

**TENTATIVE RULINGS for CIVIL LAW and MOTION**  
**November 17, 2015**

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at [www.yolo.courts.ca.gov](http://www.yolo.courts.ca.gov). If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Please take note that Yolo Superior Court is now located at 1000 Main Street, in Woodland.

Telephone number for the clerk in Department Eleven: (530) 406-6843

**TENTATIVE RULING**

**Case:** Doe v. Regents  
Case No. CV PT 15-1334  
**Hearing Date:** November 17, 2015 Department Eleven 9:00 a.m.

To afford the Court additional time in which to consider the parties' papers, this matter is **CONTINUED** on the Court's own motion to be heard on December 17, 2015, at 9:00 a.m. in Department 11.

**TENTATIVE RULING**

**Case:** Montano v. Rushmore Loan Management Services, LLC  
Case No. CV CV 15-1192  
**Hearing Date:** November 17, 2015 Department Eleven 9:00 a.m.

Defendants Christiana Trust and Rushmore Loan Management Services, LLC's demurrer to the complaint is **DROPPED FROM CALENDAR**. The Court's file reflects that the demurrer was filed on October 27, 2015. Code of Civil Procedure section 1005 requires the moving papers to be filed 16 court days before the hearing on the demurrer.

**TENTATIVE RULING**

**Case:** Nunez v. Omni Healthcare Services, Inc.  
Case No. CV PO 15-1096  
**Hearing Date:** November 17, 2015 Department Eleven 9:00 a.m.

Demurrer by defendants Shepherd's Glen Management Services, Inc. ("Shepherd") and Omni Healthcare Service, Inc.'s ("Omni") to plaintiffs Corinna Nunez by and through her successor in interest Edmundo Nunez, Edmundo Nunez, Elaina Aguilar, Esmeralda Aguilar, by and through her guardian ad litem Edmundo Nunez, and Leslie Nunez, by and through her guardian ad litem Edmundo Nunez:

Defendants' demurrer to the first cause of action for elder abuse is **OVERRULED**. (Code Civ. Proc., § 430.10, subs. (e) & (f).) Plaintiffs have adequately pled that defendants committed acts of neglect with respect to Ms. Nunez, that defendants acted with recklessness, and that managing agents of defendants ratified the reckless conduct. (Complaint, ¶¶ 12-14, 20; Welf. & Insts. Code, § 15610.57, 15657; *Carter v. Prime Healthcare Paradise Valley, LLC* (2011) 198 Cal.App.4<sup>th</sup> 396, 406-07.)

Defendants' demurrer to the second cause of action for violation of the Patients' Bill of Rights is **OVERRULED**. (Code Civ. Proc., § 430.10, subs. (e) & (f).) Defendants fail to demonstrate that plaintiffs were required to first pursue administrative enforcement before filing the instant claim. (*Nevarrez v. San Marino Skilled Nursing Facility* (2013) 221 Cal.App.4<sup>th</sup> 102, 129, 132.)

Defendants' demurrer to the third cause of action for negligence is **OVERRULED**. (Code Civ. Proc., § 430.10, subs. (e) & (f).) Plaintiffs have adequately pled that defendants breached a duty of care to Ms. Nunez. (Complaint, ¶ 49.)

Defendants' demurrer to the fourth cause of action for willful misconduct is **OVERRULED**. (Code Civ. Proc., § 430.10, subs. (e) & (f).) Plaintiffs may rely on a theory of willful misconduct against defendants, and may plead such a theory as an alternative to negligence. (*Berkley v. Dowds* (2007) 152 Cal.App.4<sup>th</sup> 518, 526.)

Defendants' demurrer to the fifth cause of action for wrongful death is **OVERRULED**. (Code Civ. Proc., § 430.10, subs. (e) & (f).) Plaintiffs plead adequate facts to support their allegation that defendants caused Ms. Nunez's death. (Complaint, ¶¶ 2, 5, 16-18.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rule of Court 3.1312, or further notice is required.

Motion to strike by defendants Shepherd and Omni:

Defendants' motion to strike is **DENIED**. (Code Civ. Proc., § 436.) Plaintiffs have alleged facts which, if proven, could establish that defendants engaged in despicable conduct carried on with a willful and conscious disregard of the rights or safety of others. (Complaint, ¶¶ 13-14; Welf. & Insts. Code, § 15657.) Health and Safety Code section 1430(b) supports a request for injunctive relief. The request for remedies against Shepherd under section 1430 need not be stricken as it is clear it is not being sued in the second cause of action.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rule of Court 3.1312, or further notice is required.

Demurrer by defendant Carolyn Van Diver:

Defendant's demurrer to the first cause of action for elder abuse is **OVERRULED**. (Code Civ. Proc., § 430.10, subs. (e) & (f).) Plaintiffs have adequately pled that defendant committed acts of neglect with respect to Ms. Nunez, that defendant acted with recklessness, and she ratified the

reckless conduct. (Complaint, ¶¶ 3, 5, 20, 22, 23, 31; Welf. & Insts. Code, § 15610.57, 15657; *Carter v. Prime Healthcare Paradise Valley, LLC* (2011) 198 Cal.App.4<sup>th</sup> 396, 406-07.)

Defendant's demurrer to the third cause of action for negligence is **OVERRULED**. (Code Civ. Proc., § 430.10, subds. (e) & (f).) Plaintiffs have adequately pled that defendant breached a duty of care to Ms. Nunez. (Complaint, ¶¶ 3, 20, 31, & 49.)

Defendant's demurrer to the fourth cause of action for willful misconduct is **OVERRULED**. (Code Civ. Proc., § 430.10, subds. (e) & (f).) Plaintiffs may rely on a theory of willful misconduct against defendant, and may plead such a theory as an alternative to negligence. (*Berkley v. Dowds* (2007) 152 Cal.App.4<sup>th</sup> 518, 526.)

Defendant's demurrer to the fifth cause of action for wrongful death is **OVERRULED**. (Code Civ. Proc., § 430.10, subds. (e) & (f).) Plaintiffs plead adequate facts to support their allegation that defendant caused Ms. Nunez's death. (Complaint, ¶¶ 3, 5, 16-18, 22 & 23.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rule of Court 3.1312, or further notice is required.

Motion to strike by defendant Van Diver:

Defendant's motion to strike is **DENIED**. (Code Civ. Proc., § 436.) Plaintiffs have alleged facts which, if proven, could establish that defendant engaged in despicable conduct carried on with a willful and conscious disregard of the rights or safety of others. (Complaint, ¶¶ 20, 22, 23, & 31; Welf. & Insts. Code, § 15657.) As the second cause of action is not directed against this defendant, the motion to strike the requests for remedies and injunctive relief is **DENIED**.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rule of Court 3.1312, or further notice is required.