<u>August 7, 2026, Civil Law & Motion Tentative Rulings</u>

1. CL0001259 Thomas Deal v. Fred Gerkensmeyer, et al.

Plaintiff's April 15, 2026, motion for leave to file a fourth amended complaint, and April 14, 2026, motion regarding vexatious litigant orders, are removed from calendar without prejudice. Plaintiff has failed to file any proof of service of the motion regarding vexatious litigant orders on the defense. Plaintiff has also failed to file an adequate proof of service establishing when and how the motion for leave to file an amended complaint was served on the defense and demonstrating that service was timely. *See* 7/23/26 Proof of Service. Pursuant to Code of Civil Procedure section 1005(b), Plaintiff was required to file and serve a notice of motion and motion at least sixteen court days before the hearing. Moreover, the period of notice is extended by additional days depending on the method of service. *See, e.g.*, Code Civ. Proc. §§ 1005, 1010.6(a)(3), 1013(a). Any future motions shall be filed and served in compliance with all the requirements of the Rules of Civil Procedure.

2. CU0001927 Steven Fischer vs. McKenzie Fisher, et al

Defendants' motion to compel attendance at neuropsychological independent medical examination (IME) by Plaintiff is granted, in part, subject to conditions set forth herein.

"[A] trial court is not *required* to order the production of test materials or test data [in connection with a physical or mental examination]. [G]iven the trial court's broad discretion in discovery matters, it retains the discretion to order the production of such materials." *Randy's Trucking, Inc. v. Superior Court* (2023) 91 Cal.App.5th 818, 838, *citing Carpenter v. Superior Court* (2006) 141 Cal.App.4th 249, 261 and *Roe v. Superior Court* (2015) 243 Cal.App.4th 138, 147-148.

At bar, Defendants have shown, and Plaintiff does not dispute, a legitimate need for the examination. The parties mainly contest whether Defendants shall be obligated to provide neurological data and materials to Plaintiff's counsel. Plaintiff has shown a legitimate need for the raw data. The Court is not persuaded by Defendants' arguments to the contrary. "Without the raw data and audio recording, plaintiff[] cannot effectively scrutinize the way the data was collected, determine if there are discrepancies, and cross-examine the neuropsychologist on the basis and reasons for the neuropsychologist's opinion." *Randy's Trucking, Inc.*, 91 Cal. App. 5th at 838. Moreover, "disclosure of these materials may help to protect against abuse and disputes over what transpired during the examination." *Ibid.* Such audiotaping will also ensure the examiner does not overstep bounds set by the court, provide the context of responses for purposes of trial, protect the examinee's interests since the examinee's counsel is usually not present, and assure any evidence of abuse can be presented to the court. *Ibid*. "Without plaintiff['s] access to the audiotape and raw data, plaintiff[] cannot adequately protect these interests." *Ibid.* Plaintiff's proposed protective order adequately addresses any confidentiality concerns and test security concerns of Defendants. In the exercise of its discretion, the Court orders production of the raw data to Plaintiff's counsel subject to a protective order. The parties are ordered to meet and confer within five days of this order to finalize a date for the neurophysiological IME.

With respect to the specific diagnostic tests to be permitted, "the plain meaning of [Code of Civil Procedure] section 2032.320 is that the trial court must 'specify the ... diagnostic tests and procedures' of the … examination by naming the tests and procedures *to be performed*." *Carpenter v. Superior Court* (2006) 141 Cal.App.4th 249, 261–262. Accordingly, the order granting the examination shall specify the tests and procedures *to be performed*.

As for the audio recording of the examination, "since [Code of Civil Procedure] section 2032.530, subdivision (a) grants the examinee the right to record a mental examination by audio technology, it implies the examinee may retain a copy of the audio recording." *Randy's Trucking, Inc.,* 91 Cal.App.5th at 837. "Nothing in the applicable statute [related to audiotaping of examinations] suggests that the right of the examiner or examinee is limited to recording only selected parts of the examination. Further, recording only the examinee's responses would defeat the main purposes of the audiotaping …." *Golfland Entertainment Centers, Inc. v. Superior Court* (2003) 108 Cal.App.4th 739, 750. Accordingly, Defendants shall provide Plaintiff with a complete audio recording of the entire examination, including both the interview and testing portions.

Finally, production of the raw testing materials, audio recordings, and any reports of examination required under Code of Civil Procedure section 2032.610 shall be made directly to Plaintiff's counsel within thirty (30) days of the examination or fifteen (15) days before trial, whichever is earlier, subject to the protective order.

3. CU0002867 Jason Christ vs. Elizabeth Aroyan, et al.

Plaintiff Jason Christ's motion for preliminary injunction as against Defendants Elizabeth Aroyan and Richard Milligan (aka "F'kir Eldercake") is denied.

"A preliminary injunction may be granted at any time before judgment upon a verified complaint, or upon affidavits if the complaint in the one case, or the affidavits in the other, show satisfactorily that sufficient grounds exist therefor." Code Civ. Proc. § 527(a). "The purpose of a preliminary injunction is to preserve the status quo pending final resolution upon a trial." *Grothe v. Cortlandt Corp.* (1992) 11 Cal.App.4th 1313, 1316. Preliminary injunctive relief requires the use of competent evidence to create a sufficient factual showing on the grounds for relief. *See, e.g., ReadyLink Healthcare v. Cotton* (2005) 126 Cal.App.4th 1006, 1016; *Ancora-Citronelle Corp. v. Green* (1974) 41 Cal.App.3d 146, 150.

"The decision to grant a preliminary injunction rests in the sound discretion of the trial court .... [B]efore the trial court can exercise its discretion the applicant must make a prima facie showing of entitlement to injunctive relief. *The applicant must demonstrate a real threat of immediate and irreparable injury.*" *Triple A Machine Shop, Inc. v. State of Cal.* (1989) 213 Cal.App.3d 131, 138 (italics added). Before a trial court may issue a nonstatutory injunction as a provisional remedy, it must appear that monetary relief would not afford adequate relief or that it would be extremely difficult to ascertain the amount of damages. Code Civ. Proc. § 526, subds. (a)(4) & (a)(5); *Thayer Plymouth Center, Inc. v. Chrysler Motors Corp.* (1967) 255 Cal.App.2d 300, 306. "[A]n injunction is an unusual or extraordinary equitable remedy which will not be granted if the remedy at law (usually damages) will adequately compensate the injured plaintiff," and the party seeking injunctive relief bears the burden to prove its absence. *Department of Fish & Game v.*

Anderson-Cottonwood Irrigation Dist. (1992) 8 Cal.App.4th 1554, 1564-1565. "Put another way, if the legal remedy of compensatory damages is adequate to do complete justice between the parties, 'a proper exercise of equitable jurisdiction will not give equitable relief.' " *ZF Micro Solutions, Inc. v. TAT Capital Partners, Ltd.* (2022) 82 Cal.App.5th 992, 1000-1001 (citation omitted).

Such is the case here. Plaintiff has made no persuasive showing that he faces a threat of immediate and irreparable injury in the absence of injunctive relief. Moreover, he has made no persuasive showing that monetary relief would not afford adequate relief. Should Plaintiff prevail at trial, the trier of fact can readily ascertain monetary damages to compensate Plaintiff for his lost opportunities, if any, to participate in Dance Church events.

4. CU0002887 Jason Christ vs. Chris Anderson

Plaintiff Jason Christ's motion for a preliminary injunction against Chris Anderson is denied without prejudice.

Judge Hardcastle issued an order (presented by Plaintiff) which stated that "Plaintiff" could serve, among other things, the summons and complaint, by various alternative means including e-mail. *See* 7/15/26 Order. Plaintiff *himself* served the complaint (as opposed to a process server or some other adult selected by Plaintiff). *See* 7/16/26 Proof of Service. Such service is legally insufficient.

> [Code of Civil] Procedure Section 414.10, entitled "Person permitted to serve," expressly provides who may serve the moving pleadings to a case: "A summons may be served by *any person who is* at least 18 years of age and *not a party to the action*." § 414.10, italics added.
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> … The intent of a statute prohibiting personal service of process by parties is to discourage fraudulent service by persons with an adversarial interest in a legal action. *Caldwell v. Coppola* (1990) 219 Cal.App.3d 859, 864 (*Caldwell*). Accordingly, "the prohibition on service by the opposing party is strictly enforced." *Id*. at p. 865; see *Sullivan v. Sullivan* (1967) 256 Cal.App.2d 301, 304 (*Sullivan*) [motion to vacate a default and judgment was *proper* where declarations filed by the parties supported a finding that the summons and complaint were served on defendant by plaintiff himself]. Thus, *"[w]hen a party has served notice on the opposing party, the court lacks personal jurisdiction over the defendant.*" *Caldwell*, at p. 865.

Braugh v. Dow (2023) 93 Cal.App.5th 76, 88–89 (parentheses and parallel citations omitted, italics added); *see id.* at 89-90 (defendant was "under no duty to act upon a defectively served summons," even if he has "actual notice of the commencement of the action").

In addition, there is no evidence that Plaintiff served any summons on Plaintiff.

This Court lacks jurisdiction over Anderson. Accordingly, the motion for a preliminary injunction is denied without prejudice.

5. CU0002909 Jason Christ vs. Wendy Phares

Plaintiff Jason Christ's motion for preliminary injunction is denied.

"A preliminary injunction may be granted at any time before judgment upon a verified complaint, or upon affidavits if the complaint in the one case, or the affidavits in the other, show satisfactorily that sufficient grounds exist therefor." Code Civ. Proc. § 527(a). "The purpose of a preliminary injunction is to preserve the status quo pending final resolution upon a trial." *Grothe v. Cortlandt Corp.* (1992) 11 Cal.App.4th 1313, 1316. Preliminary injunctive relief requires the use of competent evidence to create a sufficient factual showing on the grounds for relief. *See, e.g., ReadyLink Healthcare v. Cotton* (2005) 126 Cal.App.4th 1006, 1016; *Ancora-Citronelle Corp. v. Green* (1974) 41 Cal.App.3d 146, 150.

"The decision to grant a preliminary injunction rests in the sound discretion of the trial court .... [B]efore the trial court can exercise its discretion the applicant must make a prima facie showing of entitlement to injunctive relief. *The applicant must demonstrate a real threat of immediate and irreparable injury*." *Triple A Machine Shop, Inc. v. State of Cal.* (1989) 213 Cal.App.3d 131, 138 (italics added). Before a trial court may issue a nonstatutory injunction as a provisional remedy, it must appear that monetary relief would not afford adequate relief or that it would be extremely difficult to ascertain the amount of damages. Code Civ. Proc. § 526, subds. (a)(4) & (a)(5); *Thayer Plymouth Center, Inc. v. Chrysler Motors Corp.* (1967) 255 Cal.App.2d 300, 306. "[A]n injunction is an unusual or extraordinary equitable remedy which will not be granted if the remedy at law (usually damages) will adequately compensate the injured plaintiff," and the party seeking injunctive relief bears the burden to prove its absence. *Department of Fish & Game v. Anderson-Cottonwood Irrigation Dist.* (1992) 8 Cal.App.4th 1554, 1564-1565. "Put another way, if the legal remedy of compensatory damages is adequate to do complete justice between the parties, 'a proper exercise of equitable jurisdiction will not give equitable relief.' " *ZF Micro Solutions, Inc. v. TAT Capital Partners, Ltd.* (2022) 82 Cal.App.5th 992, 1000-1001 (citation omitted).

Such is the case here. Plaintiff has made no persuasive showing that he faces a threat of immediate and irreparable injury in the absence of injunctive relief. Moreover, he has made no persuasive showing that monetary relief would not afford adequate relief. Should Plaintiff prevail at trial, the trier of fact can readily ascertain monetary damages to compensate Plaintiff for his lost opportunities, if any, to participate in the Ecstatic Dance Nevada City events.

6. CU21-086089 George Horner, et al. vs. Deborah Carver

Appearances are required by the parties to discuss the status of the home and property in preparation for the sale of the property.

7. CU0001796 Sonya Sokolow v. Environmental Health Director Amy Irani

Defendant County of Nevada's unopposed demurrer to complaint for property damage is sustained without leave to amend.

Legal Standard

On demurrer, a court's function is limited to testing the legal sufficiency of the complaint. *Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113-114. In determining a demurrer, the court assumes the truth of the facts alleged in the complaint and the reasonable inferences that may be drawn from those facts. *Miklosy v. Regents of the Univ. of Cal.* (2008) 44 Cal.4th 876, 883. A court must determine if the factual allegations of the complaint are adequate to state a cause of action under any legal theory. *Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 103.

Contentions, deductions and conclusions of law, however, are not presumed as true. *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967. A plaintiff is not required to plead evidentiary facts supporting the allegation of ultimate facts; the pleading is adequate if it apprises the defendant of the factual basis for the plaintiff's claim. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6. A demurrer is not the appropriate procedure for determining the truth of disputed facts. *Fremont Indemnity Co.,* 148 Cal.App.4th at 113-114.

"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." *Milligan v. Golden Gate Bridge Highway & Transportation Dist.* (2004) 120 Cal.App.4th 1, 6.

Analysis

Unopposed Motion

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)).

Government Claims Act

Defendant argues the cause of action alleged is barred by Plaintiff's failure to allege compliance or excuse with the Government Claims Act ("GCA"). The Court agrees.

Pursuant to the GCA, a complaint for money or damages against a public entity must be preceded by a proper administrative claim. Gov. Code § 905. "[N]o suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented … until a written claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board…." Gov. Code § 945.4.

At bar, the complaint seeks money or damages arising from property damages from a local public entity, but fails to allege Plaintiff presented a written claim to the County. Therefore, the demurrer is sustained on this ground.

Negligence

Defendant also argues the complaint fails to state facts sufficient to allege negligence against a public entity. The Court agrees.

" 'The elements of a cause of action for negligence are well established. They are "(a) a legal duty to use due care; (b) a breach of such legal duty; [and] (c) the breach as the proximate or legal cause of the resulting injury." ' " *Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917.

At bar, the complaint fails to identify a statute imposing a duty to monitor the neighboring property; it fails to sufficiently allege a breach of a duty because no duty has been alleged; it fails to specify the property damage alleged; and it fails to specify the damages alleged. Therefore, the demurrer is sustained on this ground.

Public Entity Liability

Defendant argues the complaint fails to identify any statute authorizing Plaintiff's common law negligence claims against a public entity as required by Government Code section 815. The Court agrees.

"In order to recover plaintiffs have to show that there is some specific statutory mandate that was violated by the County, which violation was a proximate cause of the accident." *Washington v. County of Contra Costa* (1995) 38 Cal.App.4th 890, 896-897. "Questions of statutory immunity do not become relevant until it has been determined that the defendant otherwise owes a duty of care to the plaintiff and thus would be liable in the absence of such immunity. However, a defendant may not be held liable for the breach of a duty if such an immunity in fact exists." *Id.* at 896.

At bar, the complaint fails to allege any specific mandatory duty imposed by an enactment, such as "a constitutional provision, statute, charter provision, ordinance or regulation." *Tuthill v. City of San Buenaventura* (2014) 223 Cal.App.4th 1081, 1091-1092. Therefore, the demurrer is sustained on this basis.

Governmental Immunities

Defendant further argues the complaint is barred by multiple governmental immunities, because any alleged failures to inspect, investigate, and enforce a conditional use permit are the types of inspection and enforcement failures protected by governmental immunities. The Court again agrees.

"A public entity is not liable for an injury caused by adopting or failing to adopt an enactment or by failing to enforce any law." Gov. Code § 818.2. "A public entity is not liable for an injury caused by the issuance, denial, suspension or revocation of, or by the failure or refusal to issue, deny, suspend or revoke, any permit, license, certificate, approval, order, or similar authorization where the public entity or an employee of the public entity is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked." Gov. Code § 818.4. "A public entity is not liable for injury caused by its failure to make an inspection, or by reason of making an inadequate or negligent inspection, of any property…for the purpose of determining whether the property complies with or violates any enactment or contains or constitutes a hazard to health or safety." Gov. Code § 818.6.

Thus, the demurrer is sustained on this ground.

<u>Leave to Amend</u>

The burden is on the plaintiff "to articulate how it could amend its pleading to render it sufficient." *Palm Springs Villas II Homeowners Assn., Inc. v. Parth* (2016) 248 Cal.App.4th 268, 290. To satisfy that burden, a plaintiff "must show in what manner [s]he can amend his complaint and how that amendment will change the legal effect of his pleading." *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349. Plaintiff did not file an opposition to Defendants' demurrer or other papers with the Court to identify the facts that she could allege to cure the defects with his complaint. Plaintiff has not met her burden to articulate how she could amend the complaint to render it sufficient. The Court sustains the demurrer without leave to amend.