

October 31, 2025, Civil Law & Motion Tentative Rulings

1. CU0000090 Matthew Palleschi, et al. v. Daniel Fraiman Construction, Inc., et al.

On the court's motion, the hearing is continued from October 31, 2025, to November 3, 2025, at 10:00 a.m., in Department 6.

The demurrers of Defendant Daniel Fraiman Construction, Inc. (DFC) and Defendant Daniel Fraiman, Individually (DF) to Plaintiffs' Second Amended Complaint (SAC) are overruled.

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. "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. 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.

The general rule is that the plaintiff need only allege ultimate facts, not evidentiary facts. *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550. "All that is required of a plaintiff, as a matter of pleading ... is that his complaint set forth the essential facts of the case with reasonable precision and with sufficient particularity to acquaint the defendant with the nature, source and extent of his cause of action." *Rannard v. Lockheed Aircraft Corp.* (1945) 26 Cal.2d 149, 156-157.

On demurrer, a trial court has an independent duty to "determine whether or not the ... complaint alleges facts sufficient to state a cause of action under any legal theory." *Das v. Bank of America, N.A.* (2010) 186 Cal.App.4th 727, 734. Demurrers do not lie as to only parts of causes of action, where some valid claim is alleged but "must dispose of an entire cause of action to be sustained." *Poizner v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 119. "Generally it is an abuse of discretion to sustain a demurrer without leave to amend if there is any reasonable possibility that the defect can be cured by amendment." *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.

Fourth Cause of Action Against Daniel Fraiman

Plaintiffs have dismissed the fourth cause of action for breach of warranty against DF. Accordingly, DF's demurrer as to that cause of action is denied as moot.

Application of Nevada Law to Second and Third Causes of Action Against Defendant Daniel Fraiman Construction, Inc.

DFC argues the second cause of action for negligence and third cause of action for intentional representation are subject to Nevada law and cannot be litigated in California. Defendant asserts

the contractual language requiring suit in Nevada County only applies to actions “under this Contract,” that the negligence and intentional misrepresentation claims did not “arise” under the parties’ contract, and that, ergo, “Plaintiffs must have brought suit for those causes of action in the state of Nevada, where the Property is located and the dispute arose.” The court is not persuaded.

A court is “not bound to develop [parties’] arguments for them.” *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830. Moreover, a court has the discretion to “disregard conclusory arguments that are not supported by pertinent legal authority or fail to disclose the reasoning by which the [party] reached the conclusions he wants [the court] to adopt.” *Hernandez v. First Student, Inc.* (2019) 37 Cal.App.5th 270, 277 (quotation omitted).

In its moving papers, DFC asserts, without reference to *any* legal authority or any meaningful argument, that the tort claims at issue “must” be brought in Nevada. It does not specify whether it is concerned with either the court’s subject matter or personal jurisdiction. Defendants have made conclusory argument unsupported by pertinent legal authority in their moving papers. The demurrer is overruled on this ground alone. Later, in its *reply*, DFC argues that there is a lack of subject matter jurisdiction and cites authority suggesting that subject matter jurisdiction cannot be waived. The court will not consider argument raised for the first time as part of the reply brief.

In any event, based on the record presented, the Court has no reason to doubt its subject matter jurisdiction. “Causes of action—and the subject matter jurisdiction that trial courts possess to entertain them—can arise ... from judges exercising their inherent, common law authority to fashion remedies, except where that authority has been curtailed by statutory or constitutional law. *Drink Tank Ventures LLC v. Real Soda in Real Bottles, Ltd.* (2021) 71 Cal.App.5th 528, 541. The California trial courts are the “courts with the fullest common law and equity jurisdiction” *Olcese v. Justice’s Court* (1909) 156 Cal. 82, 85. Among other things, “The superior court has subject matter jurisdiction over a tort action ...” *Dale v. Dale* (1998) 66 Cal.App.4th 1172, 1177-1178. No statutory or constitutional law has been made known to the Court suggesting its authority has been curtailed. The demurrer is overruled on this ground as well.

In a related argument, DFC contends that the claims are barred because, before amending a complaint to add causes of action for construction defect, Plaintiffs were required to provide notice under Nevada Revised Statutes section 40.645. The Court disagrees.

“As the forum state, California will apply its own law ‘unless a party litigant timely invokes the law of a foreign state.’ ” *Chen v. Los Angeles Truck Centers, LLC* (2019) 7 Cal.5th 862, 867 “ ‘ In such event [that party] *must* demonstrate that the latter rule of decision will further the interest of the foreign state and therefore that it is an appropriate one for the forum to apply to the case before it.’ ” *Washington Mutual Bank, FA v. Superior Court* (2001) 24 Cal.4th 906, 919 (italics supplied); see *Hurtado v. Superior Court* (1974) 11 Cal.3d 574, 581 (proponent burden); *Pep Boys Manny Moe & Jack of California v. Old Republic Insurance Company* (2023) 98 Cal.App.5th 329, 348–349 (same). If a party “has failed to demonstrate that any foreign states’

laws should apply” a trial court will “fall back on the default choice of law principle that a California court will apply California law.” *The Pep Boys Manny Moe & Jack of California*, 98 Cal.App.5th at 349.

To determine which jurisdiction's law will govern, a trial court applies the governmental interest test, which sets out a three-step inquiry: “First, the court determines whether the relevant law of each of the potentially affected jurisdictions with regard to the particular issue in question is the same or different. Second, if there is a difference, the court examines each jurisdiction's interest in the application of its own law under the circumstances of the particular case to determine whether a true conflict exists. Third, if the court finds that there is a true conflict, it carefully evaluates and compares the nature and strength of the interest of each jurisdiction in the application of its own law ‘to determine which state's interest would be more impaired if its policy were subordinated to the policy of the other state’ [citation], and then ultimately applies ‘the law of the state whose interest would be the more impaired if its law were not applied.’ ”

Chen, 7 Cal.5th at 867–868.

At bar, DFC summarily asserts that Plaintiff was obligated to provide notice under Nevada law. Defendant has made no showing that application of Nevada law is appropriate under the three-step, governmental interest test. Defendant has not met its burden to demonstrate that Nevada law should be applied here. The demurrer premised on Nevada law is overruled.

Waiver of First, Second, and Fourth Causes of Action for Pre-Addendum Breaches and Warranties

Defendants DFC and DF both argue Plaintiffs waived any pre-addendum breaches of contract because the addendum contract waived any prior breach of contract claims, and the causes of action are premised on pre-addendum breaches and warranties. The court again is not persuaded.

As a preliminary matter, defendants argue that plaintiffs have waived certain pre-addendum claims without reference to legal authority to support their contention. This Court shall again “disregard conclusory arguments that are not supported by pertinent legal authority.” *Hernandez v. First Student, Inc.* (2019) 37 Cal.App.5th 270, 277. The demurrers are overruled on this ground alone.

In addition, the issue of waiver here cannot be resolved by demurrer. The Court cannot find, based on an examination of the SAC and the demurrer alone, that any or all of Plaintiffs’ pre-addendum claims alleged in their SAC were definitively released by their execution of the of the addendum contract. “Waiver always rests upon intent. Waiver is the intentional relinquishment of a known right after knowledge of the facts.” *Roesch v. De Mota* (1944) 24 Cal.2d 563, 572; see *Wind Dancer Production Group v. Walt Disney Pictures* (2017) 10 Cal.App.5th 56, 78. “The burden, moreover, is on the party claiming a waiver of a right to prove it by clear and convincing

evidence that does not leave the matter to speculation, and ‘doubtful cases will be decided against a waiver.’” *City of Ukiah v. Fones* (1966) 64 Cal.2d 104, 107-108. In addition, waiver is ordinarily a question of fact unless “ ‘there are no disputed facts and only one reasonable inference may be drawn.’ ” *Park v. NMSI, Inc.* (2023) 96 Cal.App.5th 346, 358. As such, the demurrers on this ground are overruled.

Economic Loss Rule and Plaintiffs’ Action for Negligence

Defendant DFC argues that Plaintiffs’ claim for negligence is barred by the economic loss rule, asserting “Plaintiffs merely re-hash the breach of contract cause of action under the guise of a negligence claim” and all of the allegations simply allege Defendant was negligent in the performance of contractual obligations. The court does not agree.

“The [economic loss] rule itself is deceptively easy to state: In general, there is no recovery in tort for *negligently* inflicted ‘purely economic losses,’ meaning financial harm unaccompanied by physical or property damage.” *Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1, 20 (quotations omitted). Stated another way, “[t]he economic loss rule requires a [contractual party] to recover in contract for purely economic loss due to disappointed expectations, unless [the party] can demonstrate harm above and beyond a broken contractual promise.” *Ibid.* (quotations omitted).

When evaluating whether the parties’ expectations and risk allocations bar tort recovery, the court must consider the alleged facts. First, applying standard contract principles, it must ascertain the full scope of the parties’ contractual agreement, including the rights created or reserved, the obligations assumed or declined, and the provided remedies for breach. Second, it must determine whether there is an independent tort duty to refrain from the alleged conduct. Third, if an independent duty exists, the court must consider whether the plaintiff can establish all elements of the tort independently of the rights and duties assumed by the parties under the contract.

The guiding and distinguishing principle is this. If the alleged breach is based on a failure to perform as the contract provides, and the parties reasonably anticipated and allocated the risks associated with the breach, the cause of action will generally sound only in contract because a breach deprives an injured party of a benefit it bargained for. However, if the contract reveals the consequences were not reasonably contemplated when the contract was entered and the duty to avoid causing such a harm has an independent statutory or public policy basis, exclusive of the contract, tort liability may lie.

Id. at 26.

At bar, Plaintiffs’ second cause of action for negligence alleges Defendant breached its duty to Plaintiffs by failing to obtain building permits to cover its work and the work of its contractors, rendering the work done “illegal,” and necessitating that the work be “legalized” by getting it inspected and approved. SAC, ¶¶ 119, 123. The contract described the project as “interior remodel including bathrooms and sinks.” SAC, Ex. A, p. 1, ¶ 5. Plaintiffs allege that during the remodel of the entry and east gabled wall of the dining room, DFC negligently damaged the

structural integrity of the property, and such negligence caused physical damage *beyond* the scope of the contract. SAC, ¶ 130. Plaintiffs also allege Defendant's negligence was a substantial factor in causing harm, including "property damage requiring repairs, additional construction costs to complete and repair Defe[n]dants['] defective and nonconforming work, and the resultant damage to the work and existing property," as well as costs to develop a plan to fix the work, as well as disruption of the beneficial use and occupancy of the property. SAC, ¶ 182. Accepting the facts alleged and inferred as true, the Court finds Plaintiffs have sufficiently alleged a cause of action for negligence which is not barred by the economic loss rule. Defendants owed a duty of due care to Plaintiffs in connection with their contracting work. Indeed, the contract itself includes a clause stating, "[i]n no event is Contractor be responsible to Customer, in damages, for any amount in excess of the amount of this Contract, *except in the case of negligence resulting from Contractor or Subcontractors hired by Contractor, that results in damage to property in excess of contract value.*" SAC, Ex. A., p. 2, ¶ 8(h). Moreover, plaintiffs have sufficiently alleged Defendants' negligence resulted in physical damage and injury outside the scope of the risks reasonably contemplated by the parties upon entering the contract.

As such, DFC's demurrer as to the second cause of action is overruled.

Third Cause of Action for Intentional Misrepresentation

Defendants DFC and DF argue Plaintiffs' cause of action for intentional misrepresentation is not pled with sufficient specificity, and more than nonperformance is required to prove Defendants' intent to not perform a promise. The court begs to differ.

"The essential elements of a count for intentional misrepresentation are (1) a misrepresentation, (2) knowledge of falsity, (3) intent to induce reliance, (4) actual and justifiable reliance, and (5) resulting damage. The essential elements of a count for negligent misrepresentation are the same except that it does not require knowledge of falsity but instead requires a misrepresentation of fact by a person who has no reasonable grounds for believing it to be true." *Chapman v. Skype Inc.* (2013) 220 Cal.App.4th 217, 230-231 (citations omitted). Fraud must be pleaded with specificity. *Small v. Fritz Companies, Inc.* (2003) 30 Cal.4th 167, 184. "'This particularity requirement necessitates pleading facts which show how, when, where, to whom, and by what means the representations were tendered.'" *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645 (citations omitted). The complainant's ability to prove the allegations does not concern the court. *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App. 3d 593, 604.

At bar, Plaintiffs' SAC alleges Defendants told Plaintiffs no permit was required knowing that was false, with the intent to induce Plaintiffs to enter into the contract, upon which Plaintiffs relied, resulting in damages, SAC, ¶ 185; that Defendants made knowingly false representations that he would oversee the budget and keep costs under a set amount, upon which Plaintiffs relied and were damaged, SAC, ¶¶ 22-23; that Defendants knew the initial budget exceeded the agreement and falsely represented otherwise, upon which Plaintiffs relied and were damaged, SAC, ¶¶ 187-199; that Defendants falsely represented one labor and material cost structure, upon which Plaintiffs relied and were damaged, SAC, ¶¶ 189-190; that Defendants falsely represented they would use experienced subcontractors and instead used unlicensed subcontractors, upon which Plaintiffs relied and were damaged, SAC, ¶ 191; and that Defendants knowingly promised

the project would be completed in a timeline that they knew was not possible and yet intentionally misrepresented it was, upon which Plaintiffs relied and were damaged. SAC, ¶ 192. Accepting the allegations as true, as the Court must, the Court concludes the allegations of the SAC are sufficient to plead a cause of action for intentional misrepresentation against both Defendants. Thus, the demurrers as to this cause of action are overruled.

Uncertainty

Both Defendants DFC and DF argue the demurrer should be sustained for uncertainty because it is only verified by one party. The court cannot agree.

A special demurrer for uncertainty under Code of Civil Procedure section 430.10(f) is disfavored and will only be sustained where the pleading is so bad that defendant cannot reasonably respond—*i.e.*, cannot reasonably determine what issues must be admitted or denied, or what counts or claims are directed against him/her. *Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616. Moreover, even if the pleading is somewhat vague, “ambiguities can be clarified under modern discovery procedures.” *Id.* If the answer contains “substantive factual allegations,” it sufficiently apprises the opposing party of the issues it is being asked to meet. *Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139 n.2.

Contrary to the suggestion of the defense, the SAC need not be verified by both plaintiffs. One plaintiff can verify a complaint pursuant to Code of Civil Procedure section 446. Moreover, the pleading is alleged with sufficient detail so that defendants can reasonably respond. The demurrers for uncertainty are overruled.

2. CU0001258 Randy Lee Miller vs. Nevada Commons

On the court’s motion, the hearing is continued from October 31, 2025, to November 3, 2025, at 10:00 a.m., in Department 6.

The motion of Defendants Nevada Commons and AWI Management Corporation for summary judgment is denied.

Summary Judgment Standard

On summary judgment, the Court must decide whether the moving party is entitled to judgment as a matter of law. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 860; *Wiener v. Southcoast Childcare Ctrs., Inc.* (2004) 32 Cal.4th 1138, 1142 . “In ruling on the motion, the court must ‘consider all of the evidence’ and ‘all’ of the ‘inferences’ reasonably drawn therefrom [citation], and must view such evidence [citations] and such inferences [citations], in the light most favorable to the opposing party.” *Aguilar*, 25 Cal. 4th at 843. As such, the court will “liberally construe plaintiff’s evidentiary submissions and strictly scrutinize defendants’ own evidence, in order to resolve any evidentiary doubts or ambiguities in plaintiffs’ favor.” *Wiener*, 2 Cal. 4th at 1142. Further, the court must consider “all the evidence set forth in the moving and

opposition papers except that to which objections have been made and sustained.” *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334.

A defendant moving for summary judgment has the initial burden of showing that a cause of action lacks merit because one or more elements of the cause of action cannot be established or there is an affirmative defense to that cause of action. Code Civ. Proc. § 437c, subd. (o)(1), (2); *Aguilar*, 25 Cal. 4th at 850. If the defendant meets that threshold burden, then the burden shifts to the plaintiff to make a prima facie showing that a triable issue of fact exists as to the cause of action set forth. *Id.* at 849.

Duty of Care

Defendants, apartment complex and management company, argue they are entitled to summary judgment against plaintiff, tenant, in connection with the latter’s slip and fall in a snow-bank of the apartment complex parking lot. Two contentions are advanced in support thereof. As for the first contention, Defendants argue “[they] should not be held to owe a duty to plaintiff to prevent him from slipping and falling into a three-foot-tall snowbank” that was “an open and obvious condition.” Mot. 8:1-3, 7:25. The court is not persuaded.¹

The broad contours for the issue of duty is well-summarized in *Zuniga v. Cherry Avenue Auction, Inc.* (2021) 61 Cal.App.5th 980:

In 1968, the California Supreme Court discarded the common law approach and determined that premises liability should be handled under ordinary negligence principles. *Rowland v. Christian*, *supra*, 69 Cal.2d at p. 119, 70 Cal.Rptr. 97, 443 P.2d 561; see Friedman et al., Cal. Practice Guide: Landlord-Tenant (The Rutter Group 2020) ¶ 6:10, p. 6-9; 12 Witkin, Summary of Cal. Law (11th ed. 2017), Real Property, § 665, p. 752 [liability under foreseeability test].) The court identified the source of the landowner's duty by referring to Civil Code section 1714, the current version of which provides: “(a) Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of *ordinary care* or skill *in the management of his or her property* or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself.” (Italics added.) The court stated that, under Civil Code section 1714, the test for liability applicable to the possessor of land “is whether in the management of his property he has acted as a reasonable man in view of the probability of injury to others.” *Rowland v. Christian*, *supra*, at p. 119, 70 Cal.Rptr. 97, 443 P.2d 561. Thus, pursuant to the general rule in Civil Code section 1714, a landlord owes a duty to its tenants to exercise ordinary care.

The general duty to exercise ordinary care in one's activities is subject to judicially created exceptions. Courts, however, create exceptions only where clearly supported by public policy. *Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1143, 210 Cal.Rptr.3d

¹ The parties devote a substantial portion of time to arguments regarding breach. That issue was not raised as part of this motion and need not be addressed.

283, 384 P.3d 283. The most important public policy “factors are ‘the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved.’ ” *Ibid.*, quoting *Rowland v. Christian*, *supra*, 69 Cal.2d at p. 113, 70 Cal.Rptr. 97, 443 P.2d 561.

...

Stated in general terms, the no-duty exception for open and obvious dangerous conditions provides that “ ‘if a danger is so obvious that a person could reasonably be expected to see it, the condition itself serves as a warning, and the landowner is under no further duty to remedy or warn of the condition.’ ” *Jacobs v. Coldwell Banker Residential Brokerage Co.* (2017) 14 Cal.App.5th 438, 447, 221 Cal.Rptr.3d 701. Thus, the rationale for the exception to the general duty of ordinary care is that the foreseeability of harm usually is absent because third parties will perceive the obvious and take action to avoid the danger. *Ibid.*

Id. at 992–994 (parentheses omitted).

“Foreseeability of harm is typically absent when a dangerous condition is open and obvious. ‘Generally, if a danger is so obvious that a person could reasonably be expected to see it, the condition itself serves as a warning, and the landowner is under no further duty to remedy or warn of the condition.’ In that situation, owners and possessors of land are entitled to assume others will ‘perceive the obvious’ and take action to avoid the dangerous condition.” *Jacobs*, 14 Cal.App.5th at 447 (citations omitted.)

Nevertheless, “[t]here may be a duty of care owed even where a dangerous condition is open and obvious, when ‘it is foreseeable that the danger may cause injury despite the fact that it is obvious (*e.g.*, when necessity requires persons to encounter it).’ In other words, ‘the obviousness of the condition and its dangerousness ... will not negate a duty of care when it is foreseeable that, *because of necessity or other circumstances, a person may choose to encounter the condition.*’ ” *Montes v. Young Men’s Christian Assn. of Glendale, California* (2022) 81 Cal.App.5th 1134, 1140 (citations omitted, original italics); see *Johnson v. The Raytheon Co., Inc.* (2019) 33 Cal.App.5th 617, 632 (“there may be situations in which an obvious hazard, for which no warning is necessary, nonetheless gives rise to a duty on a landowner's part to remedy the hazard because knowledge of the hazard is inadequate to prevent injury. This is so when, for example, the practical necessity of encountering the danger, when weighed against the apparent risk involved, is such that, under the circumstances, a person might choose to encounter the danger.”); *Osborn v. Mission Ready Mix* (1990) 224 Cal.App.3d 104, 122 (“[A]lthough the obviousness of a danger may obviate the duty to warn of its existence, if it is *foreseeable* that the danger may cause injury despite the fact that it is obvious (for example, when necessity requires persons to encounter it), there may be a duty to *remedy* the danger, and the breach of that duty

may in turn form the basis for liability, if the breach of duty was a proximate cause of any injury.”)

Judicial Council of California Civil Jury Instruction (CACI) No. 1004 tracks this well-established law related to the no-duty exception for open and obvious conditions of danger. It explains:

If an unsafe condition of the property is so obvious that a person could reasonably be expected to observe it, then the [owner/lessor/occupier/one who controls the property] does not have to warn others about the dangerous condition.

However, the [owner/lessor/occupier/one who controls the property] still must use reasonable care to protect against the risk of harm if it is foreseeable that the condition may cause injury to someone who because of necessity encounters the condition.

CACI 1004.

At bar, Defendants argue that there was no duty to warn or further remedy the snowbank, the dangerous condition at issue. The Court assumes, *arguendo*, that Defendants met their initial burden of showing no duty to warn. That said, the Court cannot conclude that Defendants met their initial burden of showing no duty to remedy whatsoever. As the moving party, Defendants had to establish by evidence supported by argument that it was *not foreseeable* that the snowbank condition may cause injury to someone who because of necessity or other circumstances may choose to encounter the condition. See, e.g., *Montes*, 81 Cal.App.5th at 1140. (If it was foreseeable, a duty of care arises.) Because Defendants did not meet their threshold burden on this issue, the burden did *not* shift to Plaintiff to make a prima facie showing that a triable issue of fact exists as to the duty issue. On this record, Defendants are not entitled to judgment as a matter of law.

Assumption of the Risk

As their second ground, Defendants argue that plaintiff assumed the risk of falling into the snowbank and that his negligence claim is barred under the doctrine of primary assumption of the risk. Mot. 8:4. The court is not persuaded.

Fazio v. Fairbanks Ranch Country Club (2015) 233 Cal.App.4th 1053, describes the general legal framework for analysis of the assumption of the risk doctrine.

In *Knight v. Jewett* (1992) 3 Cal.4th 296, 11 Cal.Rptr.2d 2, 834 P.2d 696 (Knight), the Supreme Court considered the proper application of the assumption of risk doctrine in light of its adoption of comparative fault principles in *Li v. Yellow Cab Co.* (1975) 13 Cal.3d 804, 119 Cal.Rptr. 858, 532 P.2d 1226. The court “distinguished between (1) primary assumption of risk--‘those instances in which the assumption of risk doctrine embodies a legal conclusion that there is “no duty” on the part of the defendant to protect the plaintiff from a particular risk’--and (2) secondary assumption of risk--‘those instances in which the defendant does owe a duty of care to the plaintiff but the plaintiff knowingly encounters a risk of injury caused by the defendant's breach of that duty.’ Primary assumption of risk, when applicable, completely bars the plaintiff's recovery.

The doctrine of secondary assumption of risk, by contrast, ‘is merged into the comparative fault scheme, and the trier of fact, in apportioning the loss resulting from the injury, may consider the relative responsibility of the parties.’ ” *Cheong v. Antablin* (1997) 16 Cal.4th 1063, 1067-1068, 68 Cal.Rptr.2d 859, 946 P.2d 817, citing *Knight*, supra, at pp. 308, 314-315, 11 Cal.Rptr.2d 2, 834 P.2d 696.

Although it addressed the assumption of the risk doctrine in the context of sports activities, *Knight* “provided an analytical framework for evaluating” the doctrine “in other contexts.” (*Huffman v. City of Poway* (2000) 84 Cal.App.4th 975, 994, 101 Cal.Rptr.2d 325 (*Huffman*)). Primary assumption of the risk applies when the court, “after examining the nature of the particular activity and the parties’ relationship to that activity, concludes that a plaintiff engaged in the particular activity is harmed by the risks inherent in the activity.” *Id.* at p. 994, 101 Cal.Rptr.2d 325. When the risks are inherent, the defendant does not have a “duty to protect the plaintiff from those risks or to take steps to reduce those risks.” *Ibid.*; see *Gregory v. Cott* (2014) 59 Cal.4th 996, 1001, 176 Cal.Rptr.3d 1, 331 P.3d 179 [“Primary assumption of risk cases often involve recreational activity, but the doctrine also governs claims arising from inherent occupational hazards.”]; *Priebe v. Nelson* (2006) 39 Cal.4th 1112, 1116, 47 Cal.Rptr.3d 553, 140 P.3d 848 [applying doctrine to bar kennel worker’s claim against dog owner]; *Saville v. Sierra College* (2005) 133 Cal.App.4th 857, 867-868, 36 Cal.Rptr.3d 515 [applying doctrine to student injured while practicing takedown maneuvers in police officer training course].

...

[Specifically, the] doctrine has been applied “to other activities involving an inherent risk of injury to voluntary participants ... where the risk cannot be eliminated without altering the fundamental nature of the activity.” *Beninati v. Black Rock City, LLC* (2009) 175 Cal.App.4th 650, 658, 96 Cal.Rptr.3d 105.

Id. at 1058-1059 (parentheses and citations omitted, italics added).

“The doctrine of primary assumption of the risk, however, ‘does not grant unbridled legal immunity to all defendants.’ ” *Ibid.* “[W]hen the doctrine is applied outside the sports context, summary judgment on primary assumption of risk grounds is *unavailable* unless the defendant disproves the theory it increased the inherent risks, or establishes a lack of causation between its conduct and the plaintiff’s injury.” *Ibid.* (italics added).

At bar, the activities identified by Defendants are as follows: traversing a parking lot and stepping into a snowbank while attempting to access his vehicle. The court initially notes that Defendants has not advanced any detailed argument regarding the parties’ relationship to that activity and the inherent risks of that activity. Moreover, query whether, on the record presented, traversing a parking lot and stepping into a snowbank are *activities involving an inherent risk of injury to voluntary participants where the risk cannot be eliminated without altering the fundamental nature of the activity*. See, e.g., *Curties v. Hill Top Developers, Inc.* (1993) 14 Cal.App.4th 1651, 1656 (“The instant case falls within the secondary assumption of risk

category. Hill Top, as a property owner or manager, was required to use due care to eliminate dangerous conditions on its property in order to avoid exposing tenants such as Curties to unreasonable risks of harm. The evidence before the jury supported a conclusion (as the jury in fact found) that Hill Top breached its duty by maintaining the sloping lawn configuration, despite reports that persons had fallen on it. The evidence also supported a conclusion that Curties had proceeded to knowingly encounter the risk created by Hill Top's negligence. Therefore, comparative negligence principles govern the determination of the relative fault of the two parties for Curties' injuries.”)(citation omitted); *Childs v. County of Santa Barbara* (2004) 115 Cal.App.4th 64, 71 (“applying the assumption of risk doctrine to simply riding a scooter on a residential sidewalk would not further the purpose of the doctrine to protect sports and sports-related activities from the chilling effect of liability for injuries caused by inherent risks in the activity.”) *Patterson v. Sacramento City Unified School Dist.* (2007) 155 Cal.App.4th 821, 840 (“loading wooden bleachers on a flatbed trailer is not inherently dangerous as a matter of law”). The court, however, need not decide whether the activities involved an inherent risk of injury to plaintiff such that no duty was owed by Defendants.

As noted previously, “[t]o obtain summary judgment, [Defendants] had the initial burden of production to ‘make a prima facie showing of the nonexistence of any triable issue of material fact’ as to each element of its assumption of the risk defense, including not increasing the inherent risks [Plaintiff] assumed....” *Fazio*, 233 Cal.App.4th at 1060. Defendants did not meet this initial burden to make a prima facie showing that there was no triable issue of fact as to whether they increased the risks beyond those inherent in walking through a parking lot and stepping into a snowbank. Stated otherwise, Defendants have not met their burden to disprove the theory they increased the inherent risks. Summary judgment is unwarranted based on the doctrine of primary assumption of risk. See *ibid*.

Given the disposition herein, the Court need not address the various objections to evidence and statements of undisputed facts interposed by the parties.

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

On the court’s motion, the hearing is continued from October 31, 2025, to November 3, 2025, at 10:00 a.m., in Department 6.

Receiver Amplêo Turnaround & Restructuring, LLC d/b/a Amplêo’s motion to approve final disposition of assets, terminate the receivership, and discharge the receiver is granted as prayed.

Background

The Receiver was appointed by this Court by temporary order on April 7, 2025. The order became permanent on May 30, 2025, and the Court entered an order expanding the powers of the Receiver on July 24, 2025 (“Receivership Order”).

Pursuant to the Receivership Order, the Receiver was charged with, among other things, the exclusive custody and possession of the Receivership assets, managing such assets, and selling

some of the identifiable assets of the Dental Practice. The Court notes the efforts of the Receiver were impacted by the need for court intervention in gaining access to such assets, including orders to sell identifiable assets and the dental practice patient list. The Receiver has stated it has located and liquidated substantially all of the assets as are commercially practicable to liquidate, namely: accounts receivable; cash in bank accounts the Receiver has located; small items of personal property and equipment; and causes of action worth approximately \$16,082.61. Therefore, as there is nothing further for the Receiver to liquidate, the Receiver requests the Court approve the final disposition of the assets as referenced in Exhibit A; assign the claims against attorney Guyton to Amplão in exchange for a small portion of unpaid fees; assign any remaining claims and accounts receivable to Umpqua; terminate the Receivership; and discharge the Receiver.

Discussion

The Court's administration of the instant receivership rests in its sole, sound discretion to be exercised with due regard to the unique facts of this particular case. *Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp.* (1953) 116 Cal. App. 2nd 869, 873. As an extension of the Court's authority, the Receiver "has, under the control of the court, the power to . . . take and keep possession of property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally to do such acts respecting the property as the Court may authorize." Code Civ. Proc. § 568.

"In a civil action, a receiver is an agent and officer of the court, and property in the receiver's hands is under the control and continuous supervision of the court. . . . The receiver is but a hand of the court, to aid it in preserving and managing the property involved in the suit." *People v. Stark* (2005) 131 Cal. App. 4th 184, 204. Accordingly, "it is well settled that a trial court has broad discretion in its directions and approvals given to a receiver in respect to management of the property." *Hillman v. Stults* (1968) 263 Cal. App. 2nd 848, 876.

Here, the Court concludes that the requests by the Receiver are reasonable and within the Court's broad discretion to authorize and approve. The Receiver has determined, in its reasonable business judgment, that the requests are in accordance with its obligations under the Receivership Order. The Court concurs and finds good cause to grant the relief requested herein. The Receiver is authorized to transfer and distribute the funds as set forth in Exhibit A to the instant motion.