

## **TENTATIVE RULINGS-SEPTEMBER 7, 2007**

To request a hearing on any matter on this calendar, you must call the Court at (209) 257-2692 by 4:30 p.m. today. Notice of the intention to appear must also be given to all other parties. If the clerk is not notified of a party's intention to appear, there will be no hearing and the tentative ruling becomes the order of the court.

**FIA Card Services v. Haymond: 07CV4914**

### ***Petitioner's Petition to Confirm Arbitration Award***

This matter is hereby continued; on the courts own motion, to October 12, 2007 at 10:00 a.m. in Department 2. There is no filed proof of service of the petition. In addition, the plaintiff's Notice of Motion fails to comply with Local Rule 4.03. Plaintiff is to file and serve an Amended Notice of Motion and a Proof of Service prior to the next hearing.

**Lee v. Ollig: 06CV4395**

### ***Motion to Set Aside Default Judgment***

Defendants' Motion to set Aside Default Judgment is granted.

Plaintiff's objection to the Inspection Report, attached to the Memorandum of Points and Authorities as Exhibit "A" is sustained.

As to the plaintiff's objection to the memorandum of points and authorities in support of the motion, it is not evidence, in and of itself, and, therefore, the objection is overruled.

The objection to declarations in support of the motion was previously ruled upon by the Court. Moreover, amended declarations were submitted, thereby rendering the previous objections moot.

Defendants are to prepare an order in compliance with Rule 3.1312.

**Thompson v. Herzog-Garcia: 07CV4620**

### ***Defendant's Motion to Set Aside Default***

Defendant's Motion to Set Aside Default is hereby continued, on the courts own motion, to September 28, 2007 at 10:00 a.m. in Department 2. Defendant's Notice of Motion fails to comply with Local Rule 4.03. Defendant is to file and serve an amended notice, in compliance with Rule 4.03, no later than September 14, 2007.

**Vance v. State of California: 06CV4346**

### ***Defendant's Motion for Judgment on the Pleadings***

Preliminarily, Defendant's request for judicial notice is granted as to the Complaint and the First Amended Complaint. The request for judicial notice is denied as to all other requests, as Defendant failed to authenticate said documents.

Defendant's Motion for Judgment on the Pleadings is granted with leave to amend.

A motion for judgment on the pleadings serves the same function as a general demurrer. (Virginia G. v. ABC Unified School District (1993) 15 Cal.App.4th 1848, 1852.) Accordingly, the two motions are analyzed similarly.

For the purposes of testing a cause of action, a demurrer admits the truth of all material facts properly pleaded. (Aubry v. Tri-City Hospital Dist. (1992) 2 Cal.4th 962, 966-967.) The grounds for a motion for judgment on the pleadings must appear on the face of the challenged pleading or be based upon facts that the court may judicially notice. (Blank v. Kirwan (1985) 39 Cal.3d 311, 318 (discussing the procedure for a demurrer).) As in ruling upon a demurrer, the complaint/cross-complaint should be construed liberally with an eye to substantial justice between the parties. (C.C.P. §452.)

In addition, leave to amend should be granted if there is any possibility that the plaintiff can state a valid cause of action. (Virginia G., *supra*, at 1852 (noting that it is an abuse of discretion to deny leave to amend upon granting a motion for judgment on the pleadings, unless the pleading shows on its face that it is incapable of amendment).)

The first cause of action alleges general negligence.

Government Code §815 provides:

Except as otherwise provided by statute: (a) A public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or a public employee or any other person. (b) The liability of a public entity established by this part (commencing with Section 814) is subject to any immunity of the public entity provided by statute, including this part, and is subject to any defenses that would be available to the public entity if it were a private person.

A public entity cannot be liable for common law negligence. (Hilts v. County of Solano (1968) 265 Cal.App.2d 166.) Moreover, statutory claims against government entities must be plead with particularity. (Lopez v. Southern Calif. Rapid Transit Dist. (1985) 40 Cal.3d 780, 795.)

In this instance, the plaintiff has failed to plead in the first cause of action any statutory authority for general negligence liability or that an exception to the immunity doctrine is applicable. Therefore, the motion is granted, as to the first cause of action, with leave to amend.

The second cause of action alleges medical negligence.

Government Code §844.6 provides, in pertinent part: "(a) Notwithstanding any other provision of this part, except as provided in this section and in Sections 814, 814.2, 845.4, and 845.6, or in Title 2.1 (commencing with Section 3500) of Part 3 of the Penal Code, a public entity is not liable for: (2) An injury to any prisoner."

Wards of the juvenile court are considered "prisoners" for the purpose of §844.6. (Jiminez v. Santa Cruz County (1974) 42 Cal.App.3d 407.)

Moreover, Government Code §845.6 provides;

Neither a public entity nor a public employee is liable for injury proximately caused by the failure of the employee to furnish or obtain medical care for a prisoner in his custody; but, except as otherwise provided by Sections 855.8 and 856, a public employee, and the public entity where the employee is acting within the scope of his employment, is liable if the employee knows or has reason to know that the prisoner is in need of immediate medical care and he fails to take reasonable action to summon such medical care. Nothing in this section exonerates a public employee who is lawfully engaged in the practice of one of the healing arts under any law of this state from liability for injury proximately caused by malpractice or exonerates the public entity from its obligation to pay any judgment, compromise, or settlement that it is required to pay under subdivision (d) of Section 844.6.

In this instance, the plaintiff alleges the defendant failed to provide access to medication and failed to provide adequate care. Plaintiff does not allege the defendant knew or had reason to know the plaintiff was in need of immediate medical attention and failed to take action to summon such medical care. There is no allegation in the second cause of action that the instant case falls within the exception in Government Code §845.6. Therefore, the motion is granted as to the second cause of action with leave to amend.

Defendant is to prepare an order in compliance with Rule 3.1312.