

# **Tentative Rulings for April 19, 2023**

## **Department 1**

**To request oral argument, you must notify Judicial Secretary  
Vanessa Siojo at (760) 904-5722  
and inform all other counsel no later than 4:30 p.m.**

This court follows California Rules of Court, Rule 3.1308 (a) (1) for tentative rulings. (See Riverside Superior Court Local Rule 3316.) Tentative Rulings for each law & motion matter are posted on the Internet by 3:00 p.m. on the court day immediately before the hearing at <https://www.riverside.courts.ca.gov/OnlineServices/TentativeRulings/tentative-rulings.php>. If you do not have Internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

If the Court has issued a tentative ruling, no hearing will be conducted on the motion unless one of the parties requests oral argument. To request oral argument, no later than 4:30 p.m. on the court day before the hearing you must (1) notify the judicial secretary for Department 1 at (760) 904-5722 and (2) inform all other parties of the request and of their need to appear telephonically, as stated below. If no request for oral argument is made by 4:30 p.m., the tentative ruling **will become the final ruling** on the matter effective the date of the hearing. **UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.**

IN LIGHT OF THE CORONAVIRUS PANDEMIC, IF ORAL ARGUMENT HAS BEEN REQUESTED, THE COURT ENCOURAGES COUNSEL AND SELF-REPRESENTED PARTIES TO APPEAR AT THE HEARING OF THE MOTION TELEPHONICALLY RATHER THAN IN PERSON.

**TO APPEAR TELEPHONICALLY:** On the day of the hearing, call into one of the phone numbers listed below, and input the meeting number (followed by #):

- Call-in Numbers: 1-833-568-8864 (Toll Free), 1-669-254-5252,  
1-669-216-1590, 1-551-285-1373 or 1-646-828-7666
- Meeting Number: **160 638 4172**

Please **MUTE** your phone until your case is called and it is your turn to speak. It is important to note that you must call fifteen (15) minutes prior to the scheduled hearing time to check in or there may be a delay in your case being heard.

For additional information and instructions on telephonic appearances, visit the court's website at <https://www.riverside.courts.ca.gov/PublicNotices/remote-appearances.php>

**Riverside Superior Court provides official court reporters for hearings on law and motion matters only for litigants who have been granted fee waivers and only upon their timely request. (See General Administrative Order No. 2021-19-1) Other parties desiring a record of the hearing must retain a reporter pro tempore.**

1.

CVRI2205206

ATALLA VS COUNTY OF  
RIVERSIDE

DEMURRER TO COMPLAINT OF  
JOSEPH ATALLA

**Tentative Ruling:**

The defendants' demurrer to the complaint is sustained without leave as to the fifth cause of action. The fifth cause of action is dismissed with prejudice.

The demurrer to the seventh cause of action is sustained with 20 days' leave to amend.

The demurrer is otherwise overruled. In particular, to the extent to which the demurrer purports to be brought on behalf of Does 1 through 50 (Dem., p. 3), it is overruled.

**Analysis:**

The plaintiff asserts seven causes of action in his complaint. The County demurs to the first, fourth, fifth, and seventh, all of which are asserted solely against the County. The County and Miller demur to the sixth, which is alleged against all defendants.

The demurrer also states that it is brought by "Defendants County of Riverside, Ronald L. Miller and Does 1 through 50 ('Defendants')." No fictitiously named defendants have been named by their true names and served, and none have appeared, and none have demurred to any part of the complaint. Therefore, the demurrer purported to have been brought by the Doe defendants is meritless and must be overruled.

First Cause of Action, for discrimination

The first cause of action adequately pleads an adverse employment action. An adverse employment action is not limited to termination or demotions. It also encompasses actions that are likely to impair an employee's job performance or prospect of advancement. (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 373.) The complaint alleges that Defendants' conduct subjected him to improper excessive scrutiny, elimination of his job duties, and he was denied employment opportunities. (Complaint, ¶¶ 99 and 100.) The complaint contains factual allegations regarding the excess scrutiny he faced, including being instructed to be present in the office Monday through Friday from 8:00 am to 5:00 pm, when others in his position were not. (Complaint, ¶¶ 44, 48, 50-54.) Plaintiff also alleges that he was prohibited from/had certain job duties taken away from him and was reduced to a "glorified secretary." (Complaint, ¶¶ 72, 73, 81, and 83.) These allegations describe acts that would be likely to impair an employee's job performance or prospect of advancement for pleading purposes.

Fourth Cause of Action, for retaliation

In challenging the fourth cause of action, the defendants argue that the cause of action fails because the plaintiff did not identify in his complaint the statute, rule, or regulation that was violated or that would have been violated. However, neither of the cases on which they rely – *Ross* and *Nejadian* – are pleading cases. *Ross* is an appeal from a summary judgment. *Nejadian* is an appeal from a judgment after trial. Thus, neither are authority for the proposition that the specific statute, rule, or regulation must be alleged in the complaint. The defendant having presented no authority as to what the plaintiff must plead as opposed to what the plaintiff must prove, the demurrer is overruled.

Fifth Cause of Action, for unfair business practices

The plaintiff concedes to the "removal" of the fifth cause of action. (Am. Oppo., p. 15.) The Court interprets that to be a concession that the demurrer to the fifth cause of action should be sustained without leave to amend, and the cause of action dismissed.

#### Sixth Cause of Action, for defamation

The allegations in paragraphs 14, 19, and 37 are sufficient. In addition, the allegation in paragraph 34, regarding a statement that the plaintiff was subject to disciplinary action, is not a matter of opinion if it falsely stated or implied that the plaintiff either had been or was being disciplined.

#### Seventh Cause of Action, for constructive wrongful termination

Because the County is a public entity, any claim against it must be based on a statute. (*Zipperer v. County of Santa Clara* (2005) 133 Cal.App.4<sup>th</sup> 1013, 1020.) Moreover, statutory claims must be specifically pleaded. (*Ibid.*) This cause of action does not specifically identify what statutory provision it is based on. While it generically contends that it is based on fundamental public policies of the State of California including FEHA, it does not identify Government Code § 12940 in the pleading. (Complaint, ¶¶ 147-152.) Therefore, this claim has not been specifically alleged.

2.

RIC2002589

WARD VS MILLER-JONES  
MORTUARY & CREMATORY

MOTION FOR FINAL APPROVAL

#### **Tentative Ruling:**

The plaintiff's unopposed motion for final approval and for attorney's fees and costs are not yet granted. The hearing is continued to May 3, 2023, at 8:30 A.M. in this department. No later than 4-28-23, the plaintiff shall file an amended declaration of Lo and a revised proposed order. Attorney's fees are reduced to \$88,794.

#### **Analysis:**

The motion was based primarily on the purported declaration of Lo, filed 2-6-23. However, Lo did not sign that declaration. Accordingly, on 3-2-23, the Court ordered Lo to file "[a]n amended declaration of Lo." Inexplicably, even after being given two opportunities to comply, Lo did not do so. Instead, Lo filed only a supplemental declaration addressing other defects in the 2-6-23 declaration. Thus, the Court still has no signature certifying the truth of the vast majority of the factual representations in the 2-6-23 declaration.

Moreover, the proposed order and judgment cannot be signed as drafted, for each of the following reasons:

- Paragraph 1 falsely states that the settlement agreement is attached to the order granting preliminary approval. It must be revised to delete that false representation and to state the title and filing date of the declaration to which it actually is attached.
- Paragraph 8 incorrectly provides that the defendant is obligated to pay the GSA, not only to the administrator, but also to class counsel, plaintiff, and all the participating class members. That must be corrected.
- Paragraph 10 is ambiguous, in that the first sentence gives a range of possible deadlines rather than stating what the deadline is. That ambiguity must be resolved.
- The release described in ¶ 13 and ¶ 15 is not described in the same terms as the release stated in part D.2. of the notice. The order shall be revised to conform to the language of the notice.
- The definition of Released Parties in ¶ 18 is inconsistent with the definition in the notice and exceeds the limitations prescribed by the CMO. That paragraph must be corrected.

- The proposed order does not prescribe the text of the notice of entry of judgment, as required by section I.15 of the CMO.

The Court previously advised Lo that if Lo failed to comply with the Court's directives by 4-12-23, "then the attorney's fees award shall be reduced further." As noted above, Lo has once again failed to comply with the Court's order regarding the amended declaration, thereby subjecting the class to further delay. That failure, together with the carelessness with which the proposed order was apparently drafted, demonstrates that the \$650 hourly rate claimed by Lo is unjustified. The reasonable rate is no more than \$600 per hour. The Court therefore re-calculates the lodestar as \$88,794 (147.99 hours x \$600). The attorney's-fee award is reduced to that amount.