TENTATIVE RULINGS

DEPT C11

Judge Andre De La Cruz

Court Reporters: Official court reporters (*i.e.*, court reporters employed by the Court) are not provided for law and motion matters in this Department. If a party desires a record of a law and motion proceeding, it will be the party's responsibility to provide a court reporter. Parties must comply with the Court's policy on the use of privately retained court reporters, which can be found at:

- Civil Court Reporter Pooling; and
- Court Reporter Interpreter Services.

Tentative rulings: The Court endeavors to post tentative rulings on the Court's website no later than Friday afternoon immediately preceding Monday's hearing. However, ongoing proceedings such as jury trials may prevent posting by that time. Moreover, tentative rulings may not be posted in every case.

Please do not call the department for tentative rulings if tentative rulings have not been posted.

The Court *will not* entertain a request to continue a hearing or the filing of further documents once a tentative ruling has been posted. Further, a motion may not be taken off calendar once a tentative ruling has been posted unless the entire action has been dismissed.

Submitting on tentative rulings: If all counsel intend to submit on the tentative ruling and do not desire oral argument, please advise the Courtroom Clerk by sending an email to: ctownsend@occourts.org and copied to eveloz@occourts.org. Please do not call the Department unless all parties submit on the tentative ruling. If all sides submit on the tentative ruling and so advise the Court, the tentative ruling shall become the Court's final ruling and the prevailing party shall give notice of the ruling and prepare an order for the Court's signature if appropriate under Cal. R. Ct. 3.1312.

When a proposed order is required, even if motion is unopposed, the parties are ordered to submit it in two formats: (1) one draft in MS Word (*.doc or *.docx); and (2) one draft in PDF format with all attachments/exhibits attached thereto in accordance with Cal. R. Ct. 3.1312(c)(1) and (2).

Non-appearances: If nobody appears for a hearing and the Court has not been notified that all parties submit on the tentative ruling, the Court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The Court

also might make a different order at the hearing. *See Lewis v. Fletcher Jones Motor Cars, Inc.*, 205 Cal. App. 4th 436, 442 (2012), fn. 1.

Appearances: Department C11 conducts non-evidentiary proceedings, such as law and motion, remotely, by Zoom videoconference pursuant to Code of Civil Procedure § 367.75 and Orange County Local Rule (OCLR) 375. All counsel and self-represented parties appearing for such hearings must check-in online through the Court's website at https://www.occourts.org/media-relations/civil.html prior to the commencement of their hearing. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Participants will initially be directed to a virtual waiting room pending the start of their specific video hearing.

Check-in instructions and instructional video are available at https://www.occourts.org/media-relations/aci.html. The Court's "Appearance Procedures and Information—Civil Unlimited and Complex" ("Appearance Procedures") and "Guidelines for Remote Appearances" ("Guidelines") will be strictly enforced. It is your responsibility to ensure that your *audio **and** video* are functioning properly prior to your hearing.

Parties preferring to appear in-person for law and motion hearings may do so pursuant to Code of Civil Procedure § 367.75 and OCLR 375.

Public Access: The courtroom remains open for all evidentiary and non-evidentiary proceedings.

No filming, broadcasting, photography, or electronic recording is permitted of the video session pursuant to California Rules of Court, rule 1.150 and OCLR 180.

TENTATIVE RULINGS
April 21, 2025

#	Case Name	Tentative
1	Berry vs. General Motors, LLC 30-2024-01423938	1. Demurrer to Complaint 2. Motion to Strike Portions of Complaint filed by General Motors, LLC on 11/13/2024 3. Case Management Conference **Mooted by filing of Amended Complaint;** **Case Management Conference CONTINUED to June 23, 2025 at 1:30 p.m.**

2	Cuellar-Olver vs. Lilly 30-2024-01415602	1. Motion to Strike – Anti SLAPP 2. Demurrer to Complaint filed by Matthew E. Lilly on 10/03/2024 3. Case Management Conference Defendant Matthew E. Lilly's ("Defendant") unopposed Anti-SLAPP Motion to Strike is **GRANTED**. Code of Civil Procedure section 425.16 permits a special motion to strike Strategic Litigation Against Public Participation ("SLAPP") lawsuits. A SLAPP suit is "a meritless suit filed primarily to chill the defendant's exercise of First Amendment rights." *Finton Construction, Inc. v. Bidna & Keys, APLC,* 238 Cal. App. 4th 200, 208 (2015). The trial court engages in a two-step process to determine whether a special motion to strike should be granted. Code Civ. Proc., § 425.16(b)(1). First, the court decides whether the defendant has met its initial burden of establishing a *prima facie* showing that defendant's acts, of which the plaintiff complains, were taken in furtherance of the defendant's constitutional rights of petition or free speech in connection with a public issue. *Navellier v. Sletten,* 29 Cal. 4th 82, 88 (2002). Courts must focus on the substance of the lawsuit in analyzing the first prong of a special motion to strike. *Scott v. Metabolife Internat., Inc.,* 115 Cal. App. 4th 404, 413–414 (2004). "If liability is not based on protected activity, the cause of action does not target the protected activity and is therefore not subject to the SLAPP statute." *Haight Ashbury Free Clinics, Inc. v. Happening House Ventures,* 184 Cal. App. 4th 1539, 1550 (2010). Once the moving defendant's initial evidentiary burden is met, then the burden shifts to the plaintiff to establish a probability that the plaintiff will prevail on the claim, *i.e.*, a showing of facts that would, if proved at trial, support a judgment in the plaintiff's favor. *DuPont Merck Pharm. Co. v. Superior Court,* 78 Cal. App. 4th 562, 567-568 (2000). The plaintiff "must demonstrate that the *complaint is both legally sufficient* and supported by a sufficient *prima facie* showing of facts to sustain a favorable judgment." *Premier Med.*

Mgmt. Systems, Inc. v. Cal. Ins. Guar. Assn., 136 Cal. App. 4th 464, 476 (2006) (emphasis in original; internal quotes omitted).

First, the Complaint alleges that Defendant, who is an attorney, was unprofessional while serving as counsel of record for third party Yesenia Rodriguez at a civil harassment restraining order hearing that Plaintiff filed against Rodriguez. Compl. at 1. Specifically, Plaintiff alleges that she "was alarm by the conduct of Matthew E Lilly displayed not asking question or answering on behalf of Yesenia Rodriguez." *Id.* Plaintiff further alleges that "[t]his leads me to request to start a civil case in regards to making the Court aware that the practice was unprofessional that the stranger acted as a lawyer to be an accomplice of fraud illegal activities defending a stalker . . . ." *Id.* Plaintiff finally alleges that "Matthew E. Lilly could have written this name without being his actual name . . . Matthew E. Lilly may have had a legal name change . . . . He might be an illegal person stealing birth certificates." *Id.* at 2.

Protected activity under the anti-SLAPP statute includes: "(1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; [and] (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive or judicial body, or any other official proceeding authorized by law." Code Civ. Proc., § 425.16(e)(1) - (2).

Here, all of the acts alleged in the Complaint fall squarely within the above two categories.

Second, as Defendant has met his burden and demonstrated that the Complaint arises from protected activity, the burden shifts to Plaintiff to demonstrate that her claims are legally sufficient and factually substantiated. *Newport Harbor Offices & Marina, LLC v. Morris Cerulllo World Evangelism,* 23 Cal. App. 5th 28, 49 (2018). "To meet this burden, a plaintiff cannot rely on its

		own pleading, even if verified . . . but must present admissible evidence." *Id*. Plaintiff did not file an opposition to the motion and therefore has presented no evidence to support the allegations of her complaint. Further, the acts complained of appear to be privileged under Civil Code section 47. Accordingly, the motion is **GRANTED**. Defendant is awarded $457 in costs incurred in connection with filing this motion. Code Civ. Proc., § 425.16(c)(1). In light of the above ruling on Defendant's Special Motion to Strike, the Court finds Defendant's demurrer **MOOT**. Moving party to give notice.
3	Ghanem vs. Abutsleb 30-2019-01111226	Motion for New Trial filed by Ibrahim Ghanenem on 03/18/2025 **No tentative ruling.**
4	Giardina vs. SetSchedule, Inc. 30-2023-01328940	1. Motion to be Relieved as Counsel of Record filed by counsel for SetSchedule LLC on 11/07/2024 2. Motion to be Relieved as Counsel of Record filed by counsel for SetSchedule, Inc. on 11/07/2024 The unopposed motions of attorney Jesse Caryl of Bent Caryl & Kroll, LLP to be relieved as counsel for Defendants SetSchedule, Inc. and SetSchedule, LLC are **GRANTED**. Service on the clients and on all other parties who have appeared in the case was proper and all required forms containing the requisite information were filed pursuant to California Rules of Court, rule 3.1362. The order will take effect once moving attorney files proof of service of the signed orders (MC-053) on the clients.

		Moving attorney to provide notice.
5	Kostadinov vs. La Cabana Food Distributing, Inc. 30-2024-01404446	1. Demurrer to Complaint filed by U.S. Specialty Insurance Company on 10/01/2024 2. Case Management Conference Defendant U.S. SPECIALTY INSURANCE COMPANY ("U.S. Specialty") demurs to Plaintiff KRASSIMIRE KOSTADINOV's ("Kostadinov") entire Complaint pursuant to Code of Civil Procedure §§ 430.10(e), 430.10(f), 430.10(g) and California Rule of Court, rule 3.1320, without leave to amend. Demurrer is **SUSTAINED** with twenty (20) days leave to amend for failure to state sufficient facts to constitute a cause of action and uncertainty. As to moving Defendant U.S. SPECIALTY INSURANCE COMPANY, the Complaint only alleges that this is Plaintiff's insurance company, and he has received no payment. Inconsistent with that statement, now, in the Opposition, Plaintiff claims "there is a good faith belief that USSIC issued a policy applicable to one or more defendants." *See* Opp. at 3:4-5. These inconsistent statements render the Complaint confusing and uncertain. Notably, a statutorily compliant meet and confer as required by the Code of Civil Procedure section 430.41 did not occur in connection with the instant filing. Moving party contends that even after many attempts to meet and confer with opposing counsel, those attempts were never responded to. Accordingly, the Court now sets and OSC re Sanctions against Plaintiff and his attorney for failure to communicate regarding meet and confer attempts of Defense counsel. Any declarations the Court is to consider in connection with the OSC must be filed no later than two (2) court days prior to the hearing. OSC re Sanctions as to Plaintiff and Plaintiff's Counsel is set for May 26, 2025 at 1:30 p.m. in Dept. C11. Case Management Conference is **CONTINUED** to same date and time.

		Defendant U.S. Specialty Insurance Company to give notice.
6	Leung vs. Felix 30-2023-01357423	Motion to Set Aside / Vacate Dismissal filed by Nozomi T. Leung on 10/29/2024 Plaintiff, Nozomi Leung, moves for an order setting aside the dismissal. The Motion is **GRANTED**. Plaintiff contends that the Court should set aside the dismissal pursuant to Code of Civil Procedure section 473(b) and set a Case Management Conference because there was excusable neglect as Plaintiff's counsel attempted to attend the hearing on the Court's portal on Zoom but had a difficult time reaching the Court due to problems with their computer. Declaration of Barry Zelner, ¶ 3. Code of Civil Procedure section 473(b) states: The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken. "'[A] party who seeks relief under [section 473] must make a showing that due to some mistake, either of fact or of law, of himself [or herself] or of his [or her] counsel, or through some inadvertence, surprise or neglect which may properly be considered excusable, the judgment or order from which he [or she] seeks relief should be reversed. In other words, a burden is imposed upon the party seeking relief to show why he [or she] is entitled to it, and the assumption of this burden necessarily requires the production of evidence.'" *Kendall v. Barker*, 197 Cal. App. 3d 619, 623-624 (1988). In a motion under section 473, the initial burden is on the moving party to prove

		inadvertence, surprise, excusable neglect or mistake by a "preponderance of the evidence." *Id.* at 624. "The test of whether neglect was excusable is whether 'a reasonably prudent person under the same or similar circumstances' might have made the same error." *Luri v. Greenwald,* 107 Cal. App. 4th 1119, 1128 (2003). The trial court's discretion to deny a motion for relief under section 473 based on the failure to establish excusable neglect is limited to circumstances where inexcusable neglect is clear. *New Albertsons, Inc. v Superior Court,* 168 Cal. App. 4th 1403, 1419-1420 (2008). "[A]lthough the party moving for relief under section 473 has the burden to show that the mistake, inadvertence, surprise, or neglect was excusable, any doubts as to that showing must be resolved in favor of the moving party." *Id.* at 1420. The trial court's discretion must be exercised "in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice." *Elston v. City of Turlock,* 38 Cal. 3d 227, 233 (1985) (internal citations and quotations omitted). On April 17, 2024, the Court set an Order to Show Cause Re: Dismissal (failure to service) and Case Management Conference for 6/3/24, and stated as follows: "Plaintiff is ordered to file proof of service of the summons and complaint on all unserved defendants, including specifically, Alejandra Felix before the hearing. If plaintiff fails to do so, the Court will dismiss the action against any unserved defendant at the hearing unless plaintiff appears and shows good cause otherwise. *See* Cal. Rules of Court, rule 3.110(f); Local Rule 381." ROA 14. The Court also ordered Plaintiff to file and serve a status report no later than 5 court days before the hearing. *Id.* On June 3, 2024, the Order to Show Cause Re: Dismissal (failure to serve) and Case Management Conference were continued to August 5, 2024 "to allow time for Defendant Alejandra Felix to be served with the Summons and Complaint." ROA 22.

		On August 5, 2024, the Court ordered the following: "There being no appearance nor any contact by any party, the Court now orders the entire action dismissed without prejudice." ROA 27. The instant motion to set aside/vacate dismissal was filed on October 29, 2024 such that it was brought within six (6) months after the dismissal was entered, and is timely. The inability of Plaintiff's counsel to appear and attend the hearing on August 5, 2024 for the Order to Show Cause Re: Dismissal (failure to serve) and Case Management Conference on Zoom due to problems with counsel's computer appears to be excusable neglect—though it begs the question: if a computer problem was the culprit, why a simple phone call to the Court clerk communicating the same did not occur. In any case, the motion to set aside dismissal is **GRANTED**. However, Plaintiff has not filed a proof of service of the Summons and Complaint and presents no evidence regarding the same. Thus, the Court restores the Order to Show Cause Re: Dismissal (failure to service) and Case Management Conference for May 26, 2025 at 1:30 p.m. in Department C11. Plaintiff is—again—ordered to file proof of service of the Summons and Complaint on Defendant, Alejandra Felix, *before* the hearing. If plaintiff fails to do so, the Court will dismiss the action against any unserved defendant at the hearing unless plaintiff appears and shows good cause otherwise. *See* Cal. Rules of Court, rule 3.110(f); Local Rule 381.
7	LoanDepot.com, LLC vs. Richards 30-2023-01357538	1. Motion to Compel Further Responses to Special Interrogatories filed by LoanDepot.com, LLC on 2/04/2025 2. Motion to Compel Production filed by LoanDepot.com, LLC on 2/19/2025 **IDC calendared for May 2, 2025 at 10:00 a.m.; Motions CONTINUED to May 19, 2025 at 9:00 a.m.**

8	Richardson vs. Steward 30-2023-01346448	Motion to Deem Facts Admitted filed by John Steward on 10/30/24 **Off Calendar**
9	Taylor vs. FPI Property Management 30-2024-01423495	1. Demurrer to Complaint 2. Motion to Strike filed by Ray Pesos, Jorge Nunez, FPI Property Management on 11/25/2024 3. Case Management Conference Defendants FPI Management, Inc., Jorge Nunez, and Ray Pesos filed two motions attacking the allegations in the original complaint: (1) a motion to strike punitive damages; and (2) a demurrer to the first cause of action for premise liability and third cause of action for negligent hiring, retention, and supervision as alleged against Defendant Jorge Nunez only. *Motion to Strike* First, Plaintiff's opposition to the motion to strike states that the arguments in the motion to strike are well-taken. Plaintiff requests leave to amend to cure the deficiencies discussed in the motion to strike. The Motion to Strike is **GRANTED** with 20 days leave to amend. *Demurrer* Second, Defendants' demurrer attacks the allegations against Defendant Jorge Nunez as to the first cause of action for premise liability and third cause of action for negligent hiring, retention, and supervision. Defendant demurs to the first cause of action for premise liability on the grounds that it is duplicative of the second cause of action for negligence. The Court agrees with Plaintiff "elements of a negligence claim and a premises liability claim are the same: a legal duty of care, breach of that duty, and proximate cause resulting in injury." *Gonzalez v. Interstate Cleaning Corp.*, 106 Cal. App. 5th 1026, 1034 (2024), *as modified (Nov. 21, 2024)*.

Duplicative causes of action are "a basis for sustaining a demurrer" and a judge may properly sustain a demurrer without leave to amend as to a cause of action that contains allegations of other causes of action and, therefore, does not add anything to the complaint by way of fact, theory, or recovery. *Palm Springs Villas II Homeowners Assn., Inc. v. Parth*, 248 Cal. App. 4th 268, 290 (2016), *as modified on denial of reh'g (July 14, 2016)* (holding that cause of action for breach of governing documents was duplicative of cause of action for breach of fiduciary duty).

Another case has held, however, that a demurrer need not be sustained on the grounds that one or more causes of action are redundant, *i.e.*, that a particular cause of action mirrors another cause of action and is duplicative. *Blickman Turkus, LP v MF Downtown Sunnyvale, LLC*, 162 Cal. App. 4th 858, 889–890 (2008). The court in *Blickman* further stated that the elimination of redundancy "is the sort of defect that, if it justifies any judicial intervention at all, is ordinarily dealt with most economically at trial, or on a dispositive motion such as summary judgment." *Id*.

For this reason, the demurrer is **OVERRULED** as to the first cause of action for premise liability.

Defendant demurs to the third cause of action for negligent hiring, retention, and supervision on the grounds that the Complaint does not allege that Defendant Nunez was an employer or that he held position where he was responsible for hiring, retention, and supervision such that he can be held liable pursuant to a negligent hiring, retention, and supervision cause of action.

"California case law recognizes the theory that an employer can be liable to a third person for negligently hiring, supervising, or retaining an unfit employee." *Doe v. Capital Cities*, 50 Cal. App. 4th 1038, 1054 (1996). "Liability is based upon the facts that the employer knew or should have known that hiring the employee created a particular risk or hazard and that particular harm materializes." *Id*. Here, Plaintiff has not alleged that Defendant Nunez is an

		employer or supervisor such that he was responsible for hiring, supervising, or retaining an unfit employee. The demurrer is **SUSTAINED** with 20 days leave to amend as to the third cause of action for negligent hiring, retention, and supervision as alleged against Defendant Nunez. At the hearing on these motions and the concurrently scheduled Case Management Conference, the parties shall be prepared to discuss whether Plaintiff's Motion for Leave to Amend should be vacated as moot. This Motion for Leave to Amend is scheduled for a 8/4/2025 hearing. Moving Defendants to give notice.
10	Thomas vs. Regional Center of Orange County 30-2023-01333739	1. Motion to Dismiss filed by Larry Landauer, Lilianna Castillo, Regional Center of Orange County, Arturo Cazares on 10/22/2024 2. Case Management Conference Defendants Regional Center of Orange County, Larry Landauer, Arturo Cazares, and Liliana Castillo filed a Motion to Dismiss asking the Court to dismiss Plaintiff's case against Defendant Regional Center of Orange County and enter judgment in favor of Defendant Regional Center of Orange County and against Plaintiff Joy Thomas. Plaintiff did not oppose the motion. Defendants move pursuant to Code of Civil Procedure section 581(f)(2). Section 581(f)(2) states that the "court may dismiss the complaint as to that defendant when . . . [e]xcept where Section 597 applies, after a demurrer to the complaint is sustained with leave to amend, the plaintiff fails to amend it within the time allowed by the court and either party moves for dismissal." "The decision to dismiss an action under section 581, subdivision (f)(2) rests in the sound discretion of the trial court and a reviewing court will not disturb the ruling

		unless the trial court has abused its discretion." *Gitmed v. General Motors Corp*., 26 Cal. App. 4th 824, 827 (1994). Here, Defendants Regional Center of Orange County, Larry Landauer, Arturo Cazares, and Liliana Castillo's demurrer to all causes of action in Plaintiff Joy C. Thomas dba Casa Alegria's First Amended Complaint was sustained on 9/9/2024. ROAs 74 and 85. Plaintiff was given 15 days leave to amend. *Id*. As of April 16, 2025, no amended complaint has been filed. Accordingly, the Court **GRANTS** the motion and dismisses Plaintiff's case against Defendant Regional Center of Orange County and enters judgment in favor of Defendant Regional Center of Orange County and against Plaintiff Joy Thomas. Moving party to give notice.