

**July 31, 2026, Civil Law & Motion Tentative Rulings**

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

The motion by Defendants Daniel Fraiman Construction, Inc. and Daniel Fraiman for summary adjudication as to the cause of action for intentional misrepresentation is denied.

**Legal Standard for Summary Adjudication and Summary Judgment**

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. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843. In analyzing such motions, courts must apply a three-step analysis: “(1) identify the issues framed by the pleadings; (2) determine whether the moving party has negated the opponent's claims; and (3) determine whether the opposition has demonstrated the existence of a triable, material factual issue.” *Hinesley v. Oakshade Town Center* (2005) 135 Cal.App.4th 289, 294. Thus, summary judgment or summary adjudication is granted when, after the court’s consideration of the evidence set forth in the papers and all reasonable inferences accordingly, no triable issues of fact exist and the moving party is entitled to judgment as a matter of law. Code Civ. Proc. § 437c(c); *Villa v. McFarren* (1995) 35 Cal.App.4th 733, 741. Code of Civil Procedure section 437c(f)(1) provides that, “A party may move for summary adjudication as to one or more causes of action within an action.” Such “[a] motion for summary adjudication shall be granted only if it *completely* disposes of a cause of action....” Code Civ. Proc. § 437c(f)(1) (*italics added*).

A defendant moving for summary judgment/adjudication 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(o)(1), (2); *Aguilar*, 25 Cal. 4th at 850. As to each claim as framed by the complaint, the party moving for summary judgment or summary adjudication must satisfy the initial burden of proof by presenting facts to negate an essential element. *Scalf v. D. B. Log Homes, Inc.* (2005) 128 Cal.App.4th 1510, 1520. Once the moving party has met the burden, the burden shifts to the opposing party to show via specific facts that a triable issue of material facts exists as to a cause of action or a defense thereto. Code Civ. Proc. § 437c(o)(2).

In determining whether any triable issues of material fact exist, the court must strictly construe the moving papers and liberally construe the declarations of the party opposing summary judgment. Any doubts as to whether a triable issue of material fact exists are to be resolved in favor of the party opposing summary judgment. *Barber v. Marina Sailing, Inc.* (1995) 36 Cal.App.4th 558, 562; *see also See’s Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 900. “A court generally cannot resolve questions about a declarant's credibility in a summary judgment proceeding.” *AARTS Productions, Inc. v. Crocker National Bank* (1986) 179 Cal.App.3d 1061, 1065.

## Analysis

“The elements of fraud that will give rise to a tort action for deceit are: “ ‘(a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or ‘scienter’); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.’ ” *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 974. “Fraud is an intentional tort; it is the element of fraudulent intent, or intent to deceive, that distinguishes it from actionable negligent misrepresentation and from nonactionable innocent misrepresentation. It is the element of intent which makes fraud actionable, irrespective of any contractual or fiduciary duty one party might owe to the other.” *City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith* (1998) 68 Cal.App.4th 445, 482. “[F]raudulent intent is an issue for the trier of fact to decide.” *Beckwith v. Dahl* (2012) 205 Cal.App.4th 1039, 1061.

At bar, Defendants, among other things, argue, “Plaintiffs have zero evidence that Mr. Fraiman falsely represented that the Project would not require permits...[a]side from Ms. Palleschi’s post hoc assertions in deposition...” Mot., 8:8-20. They further argue that Plaintiffs have no evidence that any alleged misrepresentation induced Michelle Palleschi’s execution of the contract, or that she justifiably relied on it. Mot., 10:22-11:11. The Court is not persuaded.

First, Defendants’ motion *itself* acknowledges that Ms. Palleschi offered deposition testimony that Mr. Fraiman falsely represented that the Project would not require permits. In light of this, Defendants have not met their threshold burden of showing that this element cannot be established. Assuming, *arguendo*, Defendants met their burden, Plaintiffs have shown that a triable issue of fact exists with respect to this representation. In short, Plaintiffs have offered evidence that Fraiman represented to Michelle Palleschi that: permits would not be required, he knew at signing he was not going to pull a permit, he knew a permit was legally required, and he knew there would be no final inspection absent a permit. See Opp’n, 8:27-9:24 and citations therein.

Second, Michelle Palleschi’s verified allegations establish that she specifically asked Fraiman about permitting before signing, that he answered falsely, and that she signed the contract at issue in reliance on that answer. See Opposition, 18:5-13 and citations therein.

The Court need not address the remaining five arguments in favor of summary adjudication raised by Defendants. Given the disposition noted above as to the alleged permit misrepresentation, Defendants are not entitled to summary adjudication as a matter of law as to the misrepresentation cause of action.

## **2. CU0002033      Ingrid W. Speck, et al. vs. Justfly Corp., et al.**

One of the parties apparently reserved this date for the filing of a motion; none was filed. This matter is removed from calendar.

### 3. CU0002312

### Raymond Davey v. Close Associates et al

The Court grants the motion of Defendants Close Associates and Craig Close to set aside Plaintiff's March 16, 2026, Amended Request for Entry of Default and Default retroactively entered on January 8, 2026.

The default was improvidently and incorrectly entered by the clerk. Firstly, a "[p]laintiff must file an affidavit with the court stating that a copy of the application for entry of default has been mailed to defendant or his attorney." *Ely v. Gray* (1990) 224 Cal.App.3d 1257, 1260, *citing* Code Civ. Proc. § 587. Code of Civil Procedure section 587 states:

*An application by a plaintiff for entry of default under subdivision (a), (b), or (c) of Section 585 or Section 586 shall include an affidavit stating that a copy of the application has been mailed to the defendant's attorney of record or, if none, to the defendant at his or her last known address and the date on which the copy was mailed. If no such address of the defendant is known to the plaintiff or plaintiff's attorney, the affidavit shall state that fact.*

*No default under subdivision (a), (b), or (c) of Section 585 or Section 586 shall be entered, unless the affidavit is filed. The nonreceipt of the notice shall not invalidate or constitute ground for setting aside any judgment.*

(Italics supplied).

Here, Plaintiff did not submit an affidavit which, as required, indicated the date on which a copy of the application had been mailed to defendant at his last known address. *See* 3/16/26 Amended Request for Default.

Secondly, Plaintiff failed to properly date his requests for entry of default as required. *See* Code Civ. Proc § 2015.5.

Thirdly, on March 16, 2026, the clerk had no lawful authority to enter a default as requested because Defendant had already filed a declaration pursuant to Code of Civil Procedure section 430.41 on March 3, 2026. *See* Code Civ. Proc. § 430.41(a)(2) ("The 30-day ["automatic"] extension shall commence from the date the responsive pleading was previously due, and the demurring party shall not be subject to default during the period of the extension."). Whether or not the automatic extension was legally applicable under the circumstances of this case, the clerk had no authority to disregard the declaration; only the Court had authority to pass judgment as to its validity.

Lastly, the clerk had no lawful authority to retroactively enter the default requested on March 16, 2026 as of January 2026. *See Jonson v. Weinstein* (1967) 249 Cal.App.2d 954, 959 ("the actual date of [physical] default entry governs.").

In short, the clerk erred in entering the default. Accordingly, it is set aside as to both Defendants. *See* Code Civil Proc. § 473(d).

In addition, or the alternative, Defendants have demonstrated to the satisfaction of the Court, based on the record presented, that they failed to timely file a responsive pleading as a result of mistake, inadvertence and excusable neglect. See Code Civ. Proc. § 473(b). The default is set aside on this ground as well.

A responsive pleading shall be served and filed within ten calendar days.

**4. CU0001696            George Watson vs. General Motors, LLC**

Defendant General Motors LLC's demurrer to the fifth cause of action of Plaintiff's Third Amended Complaint ("TAC"), to which Plaintiff has filed a written statement of non-opposition, is sustained without leave to amend.

Defendant's motion to strike the prayer for punitive damages in the TAC is granted without leave to amend. Plaintiff has filed no opposition to the motion; as such, the Court deems Plaintiff's failure to oppose the motion as consent to the granting of the same. See Cal. Rules of Court, rule 8.54(c) ("failure to oppose a motion may be deemed a consent to the granting of the motion."); see, e.g., *Amato v. Downs* (2022) 78 Cal.App.5th 435, 440, n.3 (unopposed motion can be granted on that basis, citing rule 8.54(c)).

**5. CL0004294            Federal National Mortgage Association vs. Named Defendant**

The parties shall appear for argument.

**6. CL0003982            Robert Mueller vs. Named Defendant, et al.**

The parties shall appear for argument.