

TENTATIVE RULINGS for LAW and MOTION
September 2, 2020

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

NOTICE: Effective May 4, 2020, all court appearances are by Zoom or Conference call. Yolo Superior Court Virtual Courtroom and conference call information is posted on the Yolo Court’s Website at www.yolo.courts.ca.gov.

TENTATIVE RULING

Case: Muller Ranch, LLC v. Travelers Property Casualty
Case No. CV CV 19-2522
Hearing Date: September 2, 2020 Department Ten 9:00 a.m.

The Court, on its own motion, **CONTINUES** the matter to September 28, 2020, at 9:00 a.m. in Department Ten.

TENTATIVE RULING

Case: Patterson v. County of Yolo
Case No. CV PT 19-1799
Hearing Date: September 2, 2020 Department Nine 9:00 a.m.

The Court, on its own motion, **CONTINUES** respondent County of Yolo’s special demurrer, general demurrer, motion to strike, and request for judicial notice to September 30, 2020, at 9:00 a.m. in Department Nine.

TENTATIVE RULING

Case: Scaccia v. Scaccia
Case No. CV 14-1820
Hearing Date: September 2, 2020 Department Ten 9:00 a.m.

- 1. Plaintiff Brian Scaccia’s motion to deem requests for admissions set four directed to Sutter Health Sacramento Sierra Region and monetary sanctions filed on July 30, 2020**

Plaintiff Brian Scaccia’s motion to deem requests for admissions **set four** directed to defendant Sutter Health Sacramento Sierra Region and monetary sanctions filed on July 30, 2020 is

DENIED. (Code Civ. Proc. §§ 2030.260 subd. (a), 1010.6 subd. (4)(B).) The motion was filed prior to the date that the responses were due.

Sutter health Sacramento Sierra Region's request for sanctions is **GRANTED.** (Code Civ. Proc., §§ 2023,010, subd. (h), 2033.280, subd. (b).) There is no substantial justification for plaintiff's filing this motion prior to the date the responses were due. Plaintiff shall pay defendant Sutter Health Sacramento Sierra Region **\$360.00** by September 18, 2020.

2. Plaintiff's motion to compel responses from defendant Sutter Health Sacramento Sierra Region to special interrogatories, set five and monetary sanctions filed on July 24, 2020

Plaintiff's motion to compel responses from defendant Sutter Health Sacramento Sierra Region to special interrogatories, set five and monetary sanctions filed on July 24, 2020 is **DENIED.** (Code Civ. Proc. §§ 2030.260, subd. (a), 1010.6, subd. (4)(B).) The motion was filed prior to the date that the responses were due.

Sutter health Sacramento Sierra Region's request for sanctions is **GRANTED.** (Code Civ. Proc., §§ 2023,010, subd. (h), 2030.290, subd. (c).) There is no substantial justification for plaintiff's filing this motion prior to the date the responses were due. Plaintiff shall pay defendant Sutter Health Sacramento Sierra Region **\$360.00** by September 18, 2020.

3. Plaintiff's motion to compel responses from defendant Sutter Health Sacramento Sierra Region to special interrogatories, set six and monetary sanctions filed on July 30, 2020

Plaintiff's motion to compel responses from defendant Sutter Health Sacramento Sierra Region to special interrogatories, set six and monetary sanctions filed on July 30, 2020 is **DENIED.** (Code Civ. Proc. §§ 2030.260, subd. (a), 1010.6, subd. (4)(B).) The motion was filed prior to the date that the responses were due.

Sutter health Sacramento Sierra Region's request for sanctions is **GRANTED.** (Code Civ. Proc., §§ 2023,010, subd. (h), 2030.290, subd. (c).) There is no substantial justification for plaintiff's filing this motion prior to the date the responses were due. Plaintiff shall pay defendant Sutter Health Sacramento Sierra Region **\$360.00** by September 18, 2020.

4. Plaintiff's motion to compel further responses from defendant Sutter health Sierra Sacramento Region to Request for production set four and monetary sanctions filed on January 27, 2020.

Plaintiff's motion to compel further responses from defendant Sutter health Sacramento Sierra Region to request for production set five filed on July 31, 2020 is **DENIED.** (Code Civ. Proc., § 2031.210, subd. (a)(1), (2).) Defendant's response are compliant under Code of Civil Procedure section 2031.210.

5. Plaintiff's motion to compel further response from defendant Sutter Health Sacramento Sierra Region to request for production, set five and monetary sanctions filed on July 31, 2020.

Plaintiff's motion to compel further responses from defendant Sutter health Sacramento Sierra Region to request for production set five filed on July 31, 2020 is **DENIED**. (Code Civ. Proc., § 2031.210, subd. (a)(1), (2).) Defendant's response are compliant under Code of Civil Procedure section 2031.210.

6. Defendant Dr. Kennedy's motion for summary judgment/summary adjudication

The Court it not precluded by Code of Civil Procedure section 437c, subdivision (f)(2) from hearing defendant Dr. Kennedy's second motion for summary judgment it finds the second motion addresses causation, a new issue not previously ruled on by the Court. (*Nieto v. Blue Shield of California Life & Health Ins. Co* (2010) 181 Cal.App.4th 60, 71-72.) The previous motion filed on January 15, 2016, was a motion for summary judgment, not a motion for summary adjudication and it addressed the issue of standard of care.

Defendant Daniel J. Kennedy's objection to plaintiff Brian Scaccia's separate statement is **OVERRULED**.

Defendant Daniel J. Kennedy's objections to plaintiff's evidence numbers 1-20 are **SUSTAINED IN PART**. Dr. Kennedy's objections numbers 2-6, and 8 are **SUSTAINED**. Dr. Kennedy's objections numbers 1, 7, 9, and 10, are **OVERRULED**.

Plaintiff's objections to Dr. Sockell's declaration, numbers 1-19 are **OVERRULED**.

Defendant Daniel J. Kennedy's Motion for summary judgment or alternatively summary adjudication of the seventeenth cause of action for wrongful death is **GRANTED**. (Code Civ. Proc., § 437c, subd. (p)(2).) The elements of an action for wrongful death are (1) tort (negligence or other wrongful act), (2) the resulting death, and (3) the damages, consisting of the pecuniary loss by the heirs. (*Boeken v. Philip Morris USA Inc.* (2010) 48 Cal.4th 788, 796.) "Wrongful act" as used in the wrongful death statute means "any tortious act." (*Barrett v. Superior Court* (1990) 222 Cal.App.3d 1176, 1190-1192.) In any action for wrongful death resulting from negligence, the complaint must contain allegations as to all the elements of actionable negligence. (*Jacoves v. United Merchandising Corp.* (1992) 9 Cal.App.4th 88, 105.) Plaintiff must prove the defendant's conduct was a substantial factor in causing the decedent's death. (*Bromme v. Pavitt* (1992) 5 Cal.App.4th 1487, 1497-1499.) Defendant has met his burden of showing that the cause of action for wrongful death has no merit because plaintiff cannot establish the element of causation. (UMF nos. 1-14). Whether the underlying tort is "medical malpractice," "fraud," "premeditated murder," "willful intent," or "battery,") plaintiff has failed to show defendant's conduct was a substantial factor in causing plaintiff's harm. (UMF nos. 1-14; PUMF nos. 15-96.)

7. Defendant Sutter Health Sacramento Sierra Region dba Sutter Davis Hospital's Motion for summary judgment/summary adjudication

The Court is not precluded by Code of Civil Procedure section 437c, subdivision (f)(2) from hearing defendant Sutter Health Sacramento Sierra Region dba Sutter Davis Hospital's ("Sutter") second motion for summary judgment. It finds the second motion addresses causation, a new issue not previously ruled on by the Court. (*Nieto v. Blue Shield of California Life & Health Ins. Co* (2010) 181 Cal.App.4th 60, 71-72.) The previous motion filed on January 15, 2016, was a motion for summary judgment, not a motion for summary adjudication and it addressed the issue of standard of care.

Plaintiff's objection to Sutter's motion for summary judgment or alternatively summary adjudication is **OVERRULED**. Sutter timely and properly served plaintiff Brian Scaccia with its motion for summary judgment/adjudication on May 15, 2020 via email. (Code Civ. Proc., § 1010.6, subd. (a)(1)(A); Dec. of Brian Scaccia, ¶¶ 1-13; Dec. of Bianca Samuel, ¶¶ 2-4.)

Defendant Sutter's motion for summary judgment or alternatively summary adjudication of the seventeenth cause of action for wrongful death is **GRANTED**. (Code Civ. Proc., § 437c, subd. (p)(2).) The elements of an action for wrongful death are (1) tort (negligence or other wrongful act), (2) the resulting death, and (3) the damages, consisting of the pecuniary loss by the heirs. (*Boeken v. Philip Morris USA Inc.* (2010) 48 Cal.4th 788, 796.) "Wrongful act" as used in the wrongful death statute means "any tortious act." (*Barrett v. Superior Court* (1990) 222 Cal.App.3d 1176, 1190-1192.) In any action for wrongful death resulting from negligence, the complaint must contain allegations as to all the elements of actionable negligence. (*Jacoves v. United Merchandising Corp.* (1992) 9 Cal.App.4th 88, 105.) Plaintiff must prove the defendant's conduct was a substantial factor in causing the decedent's death. (*Bromme v. Pavitt* (1992) 5 Cal.App.4th 1487, 1497-1499.) Defendant has met his burden of showing that the cause of action for wrongful death has no merit because plaintiff cannot establish the element of causation. (UMF nos. 1-15). Whether the underlying tort is "medical malpractice," "fraud," "premeditated murder," "willful intent," or "battery,") plaintiff has failed to show defendant's conduct was a substantial factor in causing plaintiff's harm. (UMF nos. 1-15.)

8. Plaintiff's unopposed motion to compel responses from defendant John Scaccia to special interrogatories, set two and monetary and issue sanctions filed on April 29, 2020

Plaintiff's unopposed motion to compel responses from defendant John Scaccia to special interrogatories, set two and monetary sanctions filed on April 29, 2020 is **GRANTED IN PART**. (Code Civ. Proc. §§ 2030.300, subd. (a)(1), (3).) Defendant shall serve further responses to the following requests: 89-94, 150, without objections. The Court strikes all objections included in the responses pursuant to its December 23, 2019, order.

The request for sanctions is **DENIED**. (Code Civ. Proc., §§ 2023.010, subd. (h), 2030.290, subd. (c).) The court "shall" impose a *monetary* sanction against the losing party on the motion to compel *unless* it finds that party acted "with substantial justification" or other circumstances render the sanction "unjust." (Code Civ. Proc., § 2030.290(c).) The Court finds that the circumstances of this case; service of 365 special interrogatories which far exceeds the statutory limit of 35, renders the imposition of sanctions unjust.

9. Plaintiff's unopposed motion to compel further responses from defendant John Scaccia to Request for production set two and monetary sanctions filed on April 29, 2020

Plaintiff's unopposed motion to compel further responses from defendant John Scaccia to request for production set two filed on April 29, 2020 is **GRANTED IN PART**. (Code Civ. Proc., § 2031.210, subd. (a)(1), (2).) Defendant agreed to provide the phone numbers responsive to request numbers 24 and 25. Defendant failed to respond to request number 27. Defendant shall provide a verified response without objections to request number 24, 25 and 27, by September 9, 2020. The request for sanctions is **DENIED**. (Code Civ. Proc., § 2031.310, subd. (h).) “. . . the court shall impose a monetary sanction under Chapter & (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel further response to a demand, unless if find that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. The Court finds that the circumstances of this case, wherein the court is only ordering defendant to further respond to 3 requests out of 36, two of which only require defendant to provide the phone numbers he used, renders the imposition of sanctions unjust.

10. Defendant John Scaccia's motion for relief from waiver and/or to allow delayed/amended response to defendant Brian Scaccia's set two and set one Discovery requests pursuant to CCP §§ 2030.290, 2031.300, 2033.280, & 2033.300.

Defendant John Scaccia's motion for relief from waiver and/or to allow delayed/amended response to defendant Brian Scaccia's set two and set one Discovery requests pursuant to CCP §§ 2030.290, 2031.300, 2033.280, & 2033.300 is **DENIED**. (Code Civ. Proc., §§ 2030.290, 2031.300, 2033.280, & 2033.300.) The Court does not find defendant's failure to serve timely responses was the result of mistake, inadvertence, or excusable neglect.

If no hearing is requested, this tentative ruling is effective immediately. No formal

11. Defendant John Scaccia's motion for partial summary judgment

Plaintiff Brian Scaccia's objections to defendant John Scaccia's evidence are **OVERRULED**.

Defendant John J. Scaccia's motion for partial summary judgment as to the causes of action: (1) false light; (2) defamation; (7) fraud and forgery; (8) conversion; (9) conspiracy to extort; (10) blackmail; (11) abuse of process; (12) tortious interference with business relationship; (13) breach of fiduciary duty; (14) elder abuse; (17) wrongful death; (18) decisions law; and (12) racketeering is **GRANTED**. (Code Civ. Proc., § 437c, subd. (p)(2).) Defendant has met his burden of showing that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action. Once the defendant has met that burden, the burden shifts to the plaintiff to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The plaintiff or shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto. (Code Civ. Proc., § 437c, subd. (p)(2); UMF 1-81; PUMF 83-155.)

12. Plaintiff Brian Scacci'a motion for partial summary judgment

Plaintiff Brian Scaccia's motion for partial summary judgment is **DENIED**. (Code Civ. Proc., § 437c, subd. (p)(1).) Plaintiff must carry the burden of production on his motion for summary

adjudication showing that he can establish every element of his causes of action for defamation and false light. (Code Civ. Proc., § 437c, (p)(1). “ ‘The elements of a defamation claim are (1) a publication that is (2) false, (3) defamatory, (4) unprivileged, and (5) has a natural tendency to injure or causes special damage.’ ” [citations] “In general, ... a written communication that is false, that is not protected by any privilege, and that exposes a person to contempt or ridicule or certain other reputational injuries, constitutes libel. (*Shively v. Bozanich* (2003) 31 Cal.4th 1230, 1242, 7 Cal.Rptr.3d 576, 80 P.3d 676.)” (*Jackson v. Mayweather* (2017) 10 Cal.App.5th 1240, 1259-1260.) Plaintiff’s evidence fails to prove that the statements John made to the healthcare workers, APS, FBI, relatives or courts had a natural consequence of causing actual damage. (Civ. Code, § 46, UMF nos. 1-67.)

13. Plaintiff Brian Scaccia’s motion for appointment of expert and attorney

Plaintiff Brian Scaccia’s motion for “appointment of experts, and limited purposes attorney filed on July 10, 2020 is **DENIED**. (Code Civ. Proc., ¶ 1005, subd. (b), 1013, subd. (a)(4)(B). The hearing date was noticed for August 3, 2020, and it was continued on the Court’s own motion to August 13, 2020. Pursuant to Code of Civil Procedure section 1005, subdivision (b) notice of the motion is required to be given at least 16 court days prior to the hearing plus two additional court days for electronic service per Code of Civil Procedure section 1013, subdivision (a)(4)(B). Plaintiff’s service of the notice of hearing and supporting papers on July 9, 2020, via email was untimely. Additionally, there is no legal authority supporting plaintiff’s request for appointment of an expert or an attorney for limited purposes at the Court’s or defendants’ expense in a medical malpractice action. (Evid. Code, ¶ 730.) Plaintiff has not shown why he has failed to hire an attorney on a contingency basis since 2014. (Bus. & Prof. Code, § 6164.)

14. Plaintiff Brian Scaccia’s motion for leave to amend

The Court denied plaintiff’s previous motion for leave to amend with prejudice. (see July 15, 2020, Order.)