

December 27, 2024

Dept. 9

Tentative Rulings

1.	PC20210469	REAVES v. KIHOLM
Motion to Be Relieved		

Counsel for the Defendant has filed a motion to be relieved as counsel pursuant to Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362. A declaration on Judicial Council Form MC-052 accompanies the motion, as required by California Rules of Court, Rule 3.1362, stating that there has been a breakdown of the working relationship.

Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362 allow an attorney to withdraw after notice to the client. Proof of service of the motion on the Defendant at their last known address and on counsel for Plaintiff was filed on November 22, 2024.

A Settlement Conference is currently scheduled on August 27, 2025, and trial is set for October 7, 2025. Those dates are not listed in the proposed Order as required by California Rules of Court, Rule 3.1362(e).

TENTATIVE RULING #1:

ABSENT OBJECTION, THE MOTION IS GRANTED ONCE AN AMENDED ORDER IS FILED. COUNSEL IS DIRECTED TO SERVE A COPY OF THE SIGNED ORDER (FORM MC-053) ON THE CLIENT AND ALL PARTIES THAT HAVE APPEARED IN THE CASE IN ACCORDANCE WITH CALIFORNIA RULES OF COURT, RULE 3.1362(e).

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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2.	22CV1352	ADAMS et al v. LATROBE HILLS HOMEOWNERS ASSOC.
Motion to Vacate Statement of Decision		

Judge Gary Slossberg issued a Statement of Decision (“Decision”) on October 15, 2024. Based upon the Clerk’s Certificate of Mailing, the Decision was mailed to counsel for both parties; however, it appears that the copy mailed to counsel for Plaintiff was returned as undeliverable on or around October 25, 2024. Defendant served a Notice of Entry of Statement of Decision, with a copy of the Decision, on November 7, 2024, to Plaintiff’s counsel by e-mail.

Plaintiffs now bring this Motion to Vacate Statement of Decision, arguing that they never received a Tentative Statement of Decision, which would have triggered their 15-day period for objecting, under California Rules of Court, Rule 3.1590. Plaintiffs request that the Court vacate the October 15, 2024 Decision or grant an extension of time to file objections to the Decision.

Defendants oppose, arguing that Plaintiffs could have filed their objections concurrently with the Motion, and that alleged improper service of the Decision is an insufficient basis under California Code of Civil Procedure (“CCP”) § 632 and § 634 to vacate the Decision. Defendants further argue that under California Rules of Court § 3.1590(g) provides that Plaintiffs’ time to object to the Decision ran the date of service, which in this case would be November 7, 2024. When Plaintiffs filed the instant Motion, they still had time to object to the Decision. The Court agrees that Plaintiffs had until November 26, 2024 to file their objections.

Plaintiffs reply, arguing that the issue is that Plaintiffs only received a Notice of Entry of Final Statement of Decision, and not a Tentative Statement of Decision.

While Defendants did not file their objections concurrently with the Motion to Vacate, the Court hereby grants Defendants 15 days from this tentative ruling to formally file any objections they may have.

TENTATIVE RULING #2:

ANY PARTY MUST FILE ITS OBJECTIONS TO THE STATEMENT OF DECISION ON OR BEFORE MONDAY, JANUARY 13, 2025.

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COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

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3.	21CV0356	POTOSKY REVOCABLE LIVING TRUST v. BELFORD ESTATES HOMEOWNERS ASSOCIATION
Motion for Leave		

On December 5, 2024, plaintiff filed a motion requesting leave to amend its complaint to add Rick Locarnini as a named defendant.^{1,2} Plaintiff cites Code of Civil Procedure section 473, noting that “the parties have just begun discovery and this matter has not been set for trial.” The court notes that these statements are incorrect. Plaintiff’s second amended complaint was filed over two years ago; and trial is currently set for May 6, 2025.

Defendant opposes the motion on the grounds that: (1) it is untimely under Code of Civil Procedure sections 1005, subdivision (b) and 1010.6, subdivision (a)(3)(B); and (2) it fails to comply with California Rules of Court, Rule 3.1324 because it does not include identification by page, paragraph, and line number the proposed additional or deleted allegations.

As it relates to the motion’s timeliness, Code of Civil Procedure section 1005, subdivision (b) requires that “all moving and supporting papers shall be served and filed at least 16 court days before the hearing.” The hearing is set for December 27, 2024. Plaintiff served its motion electronically on December 5, 2024. However, the last day to serve the motion electronically expired on December 2, 2024 (16 court days before December 27, 2024, is December 4, 2024; two court days (for electronic service) before December 4, 2024, is December 2, 2024). Moreover, plaintiff filed an amended motion on December 13, 2024, which is only nine court days before the hearing. Therefore, the court finds that plaintiff’s motion was not timely noticed.

Next, California Rules of Court, Rule 3.1324, requires the moving party to state what allegations in the previous pleading are proposed to be deleted, if any, and what allegations are proposed to be added to the previous pleading, if any, and where, by page, paragraph, and line number, said allegations are located. (Cal. Rules Ct., R. 3.1324, subs. (a)(2)–(3).) As defendant’s opposing declaration points out, plaintiff’s original motion filed December 5, 2024, does not comply with this requirement. The original declaration from plaintiff’s counsel merely states, “The proposed amendments are outlined in shadow as compared with the first [sic] amended complaint.” (Papez Decl., filed Dec. 5, 2024, ¶ 2.) In its amended motion filed December 13, 2024, plaintiff’s counsel declares, “The proposed amendments are outlined in shadow as compared with the first [sic] amended complaint and are located all on page 5 lines 4

¹ Plaintiff entitles the motion as a motion for leave to file the “second” amended complaint. However, as defendant points out, plaintiff already filed a second amended complaint in this matter on August 26, 2022. Therefore, the proposed amended complaint would constitute the third amended complaint.

² Plaintiff submitted a substantially similar motion to amend on August 23, 2023. On October 27, 2023, the court denied plaintiff’s motion, reasoning that: (1) it failed to comply with California Rules of Court, Rule 3.1324; and (2) under the circumstances, the amendment of the complaint would not be in furtherance of justice and would be prejudicial to the opposing party.

through 19 of the proposed second amended complaint and include modifying paragraph 23 adding paragraphs 24 and 25 and making the former paragraph 23 a new paragraph, paragraph 26.” (Papez Decl., filed Dec. 13, 2024, ¶ 2.) Having reviewed the proposed third amended complaint, however, the court notices other proposed additions and deletions that are omitted from plaintiff’s counsel’s declaration, including: (1) plaintiff proposes to delete paragraph 29 from the second amended complaint; (2) in paragraph 32 of the proposed third amended complaint (paragraph 30 of the second amended complaint), plaintiff proposes to delete the named defendant, “Bruce Shoff;” (3) in paragraph 35 of the proposed third amended complaint (paragraph 33 of the second amended complaint), plaintiff proposes to delete the named defendant “Bruce Shoff,” and delete the last three sentences;³ (4) in paragraph 40 of the proposed third amended complaint (paragraph 38 of the second amended complaint), plaintiff proposes changing the reference to Defendant Belford Estate Homeowners Association in the first sentence to defendants (plural); (5) plaintiff proposes deleting paragraphs 40 through 42 of the second amended complaint; and (6) plaintiff proposes deleting the fifth cause of action for declaratory relief from the second amended complaint.

Therefore, the court finds that plaintiff has still not complied with California Rules of Court, Rule 3.1324.

Even if plaintiff’s motion complied with the applicable requirements, the court would still deny the motion. “The court *may*, in *furtherance of justice*, and *on any terms as may be proper*, allow a party to amend any pleading.” (Code Civ. Proc., § 473, subd. (a)(1) (emphasis added); see Code Civ. Proc., § 576.) In support of the instant motion, plaintiff’s counsel declares that “adding this defendant [Rick Locarnini] strengthens plaintiffs [sic] claims for damages as more members of the HOA are involved in plaintiffs [sic] claims and will potentially allow for a successful mediation, mediation for this matter is set for January 14, 2025.” (Papez Decl., filed Dec. 13, 2024, ¶ 4.) Counsel acknowledges that Mr. Locarnini’s alleged wrongdoing “was discovered in September 2022,” however, plaintiff did not previously add Mr. Locarnini as a defendant in anticipation that this matter might resolve without further litigation. The court notes that plaintiff filed a similar motion to amend to add Mr. Locarnini as a named defendant in August 2023. The court denied that motion without prejudice because plaintiff failed to comply with the same California Rule of Court at issue here, Rule 3.1324. The court finds inexcusable delay on plaintiff’s part in seeking this amendment, as it has been more than two years since discovery of Mr. Locarnini’s alleged wrongdoing, and over one year since plaintiff’s motion to

³ The last three sentences of paragraph 33 in the second amended complaint read: “The defendants did not follow the articles of the Belford Estates CC & R’s in either approving or denying their applications for a construction of a fence and Quonset upon their properties. Defendant Belford Estates Homeowners Association allowed Defendant Shoff to intercept and not communicate the plaintiff’s applications to the Architectural Control Committee for approval or denial. Defendant Shoff represented to the plaintiff that the Architectural Control Committee had reviewed plaintiffs [sic] application and denied them when in fact the Architectural Control Committee had not seen the applications because of the actions of Defendant Shoff.”

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amend was denied for technical deficiency. Further, the court finds that amendment would result in probable prejudice to defendants Belford Estates Homeowners Association and Bruce Shoff in the form of delay of mediation and trial, added costs of preparation, and increased burden of discovery. (See *Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 486–487.)

Based on the above, the motion is denied without prejudice.

TENTATIVE RULING #3: PLAINTIFF’S MOTION FOR LEAVE TO FILE AN AMENDED COMPLAINT IS DENIED WITHOUT PREJUDICE.

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4.	22CV1501	ELLIS v. DEPARTMENT OF MENTAL HEALTH
Demurrer		

This case involves a claim by Peter Jon Ellis (“Plaintiff”) against El Dorado County Department of Mental Health (“Defendant”). Plaintiff claims that Defendant discriminated against him and denied him from participation in services. In the Complaint, Plaintiff states he was seeking services for his symptoms associated with his bipolar disorder and ADHD. Plaintiff alleges that a call was unreasonably made to law enforcement to report a concern without justification. Defendant demurs to the Complaint.

Standard of Review - Demurrer

A demurrer tests the sufficiency of a complaint by raising questions of law. *Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 20. In determining the merits of a demurrer, all material facts pleaded in the complaint and those that arise by reasonable implication, but not conclusions of fact or law, are deemed admitted by the demurring party. (*Moore v. Conliffe*, 7 Cal.4th 634, 638; *Interinsurance Exchange v. Narula*, 33 Cal.App.4th 1140, 1143. The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded. *Flynn v. Higham* (1983) 149 Cal.App.3d 677, 679.

Rodas v. Spiegel (2001) 87 Cal. App. 4th 513, 517

The Complaint includes one cause of action for general negligence.

Defendant demurs to the First cause of action on the following grounds:

1. Under the California Tort Claims Act (the “Act”) (Gov. Code § 810 et seq.), a public entity is not liable for injury arising from an act or omission except as provided by statute, and Plaintiff has failed to allege a statutory basis for liability with particularity.
2. Plaintiff’s Complaint is uncertain under Code of Civil Procedure (“CCP”) § 430.10(f) because it is ambiguous and unintelligible, by not describing the alleged misconduct sufficiently to apprise Defendant of the issues it must defend.
3. To the extent the claim is premised on a phone call made by a County employee, the claim fails because the employee would be immune from liability under Government Code § 822.2.⁴

Meet and Confer Requirement

Code of Civil Procedure §430.41(a) provides: Before filing a demurrer pursuant to this chapter, the demurring party **shall meet and confer in person or by telephone** with the party

⁴ Gov. Code § 822.2: A public employee acting in the scope of his employment is not liable for an injury caused by his misrepresentation, whether or not such misrepresentation be negligent or intentional, unless he is guilty of actual fraud, corruption or actual malice.

who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer.

Code of Civil Procedure §430.41(a)(3):

The demurring party shall file and serve with the demurrer a declaration stating either of the following:

(A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer.

(B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.

Dumas v. Los Angeles County Bd. of Supervisors (2020) 45 Cal. App. 5th 348 (“If, upon review of a declaration under section 430.41, subdivision (a)(3), a court learns no meet and confer has taken place, or concludes further conferences between counsel would likely be productive, it retains discretion to order counsel to meaningfully discuss the pleadings with an eye toward reducing the number of issues or eliminating the need for a demurrer, and to continue the hearing date to facilitate that effort”).

Defendant sent one meet and confer letter and gave the pro per Plaintiff two and a half weeks before filing the Demurrer. No additional efforts were made.

Argument

Defendant first asserts that a public entity, such as Defendant, is immune from negligence claims and is not liable for injury arising from an act or omission except as provided by statute. Under the Act (Gov. Code § 810 et seq.), a public entity is not liable for injury arising from an act or omission except as provided by statute. (*Hoff v. Vacaville Unified School Dist.* (1998) 19 Cal. 4th 925, 932 (citing Gov. Code § 815, subd. (a)).) The Complaint does not contain a specific statutory reference, that would cause Defendant to be liable for the alleged negligence.

Next, Defendant argues that under CCP § 430.10(f), the Complaint is uncertain because it does not identify the nature of the cause of action, nor does it describe the alleged misconduct sufficiently to apprise Defendant of the issues. The Court notes that the Complaint does not specify which services were denied, who made the phone call, what effect the phone call had, nor why or how the phone call was negligent or unreasonable. The objection of uncertainty does not go to failure to allege sufficient facts, but to doubt as to what the pleader means by the facts alleged. (*Brea v. McGlashan* (1934) 3 Cal. App. 2d 454.) Allegations of a complaint must be sufficiently clear to apprise the defendant of the issues which it is to meet and defend. (*Butler v.*

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Sequeira (1950) 100 Cal App 2nd 143, 145-147). The Court agrees that based on the currently pled facts, the Complaint is uncertain.

Lastly, Defendant argues that if Plaintiff is asserting that the County is liable for a misrepresentation in the phone call made by a County employee, then the claim falls under Government Code § 822.2 and is therefore barred. The Court agrees with the general assertion, however, it is not clear who made the phone call, and if the phone call was in fact made by a County employee, whether or not that employee was acting within the scope of his/her employment.

Plaintiff did not file an Opposition.

TENTATIVE RULING #4:

DEMURRER SUSTAINED WITH LEAVE TO AMEND.

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