

Tentative Rulings for August 6, 2024

Department M301

**To request oral argument, you must notify
Judicial Secretary Tiffany Uhls 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 <http://www.riverside.courts.ca.gov/tentativerulings.shtml>. 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 M301 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.

REMOTE APPEARANCES: The court uses Zoom for remote appearances. Parties can log into Zoom on their device or opt to call into the scheduled hearing by using one of the following Zoom telephone numbers and the meeting ID for this department:

- 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
- Zoom Meeting ID: **161 538 5472**

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.

CVSW2203059	KENDRICK VS TEMECULA VALLEY HOSPITAL, INC.	DEMURRER TO 2ND AMENDED COMPLAINT
-------------	--	-----------------------------------

Tentative Ruling:

The Demurrer is SUSTAINED with leave to amend of 10 days. Although Plaintiffs added sufficient facts to show that the relation-back doctrine applies and the 3COA is not time-barred, they have not stated sufficient facts to satisfy the heightened pleading standard to state a cause of action under the dependent adult abuse statute.

Dependent adult abuse bears a clear and convincing standard which elevates the level of factual averments. Other than numerous factually-deficient, conclusory allegations of recklessness and citations to statutes and jury instructions, the dependent adult abuse claims are very thin to provide notice. Plaintiffs allege that TVH failed to provide the most basic custodial, nursing and medical care to William, which was the direct and proximate cause of the injuries to his head and lower extremities. (SAC, ¶ 26.) Plaintiffs assert that Defendants knew that William required assistance with tasks that included, but were not limited to, repositioning and hygiene/daily needs, thereby subjecting him to cruel and adjust (sic) hardship in knowing disregard of his rights to safety. (Id at ¶ 38.) Despite this knowledge of William’s suffering, Defendant’s (sic) violated their legal duties to protect Plaintiff from pressure ulcers, skin breakdown, infection and wounds, and to provide timely treatment and wound care after these injuries occurred. (Id.) This paragraph implies that Defendants failed to properly reposition and bath William, although this is not expressly or specifically alleged. Since the heightened pleading standard applies to claims under the Act, the allegations are insufficient to state a cause of action.

2.

CVSW2206880	BADURA VS BANTA	MOTION FOR SUMMARY JUDGMENT
-------------	-----------------	-----------------------------

Tentative Ruling:

The RJN is GRANTED within the limits of *Richtek USA, Inc. v. uPI Semiconductor Corp.* (2015) 242 Cal.App.4th 651, 658. The Motion is GRANTED.

The Complaint contains no allegations that Mary Banta made any misrepresentation to Plaintiff or that she intended to defraud him in any way. (See, Complaint, generally; UMF ## 5-7.) In her motion, Mary Banta presents evidence that she never had had any contact or discussions with Plaintiff. (Banta Decl. at ¶ 4.) Based on this evidence, Mary Banta met her burden to show that she made no misrepresentations to Plaintiff, and Plaintiff cannot establish his fraud cause of action against her. Moreover, Plaintiff failed to allege any other basis of liability against Mary Banta in the Complaint. (UMF # 7.)

Mary Banta also presents evidence that the court in the Family Law Case ordered that the judgment in the present action was the sole and separate property of Theodore Banta. (UMF ## 9, 11; Ex. A, § II.D.6.) Family Court has priority and exclusivity with respect to its broad jurisdictional authority over parties to a dissolution and disposition of their

property. (See e.g., *Burkle v. Burkle* (2006) 144 Cal.App.4th 387; *Neal v. Sup. Ct.* (2001) 90 Cal.App.4th 22; *Glade v. Glade* (1995) 38 Cal.App.4th 1441; *Askew v. Askew* (1994) 22 Cal.App.4th 942.) After a family law court acquires jurisdiction in a dissolution action to characterize, value, and divide the parties' community property, no other department of the superior court may entertain proceedings or make an order adversely affecting the family court's property division jurisdiction. (*Glade, supra*, 38 Cal.App.4th at 1454-1455.)

Based on the above, Mary Banta met her initial burden, so the burden shifts to Plaintiff to create a triable issue of material fact. In opposition to the motion, Plaintiff argues that Mary Banta was complicit in Theodore's actions while married to him but submits no evidence to support this claim. Plaintiff also states that (1) Mary Banta made a call to the bank and advised a check to Plaintiff was valid, and (2) Defendants did not have the money to take the vacation they went on after Plaintiff gave the \$20,000 check to Theodore. (Banta Decl. at ¶¶ 3-5.) However, Plaintiff lacks personal knowledge to make these statements, and even if they were admissible, they do not support Plaintiff's fraud claim against Mary Banta. There is still no evidence that Mary Banta ever made any misrepresentation to Plaintiff.

Plaintiff also submits a portion of a settlement agreement between himself and Defendants, pursuant to which, he claims, both Theodore Banta and Mary Banta agreed to repay the \$20,000 at issue in this lawsuit. (Opposition, Ex. A.) As Plaintiff does not attach the full document, it is impossible for the Court to know the terms of the agreement or confirm its authenticity. Further, a settlement agreement is inadmissible to prove liability. (Evid. Code § 1152(a).) Additionally, even if such an agreement exists, it does not change the fact that Plaintiff cannot establish the elements of the fraud cause of action asserted in the Complaint.

3.

CVSW2208443	BARRETT VS J.B. WHOLESALE ROOFING AND BUILDING SUPPLIES, INC.	MOTION TO COMPEL FURTHER RESPONSES TO SPECIAL INTERROGATORIES (SET TWO) REQUEST FOR SANCTIONS
-------------	--	--

Tentative Ruling:

The unopposed Motion is GRANTED. Reasonable sanctions of \$1200.00 are imposed. Responses are due in 20 days; sanctions are due in 30 days.