
PARTIES/ATTORNEYS

Plaintiff	Charlotte Harris, individually and as trustee of The Harris Trust	Legal Aid Foundation Kate Lee
Defendant	Maricruz and Jesus Rodriguez	Esparza Law Group Luis Esparza

TENTATIVE RULING

For all the reasons discussed below, the motion for statutory preference is denied without prejudice. The motion to strike is granted with leave to amend within 30 days.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See [Remote Appearance \(Zoom\) Information | Superior Court of California | County of Santa Barbara.](#))

On April 16, 2025, plaintiff Charlotte Harris, individually and as trustee of the Harris Trust, filed a complaint alleging she is the owner of property located at 873-875 Highway 246 in Buellton. Defendants Maricruz and Jesus Rodriguez began renting a mobile home on their property in 1991. In 2020, Maricruz Rodriguez took plaintiff to an attorney ostensibly to obtain documents authorizing defendants to help her with financial, medical, and other decisions. Plaintiff was presented with documents and signed them with that understanding. Plaintiff subsequently discovered that she instead had instead signed a promissory note indebteding her to defendants in the amount of \$128,000 and gave defendants a lien with the power to foreclose on the property in the event of nonpayment.

As a result, on April 10, 2025, plaintiff filed requests for an elder abuse restraining order against the defendants. (Case Nos. 25CV02192, 25CV02187). On April 16, 2025, she filed the complaint in this action alleging the following causes of action: (1) elder abuse; (2) fraud; (3) cancellation of instrument; and (4) quiet title.

On April 24, 2025, she filed an unlawful detainer action. (Case No. 25CV02545.)¹

Motion for Statutory Preference

Plaintiff moves for an order establishing trial preference.² Code of Civil Procedure section 36 provides:

(a) A party to a civil action who is over 70 years of age may petition the court for a preference, which the court shall grant if the court makes both of the following findings:

- (1) The party has a substantial interest in the action as a whole.
- (2) The health of the party is such that a preference is necessary to prevent prejudicing the party's interest in the litigation.

The purpose of section 36, subdivision (a), is to ensure that elderly litigants who are in poor health receive their day in court while their health permits. (See *Swaithes v. Superior Court* (1989) 212 Cal.App.3d 1082, 1085 [“The clear intent of the Legislature is to safeguard litigants who qualify under subdivision (a) of section 36 against the acknowledged risk that death or incapacity might deprive them of the opportunity to have their case effectively tried and to obtain the appropriate recovery.”].) “Where a party meets the requisite standard for calendar preference under subdivision (a), preference must be granted. No weighing of interests is involved.” (*Fox v. Superior Court* (2018) 21 Cal.App.5th 529, 535.) “[T]he decision to grant or deny a preferential trial setting rests at all times in the sound discretion of the trial court in light of the totality of the circumstances.” (*Salas v. Sears, Roebuck & Co.* (1986) 42 Cal.3d 342, 344.)

Section 36.5 provides: “[a]n affidavit submitted in support of a motion for preference under subdivision (a) of Section 36 may be signed by the attorney for the party seeking preference based upon information and belief as to the medical diagnosis and prognosis of any party.” The Legislature has thus mandated that a party moving for trial preference under section 36(a) may do so by providing a minimal amount of evidentiary support. In *Fox, supra*, 21 Cal.App.5th at p. 532, plaintiff's counsel's declaration attested, among other things, “‘a foggiess in thought process that impairs [Fox's] ability to focus, concentrate and effectively communicate’” and stated further chemotherapy treatments would further impair Fox's “‘ability to focus, concentrate, and effectively communicate, making her less able to participate in her trial.’” The court found this evidence showed Fox's “mental state has deteriorated to a point where she becomes confused and forgetful”

¹ The unlawful detainer action has been resolved by stipulation. (Case No. 25CV02545, Stipulation for Entry of Judgment dated 6/10/25.)

² Opposition was filed late. The court exercises its discretion to consider it.

and “while Ms. Fox is currently able to participate in a trial, she has good reason for concern that will not be the case for much longer as her health deteriorates,” entitling her to preference. (*Id.* at p. 535.)

Here, Ms. Harris has stated in her declaration that she is 90 years old. (Harris Decl., ¶ 2.) Neither she nor her attorney have submitted the minimal evidence necessary to support a finding that health of the party is such that a preference is necessary to prevent prejudicing the party's interest in the litigation. For that reason, the motion must be denied.

Motion: Strike Answer

On September 3, 2025, the court granted defendants filed a motion to set aside default, noting that the proposed answer was not in the proper form because the proposed answer attached to the motion was a general denial, which was insufficient to controvert a verified complaint. A verified complaint must be denied “positively” or according to information and belief. (Code Civ. Proc. § 431.30(d); see *City of Hollister v. Monterey Ins. Co.* (2008) 165 Cal.App.4th 455, 476.) In other words, the allegations of a verified complaint must be denied specifically. (*Paul Blanco's Good Car Co. Auto Group v. Sup.Ct. (People)* (2020) 56 Cal.App.5th 86, 111.) The court ordered defendants to file a statutorily compliant answer by September 4, 2025.

The answer that was filed doesn't fare much better and plaintiff moves to strike it. No opposition to the motion to strike was filed. The answer is verified, but states:

1. Defendants specifically deny each and every allegation contained in the Complaint and specifically, each and every cause of action set forth in the Complaint. 2. Defendants specifically deny that Plaintiff has sustained or will sustain any damages or loss whatsoever by reason of any act or omission on Defendants' part. 3. Defendants specifically deny that Plaintiff is entitled to any damages or relief sought
ANSWER OF MARICRUZ RODRIGUEZ AND JESUS RODRIGUEZ TO COMPLAINT OF CHARLOTTE HARRIS
by reason of the Complaint, or to any relief whatsoever. 4. By way of further answer to the Complaint, Defendants allege: All allegations hereinafter set forth which are based on lack of information or belief, or which are based on information and belief, are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

This means, for example, that defendants deny the allegation that: “Defendant MARICRUZ RODRIGUEZ (“Defendant Maricruz”), an individual, and Defendant JESUS RODRIGUEZ (“Defendant Jesus”), an individual, (collectively “Defendants”) both reside in the City of Buellton and are residents of Santa Barbara

County. Defendants claim a right, title, estate, lien, or interest in the Subject Property in which Plaintiff seeks to quiet title adverse to Plaintiff's title, and Defendants' claim constitutes a cloud on Plaintiff's title." (Complaint, ¶ 3.) It is unclear how the plaintiff and court should interpret this denial. That the individually named defendants do not live in Buellton or that they are not residents of Santa Barbara County? Or that they do not claim a right, title, estate, lien or interest in the property?³

In *Williamson v. Clapper* (1948) 88 Cal.App.2d 645, 647–648, the court condemned such practices:

"We may observe that there appears to be a growing tendency in the drafting of answers to deny generally the allegations of the complaint without distinguishing between those allegations which are unquestionably true and those which it is desired in good faith to put in issue. No significance is attached to the oath of the verification. This practice is not sanctioned by law and is inexcusable. It renders it difficult, if not impossible, for the trial court to learn from the pleadings what facts are really in issue. It renders it necessary for the plaintiff to prove each material fact alleged or to gain an admission of its truth during the trial. It also complicates the matter of preparation of findings, which are required to cover all the material issues, and renders it difficult for a reviewing court to determine from an examination of the pleadings and the findings whether the latter are sufficient. The amendment of section 437, Code of Civil Procedure (Stats. 1927, p. 529, Stats. 1933, p. 1848), so as to permit verified denials to be made by reference to specific paragraphs of the complaint did not dispense with the requirement of truth in sworn statements or permit a denial of the allegations of entire paragraphs, all or some of the material allegations of which are known by the defendant to be true. Irrespective of any question of willfully false swearing, the loose practice of pleading which results in the incorporation in the answer of known false denials is to be condemned."

Defendant is directed submit an amended answer that specifically admits or denies each allegation of the complaint.

Plaintiff also moves to strike the answer on the basis that the affirmative defenses are improperly pled. To properly state an affirmative defense, the party alleging it must set forth facts "as carefully and with as much detail as the facts which constitute the cause of action and are alleged in the complaint." (*FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384.) Whether an answer states a defense is generally governed by the same principles which are applicable in determining if a complaint states a cause of action. (*South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 732.) Evaluation of an answer also

³ The latter position is contrary that that asserted in the cross-complaint.

requires an examination of the complaint because its adequacy is with reference thereto, with each defense to be considered separately, without regard to any other defense. (*FPI, supra*, 231 Cal.App.3d at 384; *Timberidge Enterprises, Inc. v. City of Santa Rosa* (1978)86 Cal.App.3d 873, 879-80.)

Here, defendants have alleged 22 affirmative defenses, some of which are clearly not applicable. The court directs defendants to carefully allege their affirmative defenses in any future pleading.

The motion to strike is granted, with leave to amend.