone numbers, and input the meeting number (followed by #):

- Call-in Numbers: 1-833-568-8864 (Toll Free), 1-669-254-5252,
1-669-216-1590, 1-551-285-1373 or 1-646-828-7666
- Meeting Number: **160 533 0910**

Please **MUTE** your phone until your case is called and it is your turn to speak. It is important to note that you must call fifteen (15) minutes prior to the scheduled hearing time to check in or there may be a delay in your case being heard.

For additional information and instructions on telephonic appearances, visit the court's website at <https://www.riverside.courts.ca.gov/PublicNotices/remote-appearances.php>

Riverside Superior Court provides official court reporters for hearings on law and motion matters only for litigants who have been granted fee waivers and only upon their timely request. (See General Administrative Order No. 2021-19-1) Other parties desiring a record of the hearing must retain a reporter pro tempore.

1.

CVRI2303050	BALTAZAR VS COUNTY OF RIVERSIDE	MOTION TO COMPEL FURTHER RESPONSES TO SPECIAL INTERROGATORIES, SET ONE BY COUNTY OF RIVERSIDE
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Tentative Ruling:

Continue the hearing on the Motion to September 30, 2024, 8:30am, D-4.

The parties have not sufficiently met and conferred regarding the substance of the motion. Plaintiff indicates that further responses were provided concurrently with the filing of the opposition to the motion. All of Defendant's Motions to Compel (eighteen) between July 24 and August 6, 2024, are continued to the September 30th date, and the parties are ordered to meet and confer as to each motion. If a motion is no longer at issue following the meet and confer efforts, it shall be taken off calendar by moving party. If the motion to compel is still at issue following the meet and confer efforts, moving party shall file a declaration at least 10 days before the next hearing date, stating the issues still to be resolved at the hearing.

2.

CVRI2304664	GONZALES VS CORONA REGIONAL MEDICAL CENTER	DEMURRER TO 1ST AMENDED COMPLAINT FOR OTHER PERSONAL INJURY/PROPERTY DAMAGE/WRONGFUL DEATH TORT (OVER \$25,000) OF CORINNE GONZALES AS TO BY ALI VARASTEHE, MD
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Tentative Ruling:

GRANT Defendant's Request For Judicial Notice.

SUSTAIN the Demurrer, without leave to amend.

The action is barred under the Public Readiness and Emergency Preparedness Act (the "PREP Act"), 42 U.S.C. §§ 247d-6d, 247d-6e. The Defendant doctors are *covered persons* entitled to immunity because at the time of this incident, they were licensed medical professionals treating patients with Covid-19 during a public health emergency, and as such they were authorized to use and administer "*covered countermeasures*" in response to Covid-19. The "*covered countermeasures*", as defined in the PREP Act, include virtually any FDA-approved or any emergency use authorized ("EUA") "drug" or "device" used to "treat, diagnose, cure, prevent, mitigate or limit the harm from Covid-19, or the transmission of SARS-C0V-2...[or] to limit harm that Covid-19... might otherwise cause..."(85 Fed.Reg.35100, 35102; see also § 247d06d(i)(1).) This includes Remdesivir. The specific language of the PREP Act prohibits "all claims for loss caused by, arising out of, relating to, or resulting from the administration to or the use by an individual of a covered countermeasure." Plaintiffs allege constructive fraud under Civil Code § 1573, claiming that Defendants are liable because they failed to disclose treatment options to the

Plaintiff, which led to the use of Remdesivir and resulted in death and injury. Regardless of the labels used by Plaintiff, the constructive fraud claims relate to and/or arise out of the use of covered countermeasures and sound in medical negligence. Moreover, if Plaintiffs desire to bring an action for willful misconduct against the Defendants under the PREP Act, they are required to file their action in the United States District Court for the District of Columbia, which has exclusive jurisdiction over these matters. (See 42 U.S.C. § 247d-6d(e)(1); *Perez v. Oxford Univ.*, 2022 WL 1446543, at*6 (S.D.N.Y. Apr. 11, 2022).

3.

CVRI2401635	NORENA RODRIGUEZ VS CRAFTSMAN LATH AND PLASTER, INC.	MOTION TO STRIKE COMPLAINT ON COMPLAINT FOR OTHER EMPLOYMENT (OVER \$35,000) OF JHON ALEXANDER NORENA RODRIGUEZ BY CRAFTSMAN LATH AND PLASTER, INC.
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Tentative Ruling:

GRANT, with 30 days leave to amend.

Defendant moves to strike portions of Plaintiff’s Complaint concerning allegations relating to, and prayer for, punitive damages. The Court grants the motion because the Complaint lacks the minimum level of facts required to meet the pleading requirements for punitive damages under Civil Code § 3294. While Plaintiff alleges that Defendant was “acting in a deliberate, cold, callous, cruel and intentional manner...”, these underlying allegations are bare legal conclusions without factual support. Plaintiff fails to allege the underlying facts constituting malice, oppression, or fraud. Plaintiff does not allege facts showing that Plaintiff has a legitimate disability, as defined by FEHA, nor does Plaintiff provide facts indicating he was entitled to an accommodation which was deliberately withheld. Finally, Plaintiff also fails to allege corporate employer liability; no ultimate facts are alleged in the Complaint as to any misconduct of a managing agent binding the corporate employer, or ratification of conduct of an employee that is outrageous in nature. The Complaint merely alleges, in conclusory fashion, that the alleged acts constituting malice, oppression, or fraud, were carried out by Defendant’s officers, directors, or managing agents.

4.

CVCO2403624	PATTERSON VS DIGITAL FEDERAL CREDIT UNION	PETITION FOR ENTRY OF DEFAULT ADMINISTRATIVE JUDGMENT, SATISFACTION OF LIEN, DAMAGES, AND INJUNCTIVE RELIEF
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Tentative Ruling:

Continue Hearing to August 7, 2024, at 8:30am, D-4.