

September 19, 2025, Civil Tentative Rulings

1. CL0002187 Discover Bank vs. Kayla Oliver

Plaintiff's unopposed motion to enter judgment is granted. The stipulation for judgment specifically provided that judgment may be entered against defendant in the event of a default and jurisdiction under Code of Civil Procedure section 664.6 was retained. Judgment shall be entered in the amount of \$11,125.79, with costs of \$548.96, for a total judgment of \$11,674.75.

2. CU0001134 U-Haul Co. of California, et al. vs. Clifford Webb, et al.

Plaintiffs' unopposed motion for summary judgment against defendant Baga is conditionally granted.

The proof of service for the notice of motion and motion for summary judgment shall contain a signed affidavit. Code Civ. Proc. §§ 1013a – 1013b. If plaintiffs served the notice of motion and motion on the date indicated, they must submit a fully executed affidavit forthwith. Assuming plaintiffs can do so, the court is favorably inclined to grant the motion as follows.

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. 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.

The court finds that plaintiffs have met their burden of persuasion that all elements of each cause of action can be established and have justified a judgment in their favor. *See Aguilar*, 25 Cal.4th at 850. Defendant has not opposed the motion and has not demonstrated the existence of a triable, material issue of fact. Indeed, "[w]ithout a separate statement of undisputed facts with references to supporting evidence... it is impossible ... to demonstrate the existence of disputed facts." *Lewis v. County of Sacramento* (2001) 93 Cal.App.4th 107, 115.

Therefore, plaintiffs are entitled to summary judgment.

3. CU0001683 County of Nevada vs. Michael James Taylor

Cross-Defendants' Demurrer to Amended Cross-Complaint

Plaintiffs/cross-defendants county, et al.'s May 27, 2025, demurrer to defendant Taylor's amended cross-complaint is sustained without leave to amend.

Standard of Review

“A demurrer tests the sufficiency of the complaint as a matter of law.” *Berg & Berg Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020, 1034. “It has been consistently held that ‘a plaintiff is required only to set forth the essential facts of his case with reasonable precision and with particularity sufficient to acquaint a defendant with the nature, source and extent of his cause of action.’ ” *Doheny Park Terrace Homeowners Assn. Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099, *cited with approval by Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550. All material facts properly pled are generally accepted as true, but “contentions, deductions or conclusions of fact or law” are not. *Evans v. City of Berkeley*, 38 Cal. 4th 1, 6 (2006).

“ ‘A demurrer tests the pleadings alone and not the evidence or other extrinsic matters. Therefore, it lies only where the defects appear on the face of the pleading or are judicially noticed. Code Civ. Proc. §§ 430.30, 430.70. The only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action.’ ” *Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 747.

Dismissal without leave to amend is proper unless there is a “reasonable possibility” that the defects in the pleading can be cured by amendment. *Hendy v. Losse* (1991) 54 Cal.3d 723, 742. The burden is on the petitioner to show in what manner he can amend his complaint and how the amendment would change the legal effect of his pleading. *Goodman v. Kennedy* (1976) 18 Cal 3d 335, 349. A court may deny leave to amend when the plaintiff fails to demonstrate the possibility of amendments curing the complaint's defects. *Hedwall v. PCMV, LLC* (2018) 22 Cal.App.5th 564, 579.

Government Claims Act

California law requires any plaintiff seeking monetary damages against a public entity to first file a claim with the entity before initiating a court action. Gov. Code § 910. The claims statutes require timely filing of a proper claim as a condition precedent to maintenance of the action. *County of San Luis Obispo v. Ranchita Cattle Co.* (1971) 16 Cal.App.3d 383, 390. This obligation is a *mandatory* prerequisite to pursuing a complaint in court, and failure to do so is fatal to the cause of action. *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 454; *Farrell v. County of Placer* (1944) 23 Cal.2d 624, 630; *Johnson v. City of Oakland* (1961) 188 Cal.App.2d 181, 183. This requirement applies both to causes of action against public entities and individual employees. *Loehr v. Ventura County Community College Dist.* (1983) 147 Cal.App.3d 1071, 1080. At bar, Taylor has failed to file a claim with the county before initiating his cross-complaint. His claim fails on this basis alone.

Taylor contends that his cross-complaint is based on the same transaction as the complaint brought by plaintiffs against him and, as such, the Government Claims Act does not apply. Not so. A purely defensive cross-complaint can be asserted against a public entity despite the defendant's noncompliance with the claims act only when (1) the public entity initiated the litigation between it and the cross-complainant; (2) the cross-complaint arises from the same transaction or event on which the entity's claim is based and may not introduce an unrelated claim; and (3) the cross-complaint asserts only defensive matter, without seeking affirmative relief. *Krainock v. Superior Court* (1990) 216 Cal.App.3d 1473, 1478; *see Southern California Edison Co. v. City of*

Victorville (2013) 217 Cal.App.4th 218, 234 (“SCE’s cross-complaint is based on facts outside of the pleadings to which the City was a party, such that the cross-complaint is not solely defensive in nature. Because of this, compliance with the Government Claims Act (Gov. Code § 810 et seq.) was necessary.”). Here, Taylor’s cross-complaint does not satisfy the second or third criterion. Plaintiffs’ suit seeks to enforce administrative penalties issued for Taylor’s violations of the Nevada County Code. The Taylor cross-complaint seeks to introduce an unrelated “waiver of tort” claim (*i.e.*, a legal theory against county officials, employees and contractors for failure to respond to documents Taylor mailed to them) and the cross-complaint seeks affirmative relief (*i.e.*, damages).

In addition, Taylor’s sample, amended cross-complaint likewise fails the *Krainock* criteria. The sample, amended cross complaint describes Taylor’s interaction with the county between 2008 and 2020 regarding the approval and issuance of building permits and inspections of structures on his property. These allegations do not arise from the same transaction or event on which plaintiffs’ current complaint is based and again introduce an unrelated claim. Moreover, the proposed, amended cross-complaint does not assert only defensive matter; it seeks affirmative relief (*i.e.*, general, special and punitive damages).

In sum, Taylor’s amended cross-complaint and even his proposed, amended cross-complaint are directed at the county, its employees, and a county contractor for actions taken within the course and scope of their public duties, and are subject to the Government Claims Act. Taylor’s failure to present his tort claim as required by the Government Claims Act bars his cross-complaint and similarly would bar his proposed, amended cross-complaint.

Other Grounds for Demurrer

Legislative immunity protects local government bodies, including boards of supervisors, when acting in a legislative capacity. *Steiner v. Superior Ct.* (1996) 50 Cal.App.4th 1771, 1785. Such immunity applies to actions taken “in the sphere of legitimate legislative activity,” including voting on policies and governance decisions. *Bogan v. Scott-Harris* (1998) 523 U.S. 44, 54.

California’s discretionary act immunity, codified in Government Code § 820.2, further shields public employees from liability for discretionary decisions. *Caldwell v. Montoya* (1995) 10 Cal.4th 972, 979-981. Discretionary immunity applies to “deliberate and considered policy decisions” requiring a conscious balancing of risks and advantages. *Id.* at 981.

Under the doctrine of quasi-judicial immunity, judicial immunity extends to individuals performing judicial or quasi-judicial functions, including administrative hearing officers. *Howard v. Drapkin* (1990) 222 Cal.App.3d 843, 852-853; *Holt v. Brock* (2022) 85 Cal.App.5th 611. “[N]onjudicial persons who fulfill quasi-judicial functions intimately related to the judicial process” are entitled to absolute immunity from damage claims arising from their official duties. *Howard*, 222 Cal.App.3d at 857.

Moreover, Government Code section 821.6 provides that public employees are “not liable for injury caused by [their] instituting or prosecuting any judicial or administrative proceeding within the scope of [their] employment, even if [they] act maliciously and without probable cause.”

At bar, the conduct of the county's board members at issue is protected by legislative and discretionary immunity. The conduct of the county's hearing officer at issue is protected by quasi-judicial and discretionary immunity. Lastly, the conduct of the county's attorneys is protected by prosecutorial immunity. Taylor has asserted no persuasive arguments to the contrary.

Lastly, Taylor's claim for "waiver of tort" does not set forth a legally recognized cause of action. Taylor has not pointed the court to any binding or persuasive legal authority for this asserted claim for relief, nor is the court aware of any such authority.

Amendment

Taylor fails to assert any facts which provide a reasonable possibility that the defects in the pleading can be cured by amendment. Leave to amend is denied.

Defendant's Motion for More Definitive Statement

Defendant Taylor's May 16, 2025, motion for a more definite statement is denied.

Defendant filed an answer on December 2, 2024. "Failure to object to a defect in the pleadings ... by demurrer ... waives the objection." *Jordan v. Department of Motor Vehicles* (1999) 75 Cal.App.4th 449, 469; Code Civ. Proc., § 430.80(a). Taylor has waived his right to challenge the complaint for purported uncertainty.

Taylor's May 16, 2025, "withdrawal, termination, cancellation and repudiation" of his answer is a legal nullity. "A party may amend its pleading [including an answer] once without leave of the court at any time before the ... demurrer, or motion to strike is filed" Code Civ. Proc. § 472(a). A demurrer to or motion to strike an answer must be filed within 10 days after service of the answer. Code Civ. Proc. §§430.40(b), 435 (b); Rules of Court, Rule 3.1322(b). After this 10-day period, leave of court is required. Cal. Prac. Guide Civ. Pro. Before Trial, Ch. 6-E, ¶6:610 ("defendant ... [has] that 10-day period to amend the answer without leave *before* a demurrer or motion to strike is filed."). Taylor did not seek leave before attempting to amend his answer by withdrawing the same in total. His May 16, 2025, withdrawal is ordered stricken. *Worley v. Spreckels Bros. Commercial Co.* (1912) 163 Cal. 60, 73 (amended answer filed without leave of court may be stricken); *see also*, e.g., *Loney v. Superior Court* (1984) 160 Cal.App.3d 719, 724 (cross-complaint filed without required leave properly stricken).

In the alternative, or in addition, the complaint at issue is not uncertain, ambiguous or unintelligible. Plaintiffs' complaint for delinquent civil penalties sufficiently describes defendant's alleged violation of law, authority for the escalating fines imposed, notice provided to defendant of the fines and defendant's failure to pay the same. A more definite statement is not required.

4. CU0001723 Umpqua Bank, vs. Joseph A. Miller, DMD, Inc., et al.

The July 14, 2025, motion of Dr. Miller to amend the expanded receivership order, for leave to serve an unlawful detainer and for leave to commence federal litigation is denied. First, Dr. Miller filed a notice of appeal in connection with the court's July 24, 2025, order on September 8, 2025.

This court lacks jurisdiction to modify the order as it is the specific subject of the appeal. Moreover, it appears that the relief sought by Dr. Miller has already been adjudicated by Judge Durant. To the extent that Dr. Miller disagrees with the decision of Judge Durant, his remedy is to appeal the same; this judicial officer does not have the authority or discretion to review a decision of a fellow bench officer. Second, Miller Real Estate, Inc., to the court's knowledge, is not a party to the instant lawsuit and is not subject to the receivership order. The court is not persuaded it has any authority to grant leave or enter any order impacting the ability of a Miller Real Estate, Inc. to serve an unlawful detainer complaint against Miller, DMD, Inc. Third, it is unclear to the court why Dr. Miller needs authority from the court to initiate the litigation described as "Joseph A. Miller, DMD vs. Ocwin (sic) Bank, Ampleo Turnaround and Restructuring, LLC." Assuming such authority is required, good cause has not been established based on the record presented.

5. TCU22-8066 Theodore Lachowicz, et al. vs. Mark Tanner Construction Inc., et al.

The July 18, 2025, motion of cross-defendant Kelly Brothers Painting, Inc. to set aside the April 23, 2023, default against cross-defendant is granted. Both cross-defendant and cross-complainant Mark Tanner Construction stipulate to the requested relief and the court finds that such relief is in the interests of justice. *See Olivera v. Grace* (1942) 19 Cal.2d 570, 575-576 (default may be set aside on equitable grounds). Cross-defendant's May 26, 2023, answer is confirmed to be filed and operative.

6. CU0002116 Regina Cooley vs. Truckee Donner Public Utility District and Michael Salmon

Defendant Salmon and Truckee Donner Public Utility District's demurrer is overruled in part and sustained with leave to amend in part. Plaintiff is granted leave to amend cause of action eight, and must file her amended complaint within ten days of this court's order.

Requests for Judicial Notice

Defendants' unopposed requests for judicial notice are granted. *See Evid. Code §§451-452.*

Legal Standard on Demurrer

"A demurrer tests the sufficiency of the complaint as a matter of law." *Berg & Berg Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020, 1034. A demurrer can be utilized where the complaint, on its face, is incomplete or discloses a defense barring recovery. *Guardian North Bay, Inc. v. Sup. Ct.* (2001) 94 Cal.App.4th 963, 971-972.

" "[A] plaintiff is required only to set forth the essential facts of his case with reasonable precision and with particularity sufficient to acquaint a defendant with the nature, source and extent of his cause of action." ' " *Doheny Park Terrace Homeowners Assn. Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099, *cited with approval by Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550. A complaint will be deemed sufficient when it contains facts that

simply “apprise the defendant of the basis upon which the plaintiff is seeking relief.” *Perkins v. Sup. Ct.* (1981) 117 Cal.App.3d 1, 6. The pleadings are to be liberally construed with “a view towards substantial justice between the parties[.]” and any specific allegations control the general pleadings. *Gentry v. EBay* (2002) 99 Cal.App.4th 816, 827. A trial court is “ ‘not limited to plaintiffs’ theory of recovery in testing the sufficiency of their complaint against a demurrer, but instead must determine if the *factual* allegations of the complaint are adequate to state a cause of action under any legal theory.’ ” *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 38. If there is any viable theory of recovery under a cause of action, the demurrer must be overruled. *Fremont Indemnity Co. v. Fremont Gen. Corp.* (2007) 148 Cal.App.4th 97, 119.

Plaintiff’s ability to prove allegations is not of concern to the court in ruling on a demurrer. *Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 496; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App. 3d 593, 604. To the extent there are factual issues in dispute, the court must assume the truth not only of all facts properly pled, but also of those facts that may be implied or inferred from those expressly alleged in the complaint. *City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 459.

“If a complaint does not state a cause of action, but there is a reasonable possibility that the defect can be cured by amendment, leave to amend must be granted.” *Quelimane Co.*, 19 Cal.4th at 39. “[L]eave to amend should be denied where the facts are not in dispute and the nature of the claim is clear but no liability exists under substantive law.” *Lawrence v. Bank of America* (1985) 163 Cal.App.3d 431, 436.

Plaintiff’s Second Cause of Action for Gender, Medical Condition, Disability Harassment, and Hostile Work Environment, Cal. Gov. Code § 12940(j)

Defendant argues that plaintiff’s second cause of action for harassment fails because it is solely based on a single incident and routine personnel management actions. The court does not agree.

Pursuant to Government Code section 12940(j)(1), harassment of an employee based on gender, medical condition, or disability...shall be unlawful if the entity, or its agents or supervisors, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. Gov. Code § 12940, subdivision (j)(1); *Thompson v. City of Monrovia* (2010) 186 Cal.App.4th 860, 880. To establish a prima facie case of a work environment harassment, plaintiff must show that (1) she is a member of a protected class; (2) she was subjected to unwelcome harassment; (3) the harassment was based on her protected status; (4) the harassment unreasonably interfered with her work performance by creating an intimidating, hostile, or offensive work environment; and (5) defendants are liable for the harassment. *Ortiz v. Dameron Hospital Assn.* (2019) 37 Cal.App.5th 568, 581. Of note, “to prevail, an employee claiming harassment based upon a hostile work environment must demonstrate that the conduct complained of was severe enough or sufficiently pervasive to alter the conditions of employment and create a work environment that qualifies as hostile or abusive to employees because of their [protected class].” *Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 462.

The working environment must be evaluated in light of the totality of the circumstances: “[W]hether an environment is ‘hostile’ or ‘abusive’ can be determined only by looking at all the circumstances. These may include the frequency of the discriminatory conduct; its

severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.”

Ibid. Moreover, under current law, “ [a] single incident of harassing conduct is sufficient to create a triable issue regarding the existence of a hostile work environment if the harassing conduct has unreasonably interfered with the plaintiff's work performance or created an intimidating, hostile, or offensive work environment. ” *Beltran v. Hard Rock Hotel Licensing, Inc.* (2023) 97 Cal.App.5th 865, 878, citing Gov. Code § 12923(b).

At bar, plaintiff has pled defendants harassed plaintiff because they knew she was a disabled female, as well as a whistleblower, and defendants engaged in severe and pervasive conduct towards plaintiff because of her gender. Complaint ¶ 45. Plaintiff also alleges a series of incidents which unreasonably interfered with her work performance by creating an intimidating, hostile, or offensive work environment. See Complaint ¶¶ 17-21, 24-26. Plaintiff's complaint sufficiently alleges harassment. Defendants' demurrer as to the second cause of action is overruled.

Plaintiff's Eighth Cause of Action for Wrongful Termination in Violation of Public Policy

Defendants argue that the eighth cause of action against the district is time-barred and barred by sovereign immunity. The court agrees in part.

First, as plaintiff acknowledges, a common law cause of action for wrongful termination cannot be maintained against a public entity; the demurrer is sustained as to this claim against defendant district. See Gov. Code, § 815(a); *Miklosy v. Regents of Univ. of Cal.* (2008) 44 Cal.4th 876, 899–900.

Second, under Government Code §911.2, a claim against a public entity or a public employee relating to personal injury must be presented no later than six months after the cause of action accrues. This requirement is jurisdictional; failure to comply bars the plaintiff from filing a lawsuit. *City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 737–738); Gov. Code § 950.2. Defendants argue the operative accrual date is October 2022 when plaintiff alleges defendant Salmon physically intimidated her, but that she did not timely present a claim until October 1, 2024. Plaintiff's complaint, however, alleges that she was wrongfully terminated in April 2024 in retaliation for her complaints and her requests for accommodation. Complaint ¶ 29. In light of this, even if one assumed that the date of termination was April 1, 2024, plaintiff's presentation of a claim on October 1, 2024 would be timely.

Plaintiff suggests that she may be able to allege this cause of action against defendant Salmon individually. Given that the defect potentially may be cured by amendment, the demurrer is sustained with leave to amend as to this cause of action.