June 20, 2025 Civil Tentative Rulings

1. CU0000862 City of Nevada City vs. John Atkinson III, as Trustee, et al.

Receiver's motion for discharge, exoneration of surety, and distribution of funds is granted.

The Receiver is required to submit a motion or stipulation for discharge, and a summary of all accounts, payments, and debts of the receivership. *See* Rules of Court, rules 3.1183, 3.1184. A receiver is an independent third party, a "hand" or "agent" of the court that acts only upon the direction and authority of the appointing court. *Takeba v. Superior Court* (1919) 43 Cal. App. 469, 475. Thus, all actions undertaken are subject to final ratification by the court, and the discharge hearing is the appropriate venue for a court to utilize its discretion on all receivership actions. *Hanno v. Superior Court* (1939) 30 Cal.App.2d 639, 641.

Any unspent receivership funds are to be disbursed by order of the court upon application of "the owner, the mortgagee, or any lienor of record . . . ." Rules of Court, rule 17980.7(c)(9). Any objections must be brought at the discharge hearing, otherwise they are waived. *Aviation Brake Systems, Ltd. v. Voorhis* (1982) 133 Cal.App.3d 230, 232-35.

Here, the motion is unopposed. The city has filed a declaration in support of its requested fees; the court finds that the requested fees of $17,329.20 are reasonable and are approved.

Additionally, the requested reserve of $10,000 is appropriate.

Distribution of the remaining funds to John D. Atkinson III, the recorded prior owner of the property, is proper.

The motion is granted.

2. CU0001207 Amanda Powell vs. Briarpatch Cooperative Of Nevada, Inc.

The motion for approval of preliminary class action and PAGA settlement is granted.

Pre-trial settlement of complex class actions is a judicially favored remedy. *Officers for Justice v. Civil Serv. Comm'n* (9th Cir. 1982) 688 F.2d 615, 625 ("Voluntary conciliation and settlement are the preferred means of dispute resolution."). Class action settlement
approval requires an early "preliminary" review by the trial court and a subsequent "final" review after notice of the settlement has been distributed to class members for their comments and objections. Rues of Court, rule 3.769(c)-(g); *Cellphone Termination Fee Cases*, 180 Cal.App.4th 1110, 1118 (2010) (the court first "preliminarily approves the settlement" and later "conducts a final approval hearing to inquire into the fairness of the proposed settlement").

Preliminary approval is warranted if the settlement falls within a "reasonable range." *See North County Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal.App.4th 1085, 1089-90. Reasonableness and fairness are presumed where: (1) the settlement is reached through "arms-

length bargaining;" (2) investigation and discovery are "sufficient to allow counsel and the court to act intelligently;" (3) counsel is "experienced in similar litigation. . . . ." *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1802. The presumption of fairness is consistent with California's public policy goal of favoring settlements. *Stambaugh v. Super. Ct* (1976) 62 Cal.App.3d 231, 236 ("the law wisely favors settlements"); *Cellphone Termination Fee Cases* (2009) 180 Cal.App.4th 1110, 1118 ("public policy generally favors the compromise of complex class action litigation"); *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151 ("voluntary conciliation and settlement are the preferred means of dispute resolution ... [t]his is especially true in complex class action litigation"). Additionally, in reviewing the fairness of a class action settlement, due regard should be given to what is "otherwise a private consensual agreement between the parties." *Cellphone Termination Fee Cases, supra* 186 Cal.App.4th at 1389. The inquiry "must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned." *Id.*

Class actions are statutorily authorized "when the question is one of common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court" Civ. Proc. Code § 382; *Lee v. Dynamex, Inc*. (2008) 166 Cal.App.4th 1325, 1332. Class certification is appropriate when there is an "ascertainable class and a well-defined community of interest among class members." *Sav-On Drug Stores, Inc.* (2014) 34 Cal.4th 319, 326. Class treatment is appropriate even if class members at some point may be required to make an individual showing as to eligibility for recovery. *Bufil v. Dollar Financial Group, Inc*. (2008) 162 Cal.App.4th 1193, 1207; *Sav-On,* 34 Cal.4th at 333.

Here, the proposed class is ascertainable and there is a well-defined community of interest among the settlement class members. The settlement was reached through arms-length bargaining at mediation. The settlement falls within the ballpark of reasonableness. Additionally, the proposed notice informs the class about the case and its settlement. The court preliminarily approves the class representative enhancement and the attorney's fees and litigation costs. The motion for preliminary class action settlement is granted.

Pursuant to Rules of Court, rule 3.769(e), the Court hereby sets the hearing for final approval for December 19, 2025, at 10:00 a.m. in Dept. 6.

3. CU0001540 Bradley Dorigo, et al. vs. County of Nevada, et al.

Defendants' demurrer to the first amended complaint is sustained with leave to amend.

A demurrer challenges defects appearing on the face of the pleading or from matters appearing through judicial notice. *See* Code Civ. Proc. §§ 430.30, 430.70. On demurrer, the court reasonably interprets the challenged pleading, reading it as a whole and its parts in context; the court determines whether the complaint states facts sufficient to constitute a cause of action under the pertinent substantive law, and assumes the truth of all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law; in deciding whether to sustain a demurrer

without leave to amend, the Court must consider whether a reasonable possibility exists that the defect can be cured by amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.

The demurrer to the first claim for uncertainty and failure to state a cause of action relating to statutory authority is sustained. A statutory basis for governmental tort liability must exist and must be identified in the complaint; if it is not, the complaint fails to state a cause of action. *Searcy v. Hemet Unified School District* (1986) 177 Cal.App.3d 792, 802. Here, plaintiff must clearly set forth the statutory basis for liability and omit any statutory references that do not provide a basis for liability, *e.g.*, Government Code section 815.2, 820.

The demurrer to the first claim for uncertainty and failure to state a cause of action relating to vagueness and lack of specificity is also sustained. "[B]ecause under the Tort Claims Act all governmental tort liability is based on statute, the general rule that statutory causes of action must be pleaded with particularity is applicable." *Lopez v. Southern California Rapid Transit District* (1985) 40 Cal.3d 780, 795. "[T]he plaintiff must set forth facts in his complaint sufficiently detailed and specific to support an inference that each of the statutory elements of liability is satisfied. General allegations are regarded as inadequate." *Mittenhuber v. City of Redondo Beach* (1983) 142 Cal.App.3d 1, 5 (citations omitted); *Peter W. v. San Francisco Unified Sch. Dist.* (1976) 60 Cal.App.3d 814, 819 ("to state a cause of action against a public entity, every fact material to the existence of its statutory liability must be pleaded with particularity."). At bar, the first amended complaint fails to allege the specific facts supporting a statutory cause of action. Plaintiff's current complaint does not explain how defendants' property allegedly constituted a dangerous condition, or how it caused plaintiff's injuries.

The demurrer to the second claim for uncertainty and duplicity is sustained. To begin with, the first claim already cites Government Code section 835, and others, as the basis for liability. As such, it is duplicative. Additionally, if the second claim is attempting to allege non-statutory general negligence, such a cause of action is not tenable against a public entity. The Tort Claims Act abolished all common-law or judicially declared forms of liability for public entities, thus eliminating common-law governmental liability for tort damages. *See* Gov. Code § 815.

There is a reasonable possibility that the defects can be cured by amendment. Leave to amend is granted. Any amended complaint shall be served and filed within 10 calendar days.

4. CU0001544 Caitlin Peters vs. Cara Krpalek, et al.

The court, on its own motion, sets aside the default entered on March 6, 2025 against defendant Cara Krpalek. The default was improvidently entered by the clerk. Plaintiff's November 18, 2024, proof of personal service was not filed *under penalty of perjury* as required to substantiate proper personal service on defendant. A responsive pleading shall be served and filed within 10 calendar days. Defendant Cara Krpalek's motion to set aside the default is denied as moot.

5. CU0001653 Magic Sun Solar, Inc. vs. Shawn McCall

Defendants McCall and Talker's motion to set aside default are dropped as moot. On June 4, 2025, after the present motion was filed, the parties entered into a stipulation to set aside the

defaults. In addition, both defendants filed separate answers on June 10, 2025. The case management conference set for August 11, 2025, at 9:00 a.m. in Dept. 6, is confirmed. No appearances are required.

6. CU0001694 Tuyen Vuong vs. Cynthia Lynn Nulph

Proposed intervenor Dignity Health's unopposed motion for leave to intervene is granted.

Labor Code Section 3853 provides as follows:
If either the employee or the employer brings an action against such third person, he shall forthwith give to the other a copy of the complaint by personal service or certified mail. Proof of such service shall be filed in such action. If the action is brought by either the employer or employee, the other may, at any time before trial on the facts, join as party plaintiff or shall consolidate his action, if brought independently.

The right to intervene at any time before trial is absolute and not subject to the court's discretion to deny that right. *Mar vs. Sakti Intern. Coro*. (1992) 9 Cal.App.4th 1780, 1785.

As Dignity Health is the employer of the plaintiff, and the alleged injuries occurred in the course and scope of plaintiff's employment, Dignity Health has the right to intervene.

In sum, the motion to intervene is granted. The proposed complaint-in-intervention shall be filed and served within 10 calendar days.