January 26, 2026 Truckee Civil Law & Motion Tentative Rulings

1. CL0003210 WELLS FARGO BANK, NA vs. MARTIN B BARRON JR, an individual

Appearance required by Plaintiff to show cause as to why this case should not be dismissed and/or Plaintiff sanctioned for failure to serve the Summons and Complaint on Defendant despite the fact this case has been pending for almost five (5) months and a declaration re non-service was filed on October 7, 2025. Absent good cause being shown, the Court intends, on its own motion, to set the matter for dismissal pursuant to CCP section 583.420 and vacate the trial date set for May 15, 2026 at 11:00 a.m.

2. CL0002502 WELLS FARGO BANK, N.A. vs. JAMIE LAMOUREUX, an individual

Appearance required by Plaintiff to show cause as to why this case should not be dismissed and/or Plaintiff sanctioned for failure to file a request for default judgment despite the fact default was entered as requested over three (3) months ago. Absent good cause being shown, the Court intends, on its own motion, to set the matter for dismissal pursuant to CCP section 583.420.

3. CL0002625 Absolute Resolutions Investments LLC vs. Jamie Lamoureux

Appearance required by Plaintiff to show cause as to why this case should not be dismissed and/or Plaintiff sanctioned for failure to file a request for default/default judgment despite the fact Defendant was served with the Summons and Complaint over eight (8) months ago. Absent good cause being shown, the Court intends, on its own motion, to set the matter for dismissal pursuant to CCP section 583.420.

4. CL0003244 JPMORGAN CHASE BANK, N.A. vs. Dolores Corona

Appearance required by Plaintiff to show cause as to why this case should not be dismissed and/or Plaintiff sanctioned for failure to serve the Summons and Complaint on Defendant despite the fact this case has been pending for almost five (5) months. Absent good cause being shown, the Court intends, on its own motion, to set the matter for dismissal pursuant to CCP section 583.420 and vacate the trial date set for May 15, 2026 at 11:00 a.m.

5. CU0000657 Daniel Botwinis vs. Patrice Fleming et al

Defendants' Coldwell Banker Real Estate, LLC; NRT West Inc.; Alan Nicholls; Kirstin Wilson; and Pilar Zolezzi Rioja ("CB Defendants") unopposed motion for summary adjudication as to the causes of action for intentional tort (battery) and claim for punitive damages against the CB Defendants is granted.

Legal Standard

The function of a motion for summary judgment or adjudication is to allow a determination as to whether an opposing party cannot show evidentiary support for a pleading or claim and to enable an order of summary dismissal without the need for trial. See *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843. "A party may move for summary adjudication as to one or more causes of action within an action…[or] one or more claim for damages as specified in Section 3294 of the Civil Code." Code Civ. Proc. § 437c(f)(1). In moving for summary judgment or summary adjudication, a "defendant . . . has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action." Code Civ. Proc. § 437c(p)(2).

In analyzing motions for summary judgment, courts must apply a three-step analysis: (1) identify the issues framed by the pleadings to be addressed; (2) determine whether moving party showed facts justifying a judgment in movant's favor; and (3) determine whether the opposing party demonstrated the existence of a triable, material issue of fact. *See Sun v. City of Oakland* (2008) 166 Cal.App.4th 1177, 1182-83; *McGarry v. Sax* (2008) 158 Cal.App.4th 983, 994; *Hinesley v. Oakshade Town Center* (2005) 135 Cal. App. 4th 289, 294. Thus, once the defendant has satisfied their burden, the burden shifts to the plaintiff "to show, by responsive separate statement and admissible evidence, that triable issues of fact exist." *Ostayan v. Serrano Reconveyance Co.* (2000) 77 Cal. App. 4th 1411, 1418 (disapproved on other grounds by *Black Sky Cap., LLC v. Cobb* (2019) 7 Cal. 5th 156, 165); see also Code Civ. Proc. § 437c(p)(2). A plaintiff's failure to provide a separate statement with the opposition may "constitute a sufficient ground, in the court's discretion, for granting the motion." Code Civ. Proc. § 437c(b)(3).

Analysis

"The essential elements of a cause of action for battery are: (1) defendant touched plaintiff, or caused plaintiff to be touched, with the intent to harm or offend plaintiff; (2) plaintiff did not consent to the touching; (3) plaintiff was harmed or offended by defendant's conduct; and (4) a reasonable person in plaintiff's position would have been offended by the touching." *So v. Shin* (2013) 212 Cal.App.4th 652, 669. "The crimes of assault and battery are intentional torts. In the perpetration of such crimes negligence is not involved." *Bartosh v. Banning* (1967) 251 Cal.App.2d 378, 385. "In an action for civil battery the element of intent is satisfied if the evidence shows defendant acted with a 'willful disregard' of the plaintiff's rights." *Ashcraft v. King* (1991) 228 Cal.App.3d 604, 613 (internal citation omitted).

A claim for punitive damages is defined by Civil Code § 3294, and includes damages, where, "[i]n an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant." Civ. Code § 3294(a). Malice, fraud and oppression are defined as conduct "intended by defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others"; "despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights"; and "an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant

of…causing injury." Civ. Code § 3294(c)(1)-(3). "Mere negligence, even gross negligence, is not sufficient to justify such an award" for punitive damages. *Kendall Yacht Corp. v. United California Bank* (1975) 50 Cal. App. 3d 949, 958.

For an employer to be liable for punitive damages for the actions of an employee, it must be shown that "the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice." Civ. Code § 3294(b). "With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation." *Ibid*.

The Court finds Defendants' separate statements of undisputed facts in support of summary adjudication of the cause of action for intentional tort (battery), which reference Defendants' evidence, suffice to establish that one or more elements of the claim fail as a matter of law. Specifically, the undisputed facts show that the cause of action for intentional tort (battery) has no merit for the following reasons: none of the CB Defendants physically touched Plaintiff or put in motion causing Plaintiff to be touched on the day of the incident (SSUMF ## 4, 6, 9); none of the CB Defendants created or placed the bear mat in front of the front door to the premises (SSUMF ## 3, 5, 7, 9); there is no evidence the CB Defendants caused Plaintiff to be touched with the intent to harm or offend him (SSUMF ## 3-15). More, the undisputed facts as to the prayer for punitive damages as to these Defendants show that the claim for punitive damages has no merit for the following reasons: there is no evidence any of the CB Defendants ever intended to harm or injure Plaintiff prior to the incident (SSUMF ## 11, 14, 15); there is no evidence any of the CB Defendants either intentionally omitted information about the bear mat (SSUMF # 11) or had actual knowledge of the presence of the bear mat at the premises prior to the (SSUMF # 13, 15). Additionally, there is no evidence that an officer, director, or managing agent of the corporation Defendants had advance knowledge or intended to harm Plaintiff. (SSUMF # 11, 13-15).

Conclusion

Accordingly and considering the shifting of the burden of proof to Plaintiff, who has not opposed the motion, the unopposed motion for summary adjudication is granted.

6. CU0001398 Brianna Vigrass v. Avian Borden, et al.

No appearance required. Petitioner's Second Amended Petition is approved without additional appearance taking note Petitioner, the minor and counsel appeared previously in this matter, and Petitioner has now filed the second amended petition addressing the issues raised by the Court previously. Accordingly and as indicated by the Court previously, Petitioner's and counsel's appearance is waived for today's proceeding.

7. CU0001662 Pankaj Gupta vs. Bamboo Ide8 Insurance Services et al

Defendant Bamboo Ide8 Insurance Services' ("Bamboo") and Defendant Sutton National Insurance Company, Inc.'s ("Sutton") demurrers are sustained without leave to amend as to the Second Cause of Action for Negligent Misrepresentation and Third Cause of Action for Negligent Misrepresentation as set forth in Plaintiff's Second Amended Complaint ("SAC").

Requests for Judicial Notice

Defendant Bamboo's requests for judicial notice are granted. Defendant Sutton's requests for judicial notice are granted.

Legal Standard on Demurrer

A demurrer tests whether the complaint sufficiently states a valid cause of action. *Hahn v. Merda* (2007) 147 Cal.App.4th 740, 747. A demurrer may only challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. Code Civ. Proc. § 430.30(a). In the event a demurrer is sustained, leave to amend should be granted where the complaint's defect can be cured by amendment. *The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.

Complaints are read as a whole, in context, and are liberally construed. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Stevens v. Superior Court* (1999) 75 Cal.App.4th 594, 601. In reviewing the sufficiency of a complaint, courts accept as true all material facts properly pleaded and matters that may be judicially noticed, but not contentions, deductions, or conclusions of fact or law, or the construction of instruments pleaded, or facts impossible in law. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591; *Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43; see *also South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 732. Opinions, speculation, or allegations contrary to law or judicially noticed facts are also disregarded. *Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.

Generally, the pleadings "must allege the ultimate facts necessary to the statement of an actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts." *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1390; *FPI Development v. Nakashima* (1991) 231 Cal.App.3d 367, 384. Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872. Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.

Second Cause of Action – Negligent Misrepresentation

Defendants' demurrers to the Second Cause of Action for Negligent Misrepresentation are sustained without leave to amend.

"Negligent misrepresentation requires an assertion of fact, falsity of that assertion, and the tortfeasor's lack of reasonable grounds for believing the assertion to be true. It also requires the tortfeasor's intent to induce reliance, justifiable reliance by the person to whom the false

assertion of fact was made, and damages to that person. An implied assertion of fact is 'not enough' to support liability." *SI 59 LLC v. Variel Warner Ventures, LLC* (2018) 29Cal.App.5th 146, 154 (internal citation omitted).

Bamboo's Demurrer to Negligent Misrepresentation

Defendant argues the misrepresentations alleged are repackaged from Plaintiff's breach of contract and bad faith actions against Sutton, to which the Court sustained the previous demurrer without leave to amend, and, as Sutton's agent, Bamboo cannot be liable for bad faith claims handling, because it is not a party to the contract. In opposition, Plaintiff asserts Defendants made false statements regarding coverage and claim handling and concealed an intent to rescind the policy. The Court agrees with Defendants. While the Court must accept all the facts properly pled as true on demurrer, mere contentions, deductions, or conclusions of fact or law are not accepted as true.

In analyzing the SAC, Bamboo is not a party to the contract, and, thus, Bamboo cannot be liable for negligent misrepresentation. Bamboo is a licensed insurance broker/agent appointed by Sutton pursuant to Ins. Code § 1704(a) and not an insurance company. As the agent of the insurer, Bamboo is not a party to the contract sued upon. "An insurance policy is, fundamentally, a contract between the insurer and the insured." *Stein v. International Ins. Co.*, (1990) 217 Cal.App.3d 609, 613. Plaintiff "cannot assert a claim for breach of contract against one who is not a party to the contract." *Tri-Continent International Corp. v. Paris Savings & Loan Assn.* (1993) 12 Cal.App.4th 1354, 1359.

Additionally, the claim fails to allege any representation by Bamboo, false or otherwise, and so fails to state sufficient facts to maintain this cause of action against Bamboo. Moreover, Plaintiff fails to meet the specificity requirement to maintain this cause of action against Bamboo. "[A] cause of action for misrepresentation requires an affirmative statement, not an implied assertion." *RSB Vineyards, LLC v. Orsi* (2017) 15 Cal.App.5th 1089,1102. Mere negligence in the handling of an insurance claim does not support recovery in tort against an insurer, much less the insurer's agent. *Adelman v. Associated International Ins. Co*. (2001) 90 Cal.App.4th 352, 356 ("An insured can recover in tort against an insurer for the improper handling of a claim only upon a showing that the insurer acted in bad faith; as we explain, such a showing requires something more than simple negligence."). The Court fails to see how Bamboo's mere acceptance of insurance premiums, stating Plaintiff's claim is under review, or any of the other assertions contained in the second cause of action equates to an affirmative statement equating to a false representation by Bamboo as alleged in the SAC.

Thus, Plaintiff has failed to allege both false representations to Plaintiff regarding his coverage, and fails to allege bad faith.

Sutton's Demurrer to Negligent Misrepresentation

As discussed above, the cause of action fails to state sufficient facts, nor does it meet the specificity requirement to maintain this cause of action against Sutton. Moreover, Plaintiff's SAC alleges the only statement made assuring coverage was made by his own agent, Steve Feig,

rather than an agent of Sutton. Thus, Plaintiff again fails to meet the pleading standard to maintain the second cause of action for negligent misrepresentation as to Defendant Sutton.

Third Cause of Action – Negligent Infliction of Emotional Distress ("NIED")

Defendants' demurrers to the Third Cause of Action for NIED are sustained without leave to amend. This claim also fails to state sufficient facts in the same fashion Plaintiff fails to state sufficient facts in support of the Second Cause of Action. It is well settled NIED is not a separate tort, but rather, part of the law of negligence with the usual elements for negligence applying including duty and negligent breach. NIED is solely a claim stemming from a cause of action for negligence. *Ragland v. U.S. Bank National Assn (*2012) 209 Cal.App.4th 182.

Further, Sutton owes no duty of good faith and fair dealing and thus, cannot owe a duty giving rise to this claim. *Coleman v. Republic Indem. Ins. Co. of Calif.* (2005) 132 Cal.App.4th 403, 415416. Moreover, the Second and Third causes of action relate to the handling of the claim, and it is well settled an action for negligent claim handling is not a legally cognizable theory under California law. Plaintiff has failed to plead any bad faith handling.

Leave to Amend

"Where a demurrer is sustained or a motion for judgment on the pleadings is granted as to the original complaint, denial of leave to amend constitutes an abuse of discretion if the pleading does not show on its face that it is incapable of amendment." *Virginia G. v. ABC Unified School Dist.* (1993) 15 Cal.App.4th 1848, 1852. At bar, Plaintiff has now filed a second amended complaint and, as to the instant demurrers, has not shown he is capable of amending the complaint a third time to sufficiently allege the foregoing causes of action against Bamboo and/or Sutton. Plaintiff has only alleged his own insurance agent from Gary E Krouse Insurance Services, Inc, Steve Feig, represented his policy would cover the expenses of the damage done by water leakage. See Defendants' RJNs, Ex. A. However, as discussed above, Mr. Feig is not a representative of either Bamboo or Sutton. As such, Mr. Feig's statements cannot be attributable to either Defendant. Therefore, leave to amend is denied.

Where a demurrer is sustained, without leave to amend, as to all causes of action of a pleading against a party, the Court is to enter a judgment of dismissal, upon an informal request of a party. CCP §581(f)(1); Desai v. Farmers Ins. Exch. (1996) 47 Cal. App. 4th 1110, 1115 (an order of dismissal as to a party, pursuant to Code of Civil Procedure Section 581(f)(1), is an independently appealable, final judgment); Beazell v. Schrader (1963) 59 Cal. 2d 577, 579-80 ("'[w]hen a demurrer to a complaint has been sustained without leave to amend, the only judgment which properly may be entered is a dismissal of the action.'"); Berri v. Sup. Ct. (1955) 43 Cal. 2d 856, 860 ("after a demurrer is sustained without leave to amend…, no formal motion to dismiss the action is necessary. The entry of a judgment of dismissal follows as a matter of course.").

In that the Court has sustained all causes of action against Defendant Bamboo without leave to amend, the Court hereby enters judgment of dismissal solely as to Bamboo.

8. CU0002143 Joan Donaldson vs. Albertsons Companies, Inc. et al

Plaintiff Joan Donaldson's motion to compel Defendant Safeway Inc.'s ("Defendant" or "Safeway") initial responses to her Special Interrogatories, Set One ("SIs") is granted in part and denied as moot in part. Plaintiff's motion to compel initial responses to her Requests for Production of Documents, Set One ("RFPs") from Safeway is granted in part and denied as moot in part. Defendant is ordered to provide verifications to the Special Interrogatories, Set One, within ten (10) days of service of the Notice of Entry of Order stemming from this hearing. Defendant shall pay $1,935.00 in court-ordered sanctions within ten (10) calendar days of service of the Notice of Entry of this Order.

Special Interrogatories

If a party to whom interrogatories are directed fails to serve a timely response, the propounding party may move for an order compelling response and for a monetary sanction. Code Civ. Proc. § 2030.290(b). The statute contains no time limit for a motion to compel where no responses have been served. All that need be shown in the moving papers is that a set of interrogatories was properly served on the opposing party, that the time to respond has expired, and that no response of any kind has been served. See *Leach v. Superior Court* (1980) 111 Cal. App. 3d 902, 905-906. Moreover, "[w]here no objections have been made within the statutorily permitted time, they are deemed waived." *Id.* Unverified responses are "tantamount to no response at all". *Appleton v. Superior Court* (1998) 206 Cal.App.3d 632, 636.

Here, Plaintiff propounded her SIs, Set One on Defendant via email to Safeway's counsel on September 12, 2025. Porat Decl., ¶ 3; Exh. A. Defendant's responses to these discovery demands were originally due by October 14, 2025. *Id*. Defendant requested, and Plaintiff granted, two extensions, making the SIs due on November 7, 2025, but Safeway failed to serve any responses by that date. Porat Decl., ¶¶ 4-5. After meeting and conferring with Defendant's counsel, Plaintiff extended the deadline for responses to Plaintiff's SIs to December 1, 2025. Porat Decl., ¶ 14. Defendant's counsel declares it served responses and verifications on November 17, 2025, but subsequently discovered the responses were to a withdrawn set of Special Interrogatories. Norris Decl., ¶ 13. Defendant's counsel states she subsequently attempted to meet and confer with Plaintiff's counsel to clear up any misunderstanding and served amended responses to the revised Special Interrogatories, Set One on January 8, 2026. Norris Decl., ¶¶ 14-15. Plaintiff's counsel acknowledges receiving responses to Special Interrogatories, Set One, but declares no verifications have been served. Reply Br., 2:27-3:1. Therefore, an order compelling verifications is warranted.

"The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel motions for interrogatories or requests for production, unless the Court finds the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." Code Civ. Proc. § 2030.290(c). The amount of sanctions awarded centers on two main principles: causation, and reasonableness. See *Cornerstone Realty Advisors, LLC. V. Summit Healthcare Reit, Inc.* (2020) 56 Cal. App. 5th 771. First, monetary sanctions may only be imposed based on attorney's fees and costs incurred "as a result" of the

misuse of the discovery process. Cal. Civ. Pro. § 2023.030(a). Second, "[t]he amount of monetary sanctions is limited to the 'reasonable expenses, including attorney's fees' that a party incurred as a result of the discovery abuse." *Cornerstone Realty Advisors, LLC, supra,* at 791, citing Cal. Civ. Pro. § 2023.030(a).

Plaintiff's request for sanctions is granted, in part. Counsel's assertions indicate she spent six (6) hours drafting the motions, a reply and anticipated time appearing at the hearing of the motions, as well as $60.00 in costs forming the basis for a request for sanctions in the amount of $2,310.00. Porat Decl., ¶ 16 and Reply, Pg. 4, ll. 1-10. A party requesting sanctions for reasonable expenses that were incurred as a result of discovery abuse must already be liable for those expenses before the court can award the costs as sanctions. See *Tucker v. Pacific Bell Mobile Servs.*, 186 Cal. App. 4th 1548 (2010) (anticipated costs for future deposition could not be included in award of sanctions). While Defendant's counsel has set forth various circumstances regarding meet and confer attempts and confusion justifying the delay in serving responses, it appears the filing of the instant motion prompted Defendant to serve responses prior to the motion hearing. Plaintiff also notes verifications have not yet been received which is "tantamount to no response at all" (See, *Appleton,* supra 206 Cal.App.3d at 636), indicating a court order is appropriate to ensure compliance. However, appearance at hearing has not yet occurred and may not be necessary. Therefore, the Court grants sanctions for the amount of time and costs actually incurred. At the indicated billing rate of $375.00 per hour which the Court finds reasonable and justified and a $60.00 filing fee, as well as considering the requests were filed separate as opposed to as one motion and there is some overlap in the pleadings, Defendant is sanctioned the total sum of $1,935.00.

Request for Production of Documents

Plaintiff did not serve a reply to Defendant's opposition, and the Reply on file states, "[t]o date, no written verified responses have been received to Plaintiff's *Special Interrogatories, Set One* served September 12, 2025". Based on the information at hand, it appears Defendant has served verified responses on Plaintiff as of January 8, 2026. Therefore, Plaintiff's motion to compel Defendant's responses to requests for production of documents, set one, is denied as moot.

9. CU0002314 Craig Dealon Dowell vs. Jose Valentin Galaz Romero et al

Appearance required by Plaintiff to show cause as to why this case should not be dismissed and/or Plaintiff sanctioned for failure to serve the Summons and Complaint on Defendant despite the fact this case has been pending for almost five (5) months. Absent good cause being shown, the Court intends, on its own motion, to set the matter for dismissal pursuant to CCP section 583.420 and vacate the Case Management Conference set for March 20, 2026 at 9:00 a.m.

10. CU0002345 Jeffrey T. Menasco et al vs. 15794 Alder Creek, LLC et al

Appearance required by Plaintiff to show cause as to why this case should not be dismissed and/or Plaintiff sanctioned for failure to serve the Summons and Complaint on Defendant despite the fact this case has been pending for almost five (5) months. Absent good cause being shown,

the Court intends, on its own motion, to set the matter for dismissal pursuant to CCP section 583.420 and vacate the Case Management Conference set for March 20, 2026 at 9:00 a.m.

11. CU0002348 Cathleen Garritson vs. Kathryn Hawkins et al

Appearance required by Plaintiff to show cause as to why this case should not be dismissed and/or Plaintiff sanctioned for failure to serve the Summons and Complaint on Defendant despite the fact this case has been pending for almost five (5) months. Absent good cause being shown, the Court intends, on its own motion, to set the matter for dismissal pursuant to CCP section 583.420 and vacate the Case Management Conference set for March 20, 2026 at 9:00 a.m.