TENTATIVE RULINGS for LAW and MOTION
April 19, 2022

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 on Yolo Court's Website, at 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.

Telephone number for the clerk in Department Nine (530) 406-6819
Telephone number for the clerk in Department Ten (530) 406-6816

TENTATIVE RULING

Case: **Din v. Sutter Health**
Case No. CV-2020-720
Hearing Date: April 19, 2022 Department Ten 9:00 a.m.

Moving defendant Sutter Valley Hospitals, dba Sutter Davis Hospital's ("SDH") Objections

Defendant Sutter Valley Hospitals, dba Sutter Davis Hospital's ("SDH") objections to the declaration of plaintiff Adnan Din, M.D., at 6:27-7:1-5 (Din decl., ¶ 25) and 7:7-10 (Din decl., ¶ 26), are **OVERRULED**. (Evid. Code, §§ 1200, 403, 702, 803; *Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1119.) SDH's objection to the declaration of plaintiff, at 8:1-3 (Din decl., ¶ 30), is **OVERRULED**. (Evid. Code, § 803.)

SHD's objections to the declaration of attorney M. Bradley Wishek, at 5:23-27 (Wishek decl., ¶ 8), are **SUSTAINED**. (Evid. Code, §§ 403, 702, 803.) SHD's objections to the declaration of attorney M. Bradley Wishek, at 5:27-29 (Wishek decl., ¶ 8), are **SUSTAINED**. (Evid. Code, §§ 403, 702, 803.) SHD's objections to the declaration of attorney M. Bradley Wishek, at 6:15-18 (Wishek decl., ¶ 9), are **SUSTAINED**. (Evid. Code, §§ 403, 702, 803.) SHD's objections to the declaration of attorney M. Bradley Wishek, at 7:11-13 (Wishek decl., ¶ 10), are **SUSTAINED**. (Evid. Code, §§ 403, 702, 803.)

The Court declines to rule on SDH's other objections to plaintiff's evidence as the evidence objected to is not germane to the disposition of SDH's motion for summary judgment or in the alternative summary adjudication. (Code Civ. Proc., § 437c, subd. (q).)

Motion for summary judgment or in the alternative summary adjudication

Defendant Sutter Valley Hospitals, dba Sutter Davis Hospital's ("SDH") motion for summary judgment or, in the alternative, summary adjudication is **GRANTED IN PART**. (Code Civ. Proc., § 437c.)

Defendant SDH's motion for summary judgment on the ground that all of plaintiff's causes of action involve alleged action by the Sutter Davis Hospital Medical Staff ("SDHMS"), a distinct

legal entity from SDH, is **DENIED**. Reflecting the "cautious" judicial attitude about granting summary judgment, the declarations and evidence offered in opposition to the motion must be liberally construed, while the moving party's evidence must be construed strictly, in determining the existence of a "triable issue" of fact. (*D'Amico v. Board of Med. Examiners* (1974) 11 Cal.3d (1974) 11 Cal.3d 1, 21.) Plaintiff has submitted admissible evidence disputing that moving defendant Sutter Davis Hospital has a board of directors. (Defendant SDH's UMF 2; Thuesen decl., Ex. 4, Shuler Tr. 123:9-13.) In Dr. Shuler's deposition transcript, Dr. Shuler refers to the Sutter Health Valley Area Medical Affairs Committee, identifying it as the board. (Shuler Tr., 23:1-4.) Dr. Shuler *also* answered the question "[d]oes Sutter Davis Hospital have a board?" with an unqualified "[n]o." (Shuler Tr., 23:12-13.) Construing the evidence as this Court must on summary judgment, moving defendant SDH is not entitled to summary judgment.

Defendant Sutter Valley Hospitals, dba Sutter Davis Hospital's motion for summary adjudication of its sixteenth affirmative defense because Sutter Davis Hospital is immune from suit under California Civil Code section 43.97 and California Business and Professions Code section 805 is **DENIED**. (Civ Code, § 43.97; Bus & Prof Code, § 805(j).) The facts of this case present what appears to be an issue of first impression: does a factual dispute regarding plaintiff's *receipt* of notice of summary suspension of privileges preclude summary adjudication as to an immunity defense based on Civil Code section 43.97 and Business and Professions Code section 805, subdivision (j)? Civil Code section 43.97 provides that "[t]here shall be no monetary liability on the part of, and no cause of action for damages, other than economic or pecuniary damages, shall arise against, a hospital for any action taken upon the recommendation of its medical staff, or against any other person or organization for any action taken, or restriction imposed, which is *required* to be reported pursuant to Section 805 of the Business and Professions Code, if that action or restriction is reported in accordance with Section 805 of the Business and Professions Code. (Civ. Code, § 43.97, emphasis added.) Business and Professions Code section 805, subdivision (j) provides that "[n]o person shall incur any civil or criminal liability as the result of making any report *required* by this section." (Emphasis added.) SDH's claim of immunity relies upon actions taken that SDH maintains were required to be reported pursuant to Business and Professions Code section 805, subdivision (c), required because plaintiff resigned his privileges "after receiving notice" of the suspension of his privileges. (Bus. & Prof. Code, § 805, subds. (c), (c)(1).) Plaintiff has submitted admissible evidence that he did not resign *after receiving notice* of the summary suspension of his privileges. (SDH's UMFs 17-18; Din decl., ¶¶ 3, 28.) This Court rules that SDH has not established that it is entitled to summary adjudication of its immunity defense based upon the asserted perspective of Dr. Shuler and the Medical Staff that the 805 and NPDB reports were legally required. (SDH's reply to separate statement, UMF 17.)

Defendant Sutter Valley Hospitals, dba Sutter Davis Hospital's motion for summary adjudication of its seventeenth affirmative defense because Sutter Davis Hospital is immune from suit for filing a report made under the federal Health Care Quality Improvement Act ("HCQIA") is **GRANTED**. (42 U.S.C. 11101 et seq.; 42 U.S.C. § 11133, subd. (a)(1)(B)(i); 42 U.S.C. § 11137, subd. (c).) Each health care entity which accepts the surrender of clinical privileges of a physician while the physician is under an investigation by the entity relating to possible incompetence or improper professional conduct shall report to the Board of Medical Examiners. (42 U.S.C.A. § 11133, subd. (a)(1)(B)(i).) "No person or entity…shall be held liable in any civil action with respect to any report made under this subchapter…without knowledge of the falsity

of the information contained in the report." (42 U.S.C.A. § 11137, subd. (c).) SDH has met its initial burden to show that it is entitled to summary adjudication on its seventeenth affirmative defense on the basis that SDH accepted plaintiff's resignation of privileges while plaintiff was under investigation. (SDH's UMFs 1-19.) Plaintiff has not responded with admissible evidence that puts into dispute whether SDH accepted plaintiff's resignation of clinical privileges while plaintiff was under investigation relating to possible incompetence or improper professional conduct. (45 C.F.R. § 60.22; 42 U.S.C. § 11137, subd. (c).) Nor has plaintiff set forth admissible evidence that SDH had actual knowledge of the falsity of the information contained in the report. (*Id.*)

SDH's third identified issue is that plaintiff's third and fourth causes of action fail as a matter of law because in the single instance where the Medical Staff restricted plaintiff's privileges, it had a legitimate non-retaliatory basis for the action. The Court notes that in the first amended complaint, plaintiff's third cause of action was for violation of Health and Safety Code section 1278.5. In the now operative second amended complaint, plaintiff's first cause of action is for violation of Health and Safety Code section 1278.5. The Court also notes that in the first amended complaint, the fourth cause of action was for violation of Business and Professions Code section 2056. In the now operative second amended complaint, the second cause of action is for violation of Business and Professions Code section 2056. This Court will refer to the causes of action that remain in the operative second amended complaint.

SDH's motion for summary adjudication as to plaintiff's SAC (first) cause of action for violation of Welfare and Institutions Code section 1278.5 and SDH's motion for summary adjudication as to plaintiff's SAC (second) cause of action for violation of Business and Professions Code section 2056 are **DENIED**. Plaintiff has set forth admissible evidence putting into dispute SDH's assertion that it had a legitimate, non-retaliatory basis to suspend plaintiff's privileges. (Din decl., ¶¶ 30-33.) In addition, plaintiff also set forth admissible evidence that he reported concerns about patient care and safety to Dr. Ferguson and the Hospital's Chief Executive Officer Rachael McKinney. (Din decl., ¶¶ 17-27.) Further, plaintiff set forth his own undisputed material facts ("UMFs") that Dr. Shuler and Dr. Ferguson pursued plaintiff's cases with unusual vigor (Plaintiff's UMFs 3, 6), that Dr. Shuler appointed the members of the peer review committee (Plaintiff's UMF 7), that Dr. Shuler exercised his authority removing and replacing Dr. Palchak from the committee (Plaintiff's UMFs 8-13), that Dr. Palchak regarded plaintiff as an excellent surgeon (Plaintiff's UMF 12). Plaintiffs can prove discriminatory animus by direct or circumstantial evidence. (See *DeJung v. Superior Court* (2008) 169 Cal.App.4th 533, 549.) A plaintiff need not demonstrate that every individual who participated in the adverse action shared discriminatory animus to defeat summary adjudication. (See *DeJung, supra,* at p. 550.) Showing that a significant participant in an employment decision exhibited discriminatory animus is enough to raise an inference that the employment decision itself was discriminatory, even absent evidence that others in the process harbored such animus. (*Id.*) The same evidence can be used both to set forth a prima facie case of discrimination and to demonstrate the existence of a triable issue of fact on the issue of pretext. (*DeJung, supra,* at p. 554.)

SDH's fourth identified issue is that plaintiff's fifth and sixth causes of action for violation of public policy are not valid causes of action in California. The Court notes that in the operative second amended complaint, the third cause of action is for violation of public policy as set forth

in Health and Safety Code section 1278.5 and the sixth cause of action is for violation of public policy as set forth in Business and Professions Code section 2056.

This Court **GRANTS** SDH's motion for summary adjudication as to plaintiff's SAC (third) cause of action for violation of public policy as expressed in Welfare and Institutions Code section 1278.5. Section 1278.5 provides that a member of the medical staff who has been discriminated against pursuant to this section shall be entitled to reinstatement, reimbursement for lost income resulting from any change in the terms or conditions of the member's privileges caused by the acts of the facility or the entity that owns or operates a health facility or any other health facility that is owned or operated by that entity, and the legal costs associated with pursuing the case, or to any remedy deemed warranted by the court pursuant to this chapter or any other applicable provision of statutory or common law. (Welf. & Inst. Code, § 1278.5, subd. (g).) The plain language of section 1278.5 provides statutory remedies for violations of the statute, and expressly allows for a plaintiff to pursue any remedy deemed warranted by the court pursuant to section 1278.5 or any other applicable provision of statutory or common law. No California court has recognized the existence of a separate tort cause of action for violation of the public policy expressed in Welfare and Institutions Code section 1278.5. Although California does recognize a tort for wrongful discharge in violation of public policy (*Tameny v. Atlantic Richfield Co*. (1980) 27 Cal.3d 167) and the principles of *Tameny* are logically capable of extension (*Harris v. Atlantic Richfield Co*. (1993) 14 Cal.App.4th 70, 80), plaintiff has not demonstrated that the plain language or the legislative history of section 1278.5 evince a legislative intent to extend *Tameny* to provide a tort cause of action for violation of public policy based upon the suspension of privileges of whistleblower medical staff, where that whistleblower medical staff does not have an employment relationship with defendant hospital. (SDH's UMF 9.)

This Court **GRANTS** SDH's motion for summary adjudication as to plaintiff's SAC sixth cause of action for violation of public policy as expressed in Business and Professions Code section 2056. No California court has recognized the existence of a tort for violation of the public policy expressed in Business and Professions Code section 2056. Although California does recognize a tort for wrongful discharge in violation of public policy (*Tameny v. Atlantic Richfield Co*. (1980) 27 Cal.3d 167) and the principles of *Tameny* are logically capable of extension (*Harris v. Atlantic Richfield Co*. (1993) 14 Cal.App.4th 70, 80), plaintiff has not demonstrated that the plain language or the legislative history of section 2056 clearly evince a legislative intent to expand *Tameny* to provide a separate tort cause of action for violation of public policy based upon the penalization of non-employee/non-contractual whistleblower medical staff. Section 2056 was sponsored by the California Medical Association. (*Khajavi v. Feather River Anesthesia Medical Group* (2000) 84 Cal.App.4th 32, 49.) The bill analyses show that the bill was intended to provide an express statutory public policy in favor of physicians' advocacy for appropriate healthcare of their patients and against employment termination or penalization of physicians for such advocacy and to state that a physician *who has an employment or other contractual relationship* with a person should not be terminated or otherwise penalized principally for advocating for appropriate healthcare for his or her patient. (*Khajavi, supra,* at pp. 49-50, emphasis added, citing Sen. Comm. On Business and Professions, Analysis of Assem. Bill No. 1676 (1993-1994 Reg. Sess.) July 12, 1993, p. 1, original emphasis; Sen. Floor Analysis of Assem. Bill No. 1676 (1993-1994 Reg. Sess.) August 30, 1993, p. 2.) While the legislative

history cited in *Khajavi* may support extension of *Tameny* to protect against penalization (of employees/contractors), a lesser wrong than termination, plaintiff has pointed to no evidence that the legislature intended to extend *Tameny* to protect physician whistleblowers like plaintiff, with no employment *or* contractual relationship with defendant hospital. (SDH's UMF 9.)

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

TENTATIVE RULING

Case:	**Romanyuk v. Johnson** **Case No. CV-2020-1397**		
Hearing Date:	**April 19, 2022**	**Department Nine**	**9:00 a.m.**

Chinh T. Vo of the Law Firm of Chinh T. Vo's unopposed motion to be relieved as counsel for plaintiffs Svetlana Romanyuk and Alex Romanyuk is **DENIED**. (Cal. Rules of Court, rule 3.1362.) The Court finds that counsel Vo has failed to provide sufficient notice of the instant motion. (Code Civ. Proc., §§ 1005, subd. (b); 1010.6, subd. (a)(4)(B), 1013, subd. (a); YCR 7.2.) The Court further finds that counsel Vo has failed to file with the Court a proof of service of the instant motion upon plaintiff Alex Romanyuk or counsel for defendant Brooklyn Jane Johnson. (Cal. Rules of Court, rule 3.1362(d).) Even if notice was sufficient, the Court finds that counsel Vo has not established: (1) good cause for the requested withdrawal; or, (2) that the requested withdrawal would not prejudice plaintiffs. (See *Lovvorn v. Johnston* (1941) 118 F.2d 704, 706 [an attorney may not, in the absence of the client's consent, withdraw from a case without justifiable cause]; *Ramirez v. Sturdevant* (1994) 21 Cal.App.4th 904, 915, citing Rules of Professional Conduct, rule 3–700(A)(2) and *Vann v. Shilleh* (1975) 54 Cal.App.3d 192, 197.)

The notice of motion does not provide notice of this Court's tentative ruling system as required by Local Rule 11.2(b). Counsel for moving party, or the moving party if unrepresented by counsel, is ordered to notify the opposing party or parties immediately of the tentative ruling system.

Parties, including plaintiffs Svetlana Romanyuk and Alex Romanyuk personally, are **DIRECTED TO APPEAR.**

TENTATIVE RULING

Case:	**Sheehy v. Beres, et al.** **Case No. CV-2021-2252**		
Hearing Date:	**April 19, 2022**	**Department Ten**	**9:00 a.m.**

Defendants Katie Catherine Beres and Morgan Stanley Smith Barney LLC's petition to compel arbitration and stay proceedings is **DENIED WITHOUT PREJUDICE**. (N.Y. CPLR 7501, 7503, subd. (a); Stecher Decl., ¶ 4, Exhibit 1-2, pp. 14 – 15.) The instant motion was not filed 16 court days before the hearing. (Code Civ. Proc., § 1005, subd. (b).) The Court also finds that the notice of the instant motion to plaintiff Maya Sheehy was insufficent – only providing 15 court days' notice. (Code Civ. Proc., §§ 1005, subd. (b); 1010.6, subd. (a)(4)(B); YCR 7.2 [requiring 16 court days' notice plus an additional 2 court days' notice for electronic service].)

The notice of motion does not provide notice of this Court's tentative ruling system as required by Local Rule 11.2(b). Counsel for moving party, or the moving party if unrepresented by counsel, is ordered to notify the opposing party or parties immediately of the tentative ruling system.

If no hearing is requested, and no party appears at the hearing, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case:	**Shelton v. Boyd**		
	Case No. CV-2020-911		
Hearing Date:	**April 19, 2022**	**Department Ten**	**9:00 a.m.**

The Court declines to rule on plaintiffs Robert Shelton and Adrian Shelton's evidentiary objections as the Court did not rely upon the paragraphs challenged in determining the instant motion.

Defendant Simeon Boyd's objections to evidence are **SUSTAINED IN PART**. (Evid. Code, §§ 210, 350.) The Court finds that plaintiffs have laid the proper foundation for the invoices and unbilled time entries attached as Exhibit A to the declaration of Tessa McGuire. (Evid. Code, §§ 402, 403; McGuire Decl., Exhibit A; see declarations of Boutin, McNairy, McGlone, Miller, Cowan and Jackson.) However, the Court finds that only those time entries that identify fees "incurred in the request for" the Stipulated Judgment ("Judgment") are relevant. (Evid. Code, §§ 210, 350; Judgment, ¶ 4.) Regarding those time entries that do not sufficiently describe the work performed, the Court is unable to determine if said fees were "incurred in the request for" the Judgment. (Judgment, ¶ 4; See *Martino v. Denevi* (1986) 182 Cal.App.3d 553, 558 – 559 [absent crucial information such as the type of issues dealt with, the trial court is placed in a position to guess at the attorney's services and cannot be the basis for an award of fees].)

Accordingly, plaintiffs' motion for award of attorneys' fees is **GRANTED IN PART**. (Cal. Rules of Court, rule 3.1702.) The Court finds that attorney's fees in the amount of **$29,035.50** were "incurred in the request for" the Judgment. (Cal. Rules of Court, rule 3.1702, subd. (b)(1); Settlement Agreement and Mutual Release, ¶¶ 4, 5; Judgment, ¶ 4.) The Court finds that the time entries within Exhibit A are reasonable and recoverable that *expressly indicate* that they pertain to: (1) any work performed to identify and investigate defendant's breach of the Settlement Agreement and Mutual Release after the Court entered the Stipulation for Settlement on August 10, 2021; and, (2) any work performed leading up to and to perfect the Judgment entered on January 24, 2022. (Cal. Rules of Court, rule 3.1702, subd. (b); See *Premier Medical Management Systems, Inc.* (2008) 163 Cal.App.4th, 550, 564; McGuire Decl., Exhibit A; Miller Decl..)

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