

Tentative Rulings for June 07, 2022 Department 02

**To request oral argument, you must notify Judicial Secretary
Charmaine Vital 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.

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 2 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; AND UNTIL FURTHER NOTICE, COUNSEL AND SELF-REPRESENTED PARTIES ARE ENCOURAGED TO APPEAR AT ANY LAW AND MOTION DEPARTMENT TELEPHONICALLY WHEN REQUESTING ORAL ARGUMENTS.

TELEPHONIC APPEARANCES: On the day of the hearing, call into one of the below listed phone numbers, 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: **161 143 8184**

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>.

Effective May 3, 2021, official court reporters will not be available in unlimited civil for any pretrial proceedings, law and motion matters, case management hearings, civil restraining orders, and civil petitions. (See General Administrative Order No. 2021-19-1)

1.

CVRI2000064	RECTOR vs BOOTSMA	Motion to Quash MOTION TO QUASH DEFENDANTS', ESSIE LOUISE BOOTSMA, SECOND (2nd) SET OF SUBPOENAS DUCES TUCEM RE MEDICAL & PSYCHOLOGICAL RECORDS OF DECEDENT, STURGIS ASHER by CONNIE RECTOR
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Tentative Ruling:

Defendant argues that Decedent’s physical and mental health is directly relevant and essential to her contributory negligence affirmative defense. Defendant asserts that the Decedent was responsible for the accident because he was walking in the middle of a highway while it was still dark. She contends that Decedent was unable to appreciate the risk of his conduct due to his psychological condition. This argument is well-taken. It is undisputed that Decedent suffered from severe mental illness, including schizophrenia and bipolar disorder. These conditions may have impacted his ability to weigh risks and act reasonably at the time of the collision. As such, medical records containing information about his mental illness are directly relevant.

Plaintiff argues that the medical records are not the least intrusive means of acquiring information about Decedent’s mental illness and medication because she has already testified about these issues. However, Plaintiff is not a doctor or mental health expert. To the extent that a medical expert is necessary to explain the nature and extent of Decedent’s illness, medical records are generally reviewed as part of the expert’s assessment and opinion.

Defendant also argues that the medical records are directly relevant to Plaintiff’s claims for financial support based and Decedent’s ability to obtain and maintain employment. Plaintiff admits that Decedent was unable to work, and the claim for loss of financial support is based on Decedent’s disability income. Because disability benefits are also based on medical and psychological condition, the medical records may be relevant, although this basis for disclosure is not as strong as above.

Plaintiff argues that the subpoenas are overbroad and not narrowly tailored. However, the subpoenas are now limited to the six years prior to Decedent’s death. This does not appear to be excessive. However, the Subpoenas do not appear to be limited to psychological records. While the Affiliated Psychological Services and Valley Star Dept. of Behavioral Health appear to be mental health care providers, it is not clear that Arrowhead Regional Medical Center is limited to mental health. Defendant has not made any showing as to why any other medical records would be relevant to her affirmative defense. Defendant has asserted no facts suggesting any other aspect of Decedent’s health is at issue. Accordingly, the Subpoenas should be limited to mental health records.

The present Subpoenas are quashed and reissued as modified to include only relevant psychological/mental health records.

2.

RIC1906176	KIMBLE vs ALPHA PHI ALPHA FRATERNITY INC	Demurrer to Third Amended Complaint
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Tentative Ruling:

First Cause of Action Wrongful Death – Negligence, Violations of Penal Code § 245.6, Civil Code §§ 43 and 52.1, Assault and Battery, Negligent Hiring, Supervision and Retention:

"In California, all government tort liability must be based on statute." *Becerra v. County of Santa Cruz* (1998) 68 Cal.App.4th 1450, 1457. A cause of action based on a statute must be asserted with particularity. *Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 795. When a statutory cause of action is alleged, "the 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. Regent contends this cause of action fails because Plaintiffs do not allege facts that show knowledge on the part of Regent.

A wrongful death cause of action is a statutory claim. *Lattimore v. Dickey* (2015) 239 Cal.App.4th 959, 968. The necessary elements of a wrongful death cause of action are: (1) a tort (typically negligence), (2) the resulting death, and (3) damages (consisting of pecuniary loss suffered by the heirs). *Id.* This cause of action appears to be based on Ed's conduct, which Regents can be liable for under Government Code §§ 815.2 and 820, if Ed's conduct is within the scope of his employment. The tort at issue appears to be negligence or assault and battery.

Under Government Code § 820(a) "a public employee is liable for injury caused by his act or omission to the same extent as a private person." Government Code § 815.2(a) states, "[a] public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart for this section, have given rise to a cause of action against that employee or his personal representative."

Plaintiff relies on *Regents of University of California v. Superior Court* (2018) 4 Cal.5th 607, in asserting liability. In *Regents of University of California*, a student was stabbed while in class by another student. UCLA was aware that the student who stabbed the plaintiff was having auditory hallucinations and believed he was being criticized by other students. *Id.* at 613. The plaintiff alleged the university failed to warn and protect her from this other student's conduct and the Supreme Court found that UCLA did owe a duty of care to the plaintiff. *Id.* However, in *Regents of University of California*, the parties all agreed that UCLA's employees were acting within the scope of their employment. Plaintiff alleges that Ed socialized with the fraternity members, took advantage of pledges to the fraternity as part of the pledge process, and hit some of the pledges as part of the pledge process. Scope of employment pertains to conduct that arises out of employment and is conduct that is not so unusual or startling that it would not be unfair to hold an employer liable. *Farmers Ins. Group v. County of Santa Clara* (1995) 11 Cal.4th 992, 1003. The court looks at whether the risk is one that would be fairly regarded as typical or incidental to the enterprise undertaken by the employer. *Id.* "If an employee's tort is personal in nature, mere presence at the place of employment and attendance to occupational duties prior or subsequent to the offense will not give rise to a cause of action against the employer under the doctrine of respondeat superior." *Alma W. v. Oakland Unified School Dist.* (1981) 123 Cal.App.3d 133, 140. "The fundamental issue is whether the wrongful act was committed 'in the course of a series of acts of the agent which were authorized by the principal. Of course, where the agent, for however brief a space of time, has ceased to serve his principal, he alone is responsible for his acts during the period of cessation.'" *Id.* at 141. Ed's conduct in participating in the hazing of pledges (taking advantage of and hitting pledges) appears to be conduct outside of employment.

Plaintiff does not cite to any authority that Regents can be held liable for information that its employees obtained outside the scope of employment. As such, it does not appear that Regents can be held liable for information Ed was aware of due to his hazing of pledges. There are no allegations that anyone else from Regents was aware of Ed's conduct or the conduct of the fraternity. Plaintiff does allege that Regents was aware of conduct that happened years prior and that complaints had been made to Regents about the fraternity. However, it is unclear what these complaints were in regards to. Where they complaints regarding pledges being beaten? Additionally, the fact that this particular fraternity had issues in other chapters across the country does not appear sufficient to give notice to any problems on campus.

Penal Code § 245.6(a) makes it unlawful to engage in hazing. Subdivision (e) states: “[t]he person against whom the hazing is directed may commence a civil action for injury or damages. The action may be brought against any participants in the hazing, or any organization to which the student is seeking membership whose agents, directors, trustees, managers, or officers authorized, requested, commanded, participated in, or ratified the hazing.” This complaint is brought by Tyler’s parents regarding conduct that occurred to Tyler. There are no allegations that anyone from Regents participated in the hazing that occurred to Tyler. While Plaintiffs allege that Ed participated in the hazing of pledges. There are no allegations that Ed hazed Tyler. As such, this code section does not appear to be applicable.

Code of Civil Procedure § 43 states: “every person has, subject to the qualifications and restrictions provided by law, the right of protection from bodily restraint or harm, from personal insult, from defamation, and from injury to his personal relations.” Regents argues that this code section is not applicable because Plaintiffs have failed to allege that Regents aided, abetted, counseled or encouraged its employee to engage in the alleged illegal hazing of Tyler. A principal can be liable for the torts of its agent, if the agent was aided in accomplishing the tort by the existence of the agency relationship. *Myers v. Trendwest Resort, Inc.* (2007) 148 Cal.App.4th 1403, 1434. Also, an employer can be held liable for its employee’s criminal torts, if they were committed within the scope of employment. *Lisa M. v. Henry Mayo Newhall Memorial Hospital* (1995) 12 Cal.4th 291, 296. As discussed above, the allegations regarding Ed and his alleged role in the hazing are conclusory. The hazing does not appear to fall within the course and scope of employment. Additionally, there are no allegations that Ed hazed Tyler.

The next statute mentioned by the first cause of action is the Bane Act – Civil Code § 52.1. Regent reasserts the same arguments raised regarding the other two statutes. As with the other two statutes, the first cause of action lacks facts regarding Regent’s involvement in the alleged harassment. The big issue with this statute is that it does not seem to apply. Civil Code § 52.1(b) states: “[i]f a person or persons, whether or not acting under color of law, interferes by threat, intimidation, or coercion, or attempts to interfere by threat, intimidation, or coercion, with the exercise or enjoyment by any individual or individuals of rights secured by the Constitution or laws of the United States, or of the rights secured Constitution or laws of this state, the Attorney General, or any district attorney or city attorney may bring a civil action for injunctive and other appropriate relief . . .” There are no allegations in this cause of action regarding what rights Regents was allegedly interfering with or attempting to interfere with. Civil Code § 52.1(b). There are no allegations that Regents’ employees harmed Tyler or threatened to harm Tyler.

The first cause of action also mentions assault and battery. However, as indicated above, there are no allegations in the SAC that Regents’ employees assaulted or battered Tyler. Additionally, without additional facts, it appears that said conduct would fall outside the scope of a Regents’ employees’ employment. The third amended complaint is nearly identical to the second amended complaint. There was only one paragraph with any changes (paragraph ¶ 26 of the Third Amended Complaint). However, none of these changes are substantive, they are made on information and belief, and are conclusory in nature. As such, the Court sustains the demurrer to this cause of action. Plaintiffs ask for leave to amend based on new evidence they obtained when they took Ed’s deposition. However, none of the testimony excerpts provided appear to help Plaintiffs’ claim. As such, the demurrer is sustained without leave to amend, unless Plaintiffs can articulate some concrete way how this testimony can fix the defects in the complaint.

Second Cause of Action for Violation of Penal Code § 245.6, Third Cause of Action or Violation of Civil Code § 43, and Fourth Cause of Action for Violation of Civil Code § 52.1: These causes of action are based on the allegations asserted in the first cause of action. As addressed above, these allegations are insufficient. As such, the Court sustains the demurrer without leave to amend, unless Plaintiffs can articulate in some concrete way how this testimony can fix the defects in the complaint.

Fifth Cause of Action for Survival/Wrongful Death – Assault and Battery: This cause of action is based on the same vague allegations regarding Ed. The statutory basis for this cause of action is Government Code § 815.2(a). This code section provides: “[a] public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative.” As addressed above, the allegations regarding Ed are vague and appear to be outside his scope of employment. As such, the Court sustains the demurrer without leave to amend, unless Plaintiffs can articulate in some concrete way why this testimony can fix the defects in the complaint.

Sixth Cause of Action for Wrongful Death – Negligent Hiring, Supervision, and Retention: This cause of action appears to be the same as the fifth cause of action. It is based on Ed’s conduct and Government Code §§ 815.2 and 820. As such, the Court sustains the demurrer without leave to amend, unless Plaintiffs can articulate in some concrete way why this testimony can fix the defects in the complaint.

3.

RIC2001198	ACEVEDO vs RAYMOND SECURITY SERVICES	Motion Set Trial on PAGA Related Issues by JULIO ACEVEDO
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Tentative Ruling:

The Request to set Trial on PAGA related matters is denied. The Complaint was filed on an individual basis only and as such, the judgment is final.