

TENTATIVE RULINGS FOR January 27, 2025
Department S-36
BEFORE THE HONORABLE TONY RAPHAEL
(909) 708-8851

ATTENTION: Commencing December 10, 2022, the Court will no longer regularly provide an official Court Reporter to transcribe proceedings in this Department. Parties who wish to have an official record of the proceedings in addition to a minute order must retain a private Certified Shorthand Reporter for the hearing and must submit a “Stipulation and Order For Appointment of Official Reporter Pro Tempore” to the court in the form found on the Court’s website. If counsel are appearing for the hearing remotely, the Stipulation can be emailed to the Judicial Assistant for Department S-36 at kcollierkosmatka@sb-court.org. The Court may sign the Order appointing the Certified Shorthand Reporter as the official Court Reporter Pro Tempore. Parties who do not retain a Certified Shorthand Reporter to be designated as an official Court Reporter Pro Tempore are deemed to have waived an official Court Reporter for the proceeding.

[PLEASE REFER TO THE GENERAL ORDERS AND FORMS POSTED ON THE COURT’S WEBSITE.](#)

PLEASE NOTE: There may be multiple tentative rulings so view the entire document.

This Court follows California Rules of Court, rule 3.1308(b) for tentative rulings. (See San Bernardino Superior Court Local Emergency Rule 8.) Tentative rulings are posted on the court’s website after 3:00 p.m. the day before the hearing at <https://www.sb-court.org/divisions/civil/civil-tentative-rulings>.

You may appear in person or by remote appearance at the hearing. (See www.sb-court.org/general-information/remote-access) If you do not have Internet access you may obtain the tentative ruling by calling (909) 708-8853 or telephoning the department at 909-708-8851] If you (or both parties) wish to submit on the Tentative, notify the other party and call the department by 4:00 p.m. the day before and your appearance may be excused unless the Court orders you to appear.

You must appear at the hearing if you are so directed by the court in the tentative ruling and be prepared to address those issues set forth by the court in its ruling.

UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF RULING

**ASHLEY ELIZABETH HALVORSON,
individually and as successor-in-interest to
BLAINE MILLER HALVORSON;**

v.

**WESTERN SPECIALIZED, INC.;
MEDTRONIC, INC.; MEDTRONIC
MINIMED, INC.; JAMES ANTHONY
BLOCK; and DOES 1 through 100, inclusive.**

**GERALD HALVORSON, an individual and
successor-in-interest to BLAINE MILLER
HALVORSON; MELISSA HALVORSON, an
individual and successor-in-interest to BLAINE
MILLER HALVORSON; GREGORY LORD
BROWN II, an individual;**

v.

**WESTERN SPECIALIZED, INC.;
MEDTRONIC, INC.; MEDTRONIC
MINIMED INC.; JAMES ANTHONY
BLOCK; and DOES 1 through 100, inclusive.**

CIVSB2301289

PROCEDURAL/FACTUAL BACKGROUND

Currently before this Court is a motion to file a first amended complaint filed by Plaintiff Gerald Halvorson.

This action was commenced on January 4, 2023, by Plaintiff Ashley Elizabeth Halvorson, individually and successor-in-interest to Decedent Blaine Miller Halvorson (“Ashley” or “Plaintiff”) asserting causes of action for (1) negligence; (2) survival action; and (3) personal injury. Ashley was Decedent’s spouse. (“Ashley Action”.) The Complaint alleges that on September 8, 2021, Plaintiff and Decedent were stopped on the west shoulder of Interstate 15 southbound, south of Stoddard Wells Road, with a flat rear tire. Defendant James Anthony

Block (“Block”) was driving a 2020 International LT625 Tractor Truck at a high rate of speed, in the course and scope of his employment with Western Specialized, Inc., when he collided with the rear of a 2002 Hyundai Elantra driven by Gregory Lord Brown, II. (“Brown”). Block then lost control of his Tractor Truck and Trailer and collided with Plaintiff and Decedent.

On April 19, 2023, in Civ.SB.2304912, later consolidated with this action, Gerald Halvorson (“Gerald”), Decedent’s father, commenced an action asserting causes of action for (1) negligence-wrongful death; (2) survival action and recovery under CCP §§ 377, 377.34, and (3) negligence-personal injury. The Complaint is based upon the same general facts. (“Gerald Action”.)

On October 25, 2024, the Gerald Plaintiffs filed this motion seeking leave to amend the Gerald Complaint to assert a cause of action for negligent infliction of emotional distress together with a declaration.

On January 13, 2025, TDSI filed an opposition to the Gerald Plaintiffs motion to file an amended complaint. Also on January 13, 2025, Western Specialized filed an opposition to the Gerald Plaintiffs’ motion to file an amended complaint. Plaintiff filed a reply on January 17, 2025, together with a supplemental declaration of Derek S. Monzon, Esq.

DISCUSSION

Statement of Law

Code Civ. Proc., § 473, subd. (a)(1), permits the court “in the furtherance of justice, and on any terms as may be proper” to allow a party to amend any pleading. Section (b)(2) allows the court to postpone the trial if the amendment is necessary. Code Civ. Proc., § 576, states, “[a]ny judge, at any time before or after commencement of trial, in the furtherance of justice, and

upon such terms as may be proper, may allow the amendment of any pleading or pretrial conference order.”

Plaintiffs attorney contends that at the deposition of Gerald Halvorson, on September 30, 2024, he testified that he was present during the incident by phone and was aware that his son, Blaine, had been severely injured in a vehicle collision. Gerald and Melissa also arrived at the hospital where their son was being treated within hours of the incident and observed their son severely injured, including losing a leg and later, after four days, succumbing to his injuries. Plaintiffs allege they experienced emotional distress. Plaintiffs’ counsel states that he researched the law and reached out to defense counsel. K&N agreed to stipulate to Plaintiffs filing a first amended complaint, but Western, Block and TDSI did not stipulated, and Medtronic did not respond.

Counsel Derek Monzon’s supplemental declaration specified the changes made to the proposed complaint. (Supp. Decl., ¶2.) He also declares:

3. Throughout my handling of this case, I had not interacted much with Gerald Halvorson as he is the sole provider of the family and works during the day in a different time zone in Minnesota, where the Halvorsons reside. My clients have also been treated for depression following the subject incident, so I have done my best not to do anything which would unnecessarily force them to relive the subject incident. The fact of Gerald Halvorson being present at the scene of the incident on the phone did not previously occur to me and only came up for the very first time at his deposition taken by Defendants.

Analysis

Request for Judicial Notice. TDSI requests that Court take judicial notice of the Plaintiff’s original complaint filed on April 19, 2023. The Court DENIES the request for judicial notice of the Complaint since the Court has the power to look through its own files. (See *Davis v. Southern California Edison Company* (2011) 236 Cal.App.4th 619, 632, fn. 11 [judicial notice of document included in appellate record is unnecessary]; *Roth v. Plikaytis* (2017) 15

Cal.App.5th 283 [court was required to consider previously filed materials incorporated by reference into attorney fee motion].)

Motion to File Amended Complaint. Motions to amend a pleading are directed to the Court's discretion and judicial policy favors the resolution of all disputed matters on their merits. "[T]he trial court has wide discretion in allowing the amendment of any pleading [citations], [and] as a matter of policy the ruling of the trial court in such matters will be upheld unless a manifest or gross abuse of discretion is shown." (*Record v. Reason* (1999) 73 Cal.App.4th 472, 486.)

Unless permitting an amendment will prejudice the rights of others, the judicial policy in favor of disposing of cases on their merits calls for "“great liberality in allowing amendments at any stage.”" (*Board of Trustees v. Superior Court* (2007) 149 Cal.App.4th 1154, 1163; see *Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, 530 ["If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion."].) "Courts must apply a policy of liberality in permitting amendments at any stage of the proceeding, *including during trial*, when no prejudice to the opposing party is shown [citation]. 'However, "even if a good amendment is proposed in proper form, unwarranted delay in presenting it may—of itself—be a valid reason for denial"' [citation]." (*P & D Consultants, Inc. v. City of Carlsbad* (2010) 190 Cal.App.4th 1332, 1345.)

The requirements for a motion to amend a pleading are listed in California Rules of Court, rule 3.1324. The Plaintiffs have complied with the procedural aspects of this motion,

attaching a copy of the proposed amended complaint and discussing the changes in his supplemental declaration.

“Ordinarily, the judge will not consider the validity of the proposed amended pleading in deciding whether or not to grant leave to amend. Grounds for demurrer or a motion to strike are premature. After leave to amend is granted, the opposing party will have the opportunity to attack validity of the amended pleading.” (WEIL & BROWN, CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL [The Rutter Group] ¶6:644 citing *Kittredge Sports Co. v Sup. Ct. [Marker, USA]* (1989) 213 Cal.App.3d 1045 1048.)

Even when a plaintiff seeks to add a new cause of action or a different legal theory, “An amended complaint relates back to an earlier complaint if it is based on the same general set of facts,” as the earlier complaint. (*Estrada v. Royalty Carpet Mills, Inc.* (2022) 76 Cal.App.5th 685, 715.) When determining if the allegations of an amended complaint relate back, “The primary consideration is whether the prior complaint provided the defendant with sufficient notice of the claim in the amended complaint.” (*Id.*, at 715, citing *Pointe San Diego Residential Community, LP. v. Procopio, Cory, Hargreaves & Savitch, LLP* (2011) 195 Cal.App.4th 265, 279.)

The original complaint asserts a cause of action for negligence—wrongful death which was brought in the individual capacity of Plaintiffs. The second cause of action was asserted as a survival action. Therefore, it appears this new claim can relate back since it is based on the same operative facts, involves the same injury and refers to the same instrumentality.

This new claim for NIED seems to relate to the previous complaints and the Defendants were on notice of these causes of action. Plaintiffs brought both survivor actions and personal actions. “[T]he fact that the amendment involves a change in legal theory that would make

admissible evidence damaging to the opposing party is *not* the kind of prejudice the court will consider.” (WEIL & BROWN, CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL [The Rutter Group] ¶6:656 citing *Hirsa v. Sup.Ct. (Vickers)*, supra, 118 CA3d at 490, 173 CR at 420; see also *Buckert v. Briggs* (1971) 15 Cal.App.3d 296, 302-303 regarding philosophy with defaults but applicable here as well [“Where there is no showing the party opposing the motion to vacate the judgment has suffered prejudice “other than that incident to a trial of the issues,” very slight evidence will be required to justify a court in setting aside the default].)

Finally, Defendants are making fact-based arguments in their oppositions as to why *Downey v. City of Riverside* (2024) 16 Cal.5th 539 does not apply. Those arguments are premature and need to be brought in a dispositive motion.

CONCLUSION

Based on the foregoing, the Court:

1. DENIES the request for judicial notice as unnecessary; and
2. GRANTS the Gerald Plaintiffs’ motion to file a first amended complaint.

Plaintiffs’ counsel is ordered to provide notice.