SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 10
Honorable Frederick S. Chung

Farris Bryant, Courtroom Clerk (covering for Rachel Tien)
191 North First Street, San Jose, CA 95113
Telephone: 408-882-2210

DATE: September 21, 2023 TIME: 9:00 A.M.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

The courthouse is open: Department 10 is now fully open for in-person hearings, as of April 18, 2023. The court strongly prefers **in-person** appearances for all contested law-and-motion matters. For all other hearings (*e.g.*, case management conferences), the court strongly prefers either **in-person or video** appearances. Audio-only appearances are permitted but disfavored, as they cause significant disruptions and delays to the proceedings. Please use telephone-only appearances as a last resort.

CourtCall is no longer available: Department 10 uses Microsoft Teams for remote hearings. Please click on this link if you need to appear remotely, and then scroll down to click the link for Department 10: https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml.

Recording is prohibited: As a reminder, most hearings are open to the public, but state and local court rules prohibit recording of court proceedings without a court order. This prohibition applies to both in-person and remote appearances.

Court reporters: Unfortunately, the court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If any party wishes to have a court reporter, the appropriate form must be submitted. See https://www.scscourt.org/general_info/court_reporters.shtml.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	22CV394562	Ralph Neal v. US Bank NA et al.	OSC re: dismissal: parties to appear.
LINE 2	23CV413796	Samuel Pendar v. County of Santa Clara et al.	Click on LINE 2 or scroll down for ruling.
LINE 3	20CV369453	Tranquis Therapeutics, Inc. v. LifeSource Biomedical Labs et al.	The motion has been withdrawn, and this matter is OFF CALENDAR.
LINE 4	21CV386311	Marilyn Johnson v. Daniel Pruitt et al.	Motion to compel: **parties to appear**. Notice is proper, and the motion is unopposed. The court is inclined to grant the motion, but Defendant Shift Technologies, LLC's request for monetary sanctions is unclear, as it has not specified any amount or provided any factual basis for sanctions. The court wishes to hear further from the parties.
LINE 5	21CV389040	Richard Connery v. Rick Soukoulis et al.	Click on LINE 5 or scroll down for ruling.
LINE 6	18CV337026	Devan Taylor v. Sears, Roebuck and Co. et al.	Motion to withdraw as counsel: counsel to appear.
LINE 7	20CV370573	Stephen Harrington et al. v. Amari and Gray P.C. et al.	Click on LINE 7 or scroll down for ruling.
LINE 8	21CV390953	Samantha L. Silva v. The Signature Motors LLC et al.	Click on LINE 8 or scroll down for ruling.

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Calendar Line 2
Case Name: *Samuel Pendar v. Santa Clara County Medical Examiner* et al.
Case No.: 23CV413796

I. BACKGROUND

This is an action brought by Samuel Pendar ("Pendar") against the County of Santa Clara (the "County"), the governmental entity that operates the Santa Clara County Medical Examiner's Office. Currently before the court is the County's demurrer to the complaint's third cause of action under the Unruh Civil Rights Act (Civ. Code, § 51).

Pendar's brother, Njawa Pendar, died on September 9, 2022. Pendar alleges that the County Medical Examiner took possession of Njawa Pendar's body shortly thereafter but failed to notify Pendar of his brother's death until December 26, 2022, more than three and a half months later. In his complaint, filed on April 10, 2023, Pendar asserts three causes of action against the County: (1) Negligence; (2) Negligent Infliction of Emotional Distress; and (3) Violation of the Unruh Civil Rights Act ("Unruh Act"). The complaint admits that the Medical Examiner is a "department or entity" of the County. (Complaint, ¶ 6.)

Pendar is self-represented, which is sometimes referred to as appearing *in propria persona* (or "pro per"). "[W]hen a litigant is appearing in propria persona, he is entitled to the same, but no greater, consideration than other litigants and attorneys. Further, the in propria persona litigant is held to the same restrictive rules of procedure as an attorney." *(Burnete v. La Casa Dana Apartments* (2007) 148 Cal.App.4th 1262, 1267, internal citations omitted).) Self-represented litigants "are held to the same standards as attorneys" and must comply with the rules of civil procedure. (*Kobaysahi v. Superior Court* (2009) 175 Cal.App.4th 536, 543.)

II. THE COUNTY'S DEMURRER TO THE COMPLAINT

A. General Standards

The court, in ruling on a demurrer, treats it "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Thus, the complaint's allegation that the County Medical Examiner's Office's constitutes a "business establishment" under the Unruh Act is a *legal conclusion* that the court is not required to accept as true on a demurrer. (Complaint, ¶ 46.)

The general rule is that statutory causes of action (such as actions under the Unruh Act) must be pleaded with particularity. (See *Lopez v. Southern California Rapid Transit District* (1985) 40 Cal.3d 780, 795; *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790.)

B. The County's Basis for Demurrer

The County asserts that the third cause of action fails to state sufficient facts because the County is not a "business establishment" for purposes of the Unruh Act. (See May 18, 2023 Notice of Demurrer at p. 2:2-3.)

The Unruh Act is a public accommodations statute that focuses on discriminatory behavior by "business establishments." (Civ. Code, § 51, subd. (b).) It provides that all

persons in California are "free, equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever." (*Ibid*.)

C. Analysis

The court SUSTAINS the County's demurrer to the third cause of action. The court agrees with the County that neither the County nor its Medical Examiner's Office is a "business establishment" under the Unruh Act and that this conclusion is compelled by the California Supreme Court's decision in *Brennon B. v. Superior Court* (2022) 13 Cal.5th 662 (*Brennon B.*).

Pendar's argument that *Brennon B.* does not apply here because the Medical Examiner's Office is not a school district is not persuasive. Although that case dealt specifically with a school district defendant, the holding of the case applies to similarly situated public entities or government agencies. The Medical Examiner's Office is no more a "business" than a school district. Further, Pendar's characterization of the California Supreme Court's decision as a "secondary source" and his assertion that only "a trier of fact" can determine whether the County is a "business establishment" under the Unruh Act are both legally incorrect. Statutory interpretation is a question of law for the courts, and it is one of the primary functions of the court system. The Supreme Court in *Brennon B.* issued an interpretation of "business establishments" in the Unruh Act that is binding on this court and applicable to this case.

As the Court explained: "The purpose and legislative history of the Unruh Civil Rights Act—and its predecessor statute—make clear that the focus of the Act is the conduct of *private business establishments*. These laws were originally enacted in response to limitations placed by the United States Supreme Court on the federal government's ability to pass laws targeting the conduct of private entities; the actions of state actors were not the focus of the state's first public accommodations laws or of the Unruh Civil Rights Act." (*Brennon B.*, *supra*, 13 Cal.5th at p. 675, emphasis in original.)

The Court also stated: "While the phrase 'all business establishments of every kind whatsoever' must be interpreted as broadly as reasonably possible, its scope remains limited to entities acting as private business establishments. In addition, the Legislature is capable of bringing government entities within the scope of specific legislation when it intends to do so, and it *has* done so with other antidiscrimination legislation. In the context of the Unruh Civil Rights Act, however, 'the statutory list of [covered entities] contains no words or phrases most commonly used to signify public school districts, or, for that matter, any other public entities or governmental agencies.' The Act does not—as *does* FEHA, for example—define the covered entities to include 'the state or any political or civil subdivision of the state, and cities.' (Gov. Code, § 12926, subd. (d).) As we have previously explained, '[t]he specific enumeration of state and local governmental entities in one context [such as the California Fair Employment and Housing Act], but not in the other [here, the Unruh Civil Rights Act], weighs heavily against a conclusion' that the coverage provisions should be understood as identical. That is especially true where, as here, the statutes' coverage provisions were drafted by the very same Legislature during the same legislative session; the legislative history is, thus, strong evidence

that the Legislature crafted language for FEHA to explicitly cover governmental entities, while simultaneously crafting language for the Unruh Civil Rights Act that sets forth *different* coverage." (*Brennon B., supra*, 13 Cal.5th at p. 678, internal citations omitted, emphasis in original.)

Finally, the Supreme Court noted: "In parsing the boundaries of what constitutes a 'business establishment,' our cases have focused on attributes—performing business functions, protecting economic value, operating as the functional equivalent of a commercial enterprise, etc.—that are not shared by public school districts engaged in the work of educating students." (*Brennon B., supra*, 13 Cal.5th at p. 681.)

Based on the foregoing, the court must find that the County Medical Examiner's Office—both in its general operations and in the specific context of taking possession of the remains of the recently deceased and notifying next of kin—cannot reasonably be considered as possessing any of the attributes of a private "business establishment." Plaintiff's third cause of action for violation of the Unruh Act therefore fails to state sufficient facts against the County as a matter of law.

D. Leave to Amend

The opposition asks that the demurrer be "denied" but does not request leave to amend if the demurrer is sustained or explain how the third cause of action could be amended to better state a claim against the County. It is a plaintiff's burden to show how an amendment could cure a defect identified on demurrer. (See *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081; *Heritage Pac. Fin'l, LLC v. Monroy* (2013) 215 CA4th 972, 994; *Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1145 ["The onus is on the plaintiff to articulate the 'specifi[c] ways' to cure the identified defect, and absent such an articulation, a trial or appellate court may grant leave to amend 'only if a potentially effective amendment [is] both apparent and consistent with the plaintiff's theory of the case. [Citation.]'"].)

While the court has significant doubts that a claim for a violation of the Unruh Act can be brought against the County based on the facts alleged here, the court sustains the demurrer with 10 days' leave to amend, as this is the first pleading challenge in the case.

The court emphasizes that when a demurrer is sustained with leave to amend, the leave must be construed as permission to the pleader to amend the cause(s) of action to which the demurrer has been sustained, not to add entirely new causes of action. (*Patrick v. Alacer Corp*. (2008) 167 Cal.App.4th 995, 1015.) To raise claims entirely unrelated to those originally alleged requires either a new lawsuit or a noticed motion for leave to amend. Absent prior leave of court an amended complaint raising entirely new and different causes of action may be subject to a motion to strike. (*Zakk v. Diesel* (2019) 33 Cal.App.5th 431, 456, citing *Harris v. Wachovia Mortgage, FSB* (2010) 185 Cal.App.4th 1018, 1023.)

This means that the court does not grant leave to add new claims or new parties at this time, only leave to amend the third cause of action.

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Calendar Line 5
Case Name: *Richard Connery v. Rick Soukoulis et al.*
Case No.: 21CV389040

Plaintiff Richard Connery filed this motion to compel responses to special interrogatories and document requests from defendant Rick Soukoulis on May 19, 2023. Since that time, Soukoulis has retained new counsel, and he finally served written responses to the discovery requests on September 8, 2023. On that same date, Soukoulis also filed a "limited opposition" to the motion, arguing that with the service of his written responses, the motion is now "moot." On September 13, 2023, Connery filed a reply brief, stating that he received satisfactory answers to the special interrogatories, but that the responses to the requests for production were made with objections, even though objections were waived.

The court has now reviewed the written responses to the document requests, and it is unclear whether any documents have actually been withheld on the basis of the objections, which are generic. The responses state that there are "no non-privileged document[s]" in defendant's possession, but it is not apparent whether there are any privileged documents that are responsive and that have been withheld. Given the nature of the requests, it is difficult to envision that any responsive documents would actually be privileged.

To clear up this needless ambiguity, the court orders Soukoulis to respond to Connery *within 10 days* with a clarification as to whether there are any documents that have been withheld on the basis of his objections. If so, Soukoulis must provide a privilege log to Connery *within 20 days* of the date of this order. Connery may then file a separate motion if he believes that any documents have been improperly withheld.

Finally, Connery has requested $878.75 in monetary sanctions for the cost of having had to bring this motion. The court finds this amount to be reasonable, and that Soukoulis's delay in responding to discovery was without substantial justification. Accordingly, the court orders Soukoulis to pay Connery $878.75 *within 30 days* of the date of this order.

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Calendar Line 7
Case Name: *Stephen Harrington et al. v. Amari and Gray P.C. et al.*
Case No.: 20CV370573

Defendants Amari and Gray, P.C. and John W. Gray move to set aside a default judgment and to quash service of summons for want of personal jurisdiction. Since filing their motion on March 16, 2023, defendants also filed a notice of appeal of the default judgment on July 13, 2023, and that appeal is now pending. As a consequence, this court lacks subject matter jurisdiction to decide the present motion and must deny it.

Under Code of Civil Procedure section 916, the "perfecting" of an appeal (*i.e.*, the proper filing of a notice of appeal) automatically stays proceedings in a trial court. The purpose of the automatic stay is "'to protect the appellate court's jurisdiction by preserving the status quo until the appeal is decided.'" (*LAOSD Asbestos Cases* (2018) 28 Cal.App.5th 862, 872 [quoting *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 189].) The lone exception to the rule exists for matters that are not "embraced in" or "affected by" the appeal. (*Ibid.*) In this case, defendants have appealed the trial court's default judgment, including the court's December 10, 2021 order denying their motion to set aside the default judgment under Code of Civil Procedure section 473, subdivision (b) (excusable mistake or neglect). Now, defendants have filed a motion to set aside the default judgment under section 473, subdivision (d) (void judgment). Even though the grounds for the two motions are slightly different, there can be no doubt that any decision by this court to set aside the default judgment under subdivision **(d)** would necessarily interfere directly with the appellate court's jurisdiction to decide whether the default judgment should have been set aside under subdivision **(b)**. Thus, the present motion is undoubtedly "embraced in" and "affected by" the pending appeal.

Given the absence of subject matter jurisdiction by this trial court, the present motion must be, and is, DENIED without prejudice.

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Calendar Line 8
Case Name: *Samantha L. Silva v. The Signature Motors LLC et al.*
Case No.: 21CV390953

This is a petition to confirm an arbitration award, filed by plaintiff Samantha Silva on May 25, 2023 following an April 26, 2023 award of $59,478.57 in attorney's fees and costs, plus interest.[1] Defendant/Respondent The Signature Motors LLC ("Signature") opposes the petition. Signature has also filed a petition to vacate the arbitration award, which raises the same arguments as its opposition to the motion to confirm.

The basis for Signature's opposition (and petition to vacate) is the fact that the arbitrator who awarded the attorney's fees and costs to Silva, Jonathan Polland, supposedly failed to disclose the fact that he teaches an American Arbitration Association (AAA) class called "Everything an Advocate Needs to Know About Winning Attorney's Fees and Costs in an Arbitration." According to Signature, the very title of this class evinces a bias in favor of certain parties in arbitration and constitutes an "indirect financial interest" in the award of attorney's fees in this case.

The court concludes that this argument by Signature fails to set forth any of the proper grounds for vacating or correcting the arbitration award under Code of Civil Procedure sections 1286.2 and 1286.6. As a general rule, the scope of the court's review of an arbitration award is limited, and it requires finding some flaw that rendered the arbitration proceedings fundamentally unfair or improper—*i.e.*, one of the enumerated grounds in sections 1286.2 and 1286.6. The fact that Polland teaches a class about attorney's fees does not constitute "corruption" or "fraud" under section 1286.2, subdivisions (a)(1) and (a)(2), nor does it constitute a "ground for disqualification" under section 1286.2, subdivision (a)(6). The notion that there is something inherent in teaching a class about attorney's fees awards that makes one unable to be impartial in deciding an attorney's fees award strikes the court as patently absurd. Furthermore, there is nothing in the title of the course that displays a bias in favor of plaintiffs or defendants; nor does the title indicate that the arbitrator has a personal interest in any side actually "winning" any particular amount of fees—apparently, the class is designed to provide advice to attorneys on how they *could* win. In fact, the course was apparently open to all attorneys, and Signature's counsel admits that upon reading the title of the course, his firm also "became interested in taking this course." (Declaration of Ali Kamarei, ¶ 26.) Finally, Signature completely fails to explain how the teaching of such a class could somehow constitute an "indirect financial interest" in the outcome of this particular case; the court discerns no connection whatsoever, direct or indirect.

Accordingly, the court GRANTS the petition to confirm the arbitration award. In addition, although the motion to vacate was not properly noticed for hearing by Signature, the parties have now fully briefed the issue, making exactly the same arguments. The court therefore DENIES the petition to vacate for the same reasons. Following the entry of the court's order on these motions, Silva shall submit a final judgment for the court's signature.

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[1] The parties settled the underlying dispute, and the only matter that proceeded to arbitration was attorney's fees and costs under the Song-Beverly Act.