

TENTATIVE RULINGS: CIVIL LAW & MOTION

**Wednesday, April 22, 2026 at 3:00 p.m.
Courtroom 18 – Hon. Dana Simonds
Civil and Family Law Courthouse
3055 Cleveland Avenue
Santa Rosa, California 95403**

The tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument, **YOU MUST NOTIFY** the Judge’s Judicial Assistant by telephone at **(707) 521-6724**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

If the tentative ruling is accepted, no appearance is necessary unless otherwise indicated.

TO JOIN ZOOM ONLINE:

Department 18:

Meeting ID: 160—739—4368

Password: 000169

<https://sonomacourtorg.zoomgov.com/j/1607394368?pwd=aW1JTWIL3NBcE9LVHU2NVVpQlVRUT09>

TO JOIN ZOOM BY PHONE:

By Phone (same meeting ID and password as listed for each calendar):

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Unless notification of an appearance has been given as provided above, the tentative ruling shall become the ruling of the Court the day of the hearing at the beginning of the calendar.

1. 24CV01353, Hinhosay vs Altaf M.D.

Defendant Mujeeb Altaf, M.D.’s motion for summary judgment is **DENIED**. All requests for judicial notice are **GRANTED**.

Plaintiff’s counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

The Court previously continued the hearing on this motion to allow Defendant an opportunity to properly file the exhibits in support of the Declaration of Patricia H. Perry. The exhibits were submitted in the form of a Dropbox link, rather than physically being attached to the declaration. The Court explained in its previous tentative ruling that submitting the exhibits as a Dropbox link was improper and problematic. Doing so is in violation of California Rules of Court, Rule 3.1302(a), which requires all papers relating to law and motion proceedings to be filed in the clerk’s office, unless otherwise provided by local rule or by the Court’s protocol for electronic filing. There

exists no local rule or Court protocol that allows exhibits to be filed in the form of a Dropbox link. Doing so fails to create a record for any potential appeal. Furthermore, the Court's internal electronic security protocol discourages clicking on external weblinks.

The Court continued the motion for Defendant to properly file the exhibits and set a deadline of April 10, 2026. Defendant has failed to file the exhibits. None of the exhibits attached to the Declaration of Patricia H. Perry have been submitted in an acceptable format and they have not been considered.

Analysis:

Plaintiff Somphet Phongsa, by and through his successors in interest, brought suit against Santa Rosaidence Opco, LLC; Providence Group, Inc.; Providence Administrative Consulting Services, Inc.; Mujeeb Altaf M.D.; and Does 1-100, alleging Reckless or Willful Neglect of Elder Adult Pursuant to CACI 3105, Wrongful Death, Negligence, and Violation of Patient Rights.

Plaintiffs allege that on or about March 20, 2023, Plaintiff Somphet was riding his bicycle when he was hit by a car and thrown to the ground. As a result of this accident, he experienced a head injury, which caused a traumatic brain injury and traumatic encephalopathy. He was treated at Santa Rosa Memorial hospital for a month, then discharged to Kentfield Rehabilitation Hospital. He was readmitted to Santa Rosa Memorial Hospital for further surgeries, and then discharged on June 23, 2023 to Sonoma Specialty Hospital for further rehabilitation. He was a patient at Sonoma Specialty Hospital from June 23 to July 20, 2023.

On July 20, 2023, he was discharged to Santa Rosa Post Acute for ongoing treatment and medical monitoring. Plaintiffs allege that due to lack of care by the staff of Santa Rosa Post Acute, and due to their failure to transfer him out to an acute care hospital, that first night Plaintiff Somphet immediately started to deteriorate from his medical baseline. On the morning of July 23, 2023, the family of Plaintiff Somphet got a call from Santa Rosa Post Acute, saying that he was found dead in his bed at 6:45 a.m. Plaintiffs allege that Santa Rosa Post Acute nurses and doctors failed to check on Plaintiff Somphet or give him supplemental oxygen. Plaintiffs also allege that the nurses entered in notes after his death stating that they checked on him, when they had not.

The instant motion for summary judgment is raised by Defendant Mujeeb Altaf, M.D., who is alleged to have been the attending physician for Plaintiff Somphet while he was at Santa Rosa Post Acute. Plaintiffs allege two causes of action against Defendant Altaf—one for wrongful death (Second Cause of Action) and one for negligence (Third Cause of Action).

Defendant Altaf has submitted a separate statement of undisputed material facts in support of his motion. However, most of the facts are supported by evidence that has not been properly submitted. Therefore, they are not supported at all. The only facts submitted by Defendant that are supported by evidence are those that rely on the Declaration of Karl E. Steinberg, M.D., since this declaration was properly submitted. Although, the Court notes that the documents relied upon by Dr. Steinberg in reaching his opinion are not in the record.

I. Defendant Has Failed to Show the Lack of Triable Issue of Material Fact

“From commencement to conclusion,” the moving party bears the burden of persuasion and

production to make a prima facie showing that there are no triable issues of material fact. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal. 4th 826, 850.) “There is no obligation on the opposing party...to establish anything by affidavit unless and until the moving party has by affidavit stated facts establishing every element...necessary to sustain a judgment in his favor.” (*Consumer Cause, Inc. v. SmileCare* (2001) 91 Cal. App. 4th 454, 468.)

The elements for a cause of action for wrongful death are, “(1) a ‘wrongful act or neglect’ on the part of one or more persons that (2) ‘cause[s]’ (3) the ‘death of [another] person.’” (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 390.)

The elements of a cause of action for negligence due to medical malpractice are, ““(1) the duty of the professional to use such skill, prudence, and diligence as other members of his profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional's negligence.”” (*Hanson v. Grode* (1999) 76 Cal.App.4th 601, 606.)

Here, the only properly submitted evidence in support of this motion is the declaration of Karl E. Steinberg, M.D., in which Dr. Steinberg opines that Dr. Altaf’s examination, assessment, care, and treatment of Plaintiff Somphet was consistent with the applicable standard of care. Dr. Steinberg bases this opinion upon his review of Plaintiff’s Complaint for Damages; Decedent’s medical records from Santa Rosa Post Acute; Decedent’s medical records from Providence Santa Rosa Memorial Hospital; Decedent’s medical records from Sonoma Specialty Hospital; and Decedent’s medical records from Kentfield Rehabilitation Hospital. None of these documents are attached to Dr. Steinberg’s declaration. Many of these documents are ones that Defendant’s counsel attempted to submit via Dropbox link.

Dr. Steinberg’s opinion testimony is not sufficient to meet Defendant’s burden of proof on this motion. Accordingly, the burden of proof never shifted to Plaintiff. Even if it did, Plaintiff sufficiently showed the existence of a triable issue of material fact. Plaintiff submitted the declaration of Kristina M. Kury, M.D., who opines that the medical care and treatment provided by Dr. Altaf for Plaintiff during his admission at Santa Rosa Post Acute was below the standard of care. Defendant’s reply fails to rebut the existence of a triable issue of material fact.

2. **25CV01635, Clark vs The Northern California Regional Service of Office of Narcotics Anonymous**

Defendants The Northern California Regional Service Office of Narcotics Anonymous and NA Youth Committee’s demurrer to Plaintiff’s complaint is ordered **STRICKEN** from the record. Defendants have 10 days from the date of this order to file their answer.

The Court’s minute order shall constitute the order of the Court.

Defendants’ responsive pleading was originally due to be filed by December 24, 2025. Upon meeting and conferring, Plaintiff’s counsel granted Defendants an extension to file their demurrer by January 8, 2026. Defendants did not file their demurrer until January 20th. They did not seek any further extension of time from Plaintiff, they did not file a declaration supporting an automatic 30-

day extension under CCP § 430.41, and they did not seek leave of court to file a late demurrer. Accordingly, Defendants' demurrer has not been filed in accordance with the law and it shall be stricken pursuant to CCP § 436.

Defendants argue in reply that the 30-day deadline for filing a demurrer is permissive because CCP § 430.40 uses the word "may." The statute states, "(a) A person against whom a complaint or cross-complaint has been filed may, within 30 days after service of the complaint or cross-complaint, demur to the complaint or cross-complaint." Defendants' interpretation of the statute is inaccurate. The permissive portion of the statute refers to Defendants' decision to file a demurrer—rather than an answer. The 30-day deadline is quite clearly mandatory. This is further evidenced by the language of CCP § 430.41(a)(2). The cases cited by Defendants are inapposite. They discuss whether default can be entered against a defendant when a demurrer was filed prior to entry of default. That is not the issue currently before the Court, as Plaintiff has not sought entry of default.

3. SCV-271383, Pershing vs American Automobile Association of Northern California, Nevada and Utah

Defendant's unopposed motion to seal confidential materials filed in conjunction with the parties' summary adjudication motions is **GRANTED**.

The Court will sign the proposed order lodged with the moving papers.

Analysis:

California Rules of Court, Rule 2.550 provides "The Court may order that a record be filed under seal only if it expressly finds facts that establish:

- (1) There exists an overriding interest that overcomes the right of public access to the record;
- (2) The overriding interest supports sealing the record;
- (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
- (4) The proposed sealing is narrowly tailored; and
- (5) No less restrictive means exist to achieve the overriding interest.

Defendant American Automobile Association of Northern California, Nevada and Utah ("AAA") seeks to seal several documents that were filed in support of Plaintiff's opposition to Defendant's motion for summary adjudication, as listed in the notice of motion supporting this motion. Defendant argues that some of the documents, including Plaintiff's Exhibits 46 and 71, were already marked confidential pursuant to a protective order; therefore, filing them in the public record was violative of that order. Plaintiff submitted some documents conditionally under seal, including Exhibits 1, 11, 12, 13, 20, 38, 39, 47, and 80, which Defendant now seeks to have sealed. Defendant submits that these documents contain private employee information or proprietary information that is not otherwise publicly available. Plaintiff has not opposed this motion.

Defendant has demonstrated a significant interest in protecting the information contained in the exhibits which they seek to have sealed. The Court finds that this interest overrides the right of

public access and supports sealing the records. The Court also finds that the proposed sealing is narrowly tailored and there are no less restrictive means to achieve the overriding interest of protecting the moving party's private or proprietary information.

4. **24CV05889 Seals vs Kaiser Foundation Health Plan, Inc.**

Defendants' motion to seal is **GRANTED**.

Defendants' counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

Analysis:

Defendants Kaiser Foundation Health Plan, Inc., The Permanente Medical Group, Inc., and Kaiser Foundation Hospitals seek to seal the unredacted versions of some of the declarations filed conditionally under seal in support of their motion to compel arbitration because they contain confidential patient information. While the parties have stipulated to arbitration and no longer seek a ruling on the motion to compel arbitration, the motion to seal remains.

California Rules of Court, Rule 2.550 provides "The Court may order that a record be filed under seal only if it expressly finds facts that establish:

- (1) There exists an overriding interest that overcomes the right of public access to the record;
- (2) The overriding interest supports sealing the record;
- (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
- (4) The proposed sealing is narrowly tailored; and
- (5) No less restrictive means exist to achieve the overriding interest.

The documents Defendants seek to seal contain information relating to employee personnel files and confidential proprietary materials. Defendants have demonstrated a significant interest in protecting the information contained in the exhibits which they seek to have sealed. The Court finds that this interest overrides the right of public access and supports sealing the records. The Court also finds that the proposed sealing is narrowly tailored and there are no less restrictive means to achieve the overriding interest of protecting the moving party's private or proprietary information.

5. **25CV02179, Looney vs Missme, Inc.**

Plaintiff's unopposed motion to appoint receiver to take possession and, if necessary, sell Defendant's liquor license is **GRANTED**.

If no hearing is requested, the Court will sign the proposed order lodged with the moving papers.

Judgment was entered against Defendant on July 18, 2025, in the amount of \$6,681.36 to be paid to Plaintiff/Judgment Creditor Gary Looney dba Collectronics of California. Plaintiff has propounded postjudgment discovery on Defendant and has received no response. Plaintiff has attempted several

times to contact Defendant via phone and letter to no avail. Plaintiff represents several attempts to enforce the judgment have been unsuccessful. Plaintiff submits that the only attachable asset is the liquor license. Plaintiff has met his burden of proving that the appointment of a receiver is necessary.

The Court approves Landon McPherson as the receiver. Mr. McPherson shall post an undertaking in the amount of \$1,000.00 upon his appointment.

6. 25CV04944. Capital One, N.A. vs Rodriguez

Defendant's motion to set aside default judgment is **DENIED**.

Plaintiff's counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

Analysis:

Plaintiff filed its complaint on July 14, 2025, and served process upon Defendant on August 5, 2026. After Defendant failed to respond to the complaint, default judgment was entered against him on December 18, 2026.

Defendant herein seeks relief from default judgment pursuant to CCP § 473(b) based on his representation that default was entered against him because he did not know that he needed to do anything in response to receiving the summons and complaint aside from appearing at the case management conference that was set in 2026.

CCP § 473(b) provides, "The court may, upon any terms as may be just, relieve a party or the party's legal representative from a judgment, dismissal, order, or other proceeding taken against the party through the party's mistake, inadvertence, surprise, or excusable neglect." However, it also states, "Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted..." Defendant has not submitted a proposed answer or other pleading. Accordingly, the Code provides that the application shall not be granted.

7. 25CV07252, Commercial Collection Service, Inc. vs Smith

Defense is ordered to appear to discuss representation issues; a corporation must be represented in litigation by a licensed attorney.

Defendants' demurrer to Plaintiff's first amended complaint is **SUSTAINED** in part and **OVERRULED** in part. It is **SUSTAINED** as to the First and Second Causes of Action against both defendants. It is further **SUSTAINED** as to the Third Cause of Action against Defendant David Alan Smith, but **OVERRULED** as to the Third Cause of Action against Defendant LandCo Environments, Inc. ("LandCo").

Defendants' motion to strike is **DENIED**.

Leave to amend is **GRANTED**.

Defendants' counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

As an initial matter, the Court notes that Defendants filed their demurrer and motion to strike together as one motion. Doing so is improper as a demurrer and a motion to strike are two distinct motions under different sections of the Code of Civil Procedure. "Motions to strike and demurrers should be filed as separate documents." (Weil & Brown, *Cal. Prac. Guide Civ. Pro. Before Trial* § 7:162.1.) The Court will consider the motions on their merit this time but cautions counsel against continuing this practice.

Demurrer:

Defendant herein demurs to each cause of action of Plaintiff's First Amended Complaint ("FAC") on the grounds that each cause of action fails to state sufficient facts and is uncertain. The Court does not agree that any of the causes of action are uncertain. A demurrer for uncertainty pursuant to CCP § 430.10(f) will be sustained only where a defendant cannot reasonably respond, i.e. cannot reasonably determine what issues must be admitted or denied, or what counts or claims are directed against him or her. (*Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616; see also *A.J. Fistes Corp. v. GDL Best Contractors, Inc.* (2019) 38 Cal.App.5th 677, 695 ("A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures.") Defendants' demurrer on the basis of failure to state a claim is analyzed in detail below.

I. First Cause of Action – Open Book Account

The elements of a cause of action for open book account are:

1. That [*plaintiff*] and [*defendant*] had financial transactions with each other;
2. That [*plaintiff*], in the regular course of business, kept [a written/an electronic] account of the debits and credits involved in the transactions;
3. That [*defendant*] owes [*plaintiff*] money on the account; and
4. The amount of money that [*defendant*] owes [*plaintiff*].

(CACI 372.)

Plaintiff alleges that Watersavers Irrigation, Inc. ("Plaintiff's Assignor"), owner of the account described, assigned the account(s) alleged to Plaintiff for collection. Plaintiff generally alleges:

Within four years last past, and prior to the commencement of this action, Defendants became indebted on an open book account to Plaintiff's Assignor in the sum of \$42,489.48 for wholesale irrigation supplies furnished to the defendants by Plaintiff's Assignor at their special instance and request. The balance owed by Defendants is \$42,489.48.

(FAC, ¶ 8.)

Plaintiff's allegations regarding the debt are conclusory. "We disregard legal conclusions in a complaint; they are just a lawyer's arguments." (*Wexler v. California FAIR Plan Assn.* (2021) 63

Cal.App.5th 55, 70.) This Court disregards Plaintiff's conclusory allegation that Defendants became indebted on an open book account because it is not supported by fact. Plaintiff has failed to allege the financial transactions the parties had with one another other than a conclusory statement that Defendants became indebted to Plaintiff's assignor. Plaintiff also fails to allege that Plaintiff, in the regular course of business, kept an account of the debts and credits involved in the transaction. The factual allegations supporting this cause of action are insufficient to state a cause of action or open book account.

II. Second Cause of Action – Account Stated

“An account stated is an agreement, based on prior transactions between the parties, that the items of an account are true and that the balance struck is due and owing.” (*Leighton v. Forster* (2017) 8 Cal.App.5th 467, 491, quoting *Maggio, Inc. v. Neal* (1987) 196 Cal.App.3d 745, 752.) “To be an account stated, “it must appear that at the time of the statement an indebtedness from one party to the other existed, that a balance was then struck and agreed to be the correct sum owing from the debtor to the creditor, and that the debtor expressly or impliedly promised to pay to the creditor the amount thus determined to be owing.” (*Ibid.*)

Here, Plaintiff again alleges in a conclusory manner that,

Within four years last past, there was an account stated by and between Plaintiffs Assignor and Defendants, wherein the sum alleged in the First Cause of Action was found to be due Plaintiff's Assignor, which sum defendants agreed and promised to pay, and no part of that sum has been paid.

(FAC, ¶ 11.) Plaintiff bases the allegations of this cause of action upon the facts alleged in support of the First Cause of Action. The Court has found those allegations to be insufficient. Plaintiff's conclusory allegations supporting this cause of action are insufficient to raise a claim.

III. Third Cause of Action – Breach of Contract

To allege a cause of action for breach of contract a party must allege the following elements: (1) the existence of a contract, (2) plaintiff's performance or excuse for non-performance, (3) defendant's breach, and (4) damages to plaintiff there from. (*Acoustics, Inc. Trepte Constr. Co.* (1971) 14 Cal. App.3d 887, 913.) “A written contract may be pleaded either by its terms—set out verbatim in the complaint or a copy of the contract attached to the complaint and incorporated therein by reference—or by its legal effect.” (*Heritage Pac. Fin., LLC v. Monroy* (2013) 215 Cal.App.4th 972, 993.) “In order to plead a contract by its legal effect, plaintiff must ‘allege the substance of its relevant terms.’” (*Ibid.*)

Plaintiff herein alleges that Plaintiff's Assignor and Defendants entered into a written contract and attached a copy of the written contract to the FAC. Plaintiff alleges that “Under the contract, Defendant Landco Environments promised to pay the agreed price for the goods and services it ordered from Plaintiff's Assignor and Defendant David Alan Smith personally guaranteed payment for all such charges.”

Plaintiff further alleges that within four years last past, Defendants breached the contract by failing to pay the sums due and that Plaintiffs Assignor performed all obligations to Defendants except

those obligations Plaintiff's Assignor was prevented or excused from performing. Plaintiff also alleges that Plaintiff is entitled to attorney's fees as set forth in the contract.

Plaintiff attached to the Complaint a document entitled "Credit Application." The applicant is identified as "LandCo Environments, Inc." a "Corporation." The "principal owner" of LandCo is identified as "David Smith" The contract is signed by "David Smith" as "Principal." Plaintiff alleges that David Smith personally guaranteed payment for charges under the contract. However, such is not reflected in the contract attached to the Complaint. There is no language in the credit application that indicates a personal guarantee by David Smith. He signed it as the principal of LandCo corporation. Plaintiff has not alleged facts to support the existence of a separate agreement wherein David Smith agreed to personally guarantee the debt. Accordingly, Plaintiff has failed to allege facts supporting this cause of action against David Smith personally. However, Plaintiff's facts are sufficient to state a cause of action for breach of contract against Defendant LandCo.

Motion to Strike:

Defendant's motion to strike Defendant David Alan Smith as a defendant is **MOOT** considering that the Court has sustained Defendants' demurrer as to each cause of action alleged against Defendant Smith.

Defendants' motion to strike paragraph 9 of the FAC is **MOOT** considering that the Court has sustained the Defendants' demurrer to the First Cause of Action.

Defendant's motion to strike paragraph 16 relating to attorney's fees and the portion of the prayer for relief seeking attorney's fees is **DENIED**.

Defendant argues that Plaintiff alleges only a conclusion that some unstated verbiage somewhere suffices to entitle Plaintiff to attorney's fees. Plaintiff alleges "Plaintiff is entitled to attorney's fees as set forth in the Contract alleged herein." (FAC, ¶ 16.) The contract attached to the complaint states, in pertinent part, "Applicant(s) also agree to pay service charges at highest rate allowed by law and any applicable collection fees up to 50% *and or attorney fees on all amounts outstanding and not paid within terms of sales.*" (Italics added.) Accordingly, Plaintiff has sufficiently alleged entitlement to attorney's fees.

*****This is the end of the Tentative Rulings*****