September 18, 2026, Civil Law & Motion Tentative Rulings

1. CL0003758 Alford Presser., Jr. vs. California Department of Transportation

Defendant California Department of Transportation's motion to set aside Plaintiff's entry of default is withdrawn from calendar. The Court approved a stipulation to grant this relief.

2. CU0001813 USA Bath California Remodeling, Inc. vs. David Sweat

Attorney James L. Arrasmith's motion to be relieved as counsel is granted.

The Court has discretion to allow an attorney to withdraw, and such a motion should be granted provided that there is no prejudice to the client and it does not disrupt the orderly process of justice. *See Ramirez v. Sturdevant* (1994) 21 Cal.App.4th 904, 915; *People v. Prince (*1968) 268 Cal.App.2d 398, 403-407.

A motion to be relieved as counsel must be made on Judicial Council Form MC-051 (Notice of Motion and Motion), MC-052 (Declaration), and MC-053 (Proposed Order). Cal. Rules of Court, rule 3.1362(a), (c), (e). The requisite forms must be served "on the client and on all parties that have appeared in the case." Cal. Rules of Court, rule 3.1362(d).

Attorney Arrasmith represents Defendant David Sweat. Arrasmith has filed Judicial Council Forms MC-051 (Notice of Motion and Motion), MC-052 (Declaration), and MC-053 (Proposed Order). Arrasmith moves to be relieved as counsel, citing a deterioration of the working relationship with his client. Notice of the request has been served on the client and all parties. No opposition has been filed. The Court finds this to be proper grounds for withdrawal. *See Estate of Falco* (1987) 188 Cal.App.3d 1004, 1014 (a breakdown in the attorney-client relationship is grounds for allowing the attorney to withdraw).

An updated proposed order shall be lodged. This order will be effective only upon filing proof of service of the signed order upon the client at issue.

3. CU0001978 Bridgett Higginbotham vs. Pacific Specialty Insurance, et al.

Defendant Select Environmental's ("Select" or "Settling Defendant") unopposed motion for determination of good faith settlement is granted.

<u>Legal Standard</u>

"A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault." Code Civ. Proc. § 877.6(c).

In making a good faith settlement determination, a trial court should "inquire, among other things, whether the amount of the settlement is within the reasonable range of the settling tortfeasor's proportional share of comparative liability for the plaintiff's injuries." *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (*Tech-Bilt*) (1985) 38 Cal.3d 488, 499. "The party asserting the lack of good faith shall have the burden of proof on that issue." Code Civ. Proc., § 877.6(d).

"In the context of section 877.6, '[t]he trial court is given broad discretion in deciding whether a settlement is in "good faith" for purposes of section 877.6, and its decision may be reversed only upon a showing of abuse of discretion.' " *Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 957.

<u>The Tech-Bilt Factors as Applied to the Present Case</u>

Settling Defendant requests the Court find its settlement with Plaintiff in the amount of $4,500.00 was made in good faith based on its position the Settlement Agreement meets all the relevant *Tech-Bilt* factors.

Acknowledging that there is no precise method to determine whether parties entered into a good faith settlement, the Supreme Court in *Tech-Bilt* provided guidelines for determining whether a settlement is made in good faith. *Tech-Bilt, supra,* 38 Cal.3d at 495. Rather, the court must strike a balance between the public policy favoring settlements and the competing policy favoring equitable allocation of costs between tortfeasors. *Id*. at 498-99. To accomplish this, the *Tech-Bilt* court provided the following factors for determining whether a proposed settlement is based on good faith: (1) a rough approximation of plaintiff's total recovery and the settling defendant's proportionate liability; (2) the amount paid in settlement; (3) allocation of settlement amounts among plaintiffs; (4) recognition that a settlor should pay less in settlement than it would if it were found liable after trial; (5) financial conditions and insurance policy limits of the settling defendant; and (6) the existence of collusion, fraud, or tortious conduct aimed to injure the interests of non-settling defendants. *Id*. at 499-500. The burden of proof in asserting that a settlement lacked good faith falls upon the party making the assertion and it must show that "the settlement is so far 'out of the ballpark' in relation to these factors as to be inconsistent with the equitable objectives of [Code of Civil Procedure section 877.6]." *Ibid*.

At bar, Defendant Pacific Specialty Insurance Company ("PSIC") previously opposed the motion, and the Court granted discovery for a limited period of time to allow the parties to gather sufficient factual information for the objecting non-settlor to carry its burden of proof as to any lack of good faith. 5/15/26 Minute Order. Prior to the present hearing, PSIC subsequently filed a notice of non-opposition to the motion, stating "after conducting and reviewing additional discovery, PSIC no longer contests the good faith of the settlement" and withdrew its previously filed opposition. PSIC Notice of Non-Opp, 2:5-9. Select's counsel has submitted a supplemental declaration in support of its motion, stating Select responded to propounded discovery and provided evidence showing Select "performed its work…in accordance with the instructions and consent of Plaintiff"; that Select's insurance coverage determined coverage would be provided; and that Plaintiff decided to proceed with the settlement as agreed even with the insurance coverage information. Maxwell Supp. Decl., ¶¶ 3, 6-7.

Settling Defendant has not submitted evidence in support of its motion; that said, non-settling Defendant PSIC has reviewed evidence causing it to withdraw any argument that the settlement amount would be grossly disproportionate or out of the ballpark of a reasonable settlement range.

Further, Select asserts the settlement was reached in good faith as an arm's length transaction. Maxwell Decl., ¶ 5. Finally, under Code of Civil Procedure section 877.6, "the party asserting the lack of good faith shall have the burden of proof on that issue." In the absence of any opposition to this motion, this burden has not been met.

Accordingly, the Court finds that the settlement was made in good faith.

4. CU0002045 California Fair Plan Association vs. Gregory James Gallup (deceased), et al.

The Court grants the motion of Defendant Joan Gallup, Successor-in-Interest to the Estate of Gregory James Gallup, for judgment on the pleadings.

<u>Requests for Judicial Notice</u>

Defendant's unopposed requests for judicial notice are granted.

<u>Legal Standard</u>

A party may bring a motion for judgment on the pleadings ("MJOP") after filing an answer and the time to demurrer has expired. Code Civ. Proc. § 438(b)(1) and (f); *Evans v. California Trailer Court, Inc.* (1994) 28 Cal.App.4th 540, 548. If the moving party is the defendant, then a MJOP is limited to the grounds the court has no jurisdiction over the subject of the cause of action or the complaint fails to state a cause of action. Code Civ. Proc. § 438(c)(1)(B). The grounds for a MJOP shall appear on the face of the pleading or from any matter judicially noticed. Code Civ. Proc., § 438(d). Essentially, a MJOP performs the same function as a general demurrer, *i.e.*, it attacks only the defects disclosed on the face of the pleading or by matters that are judicially noticed. *Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999. "In deciding or reviewing a judgment on the pleadings, all properly pleaded material facts are deemed to be true, as well as all facts that may be implied or inferred from those expressly alleged." *Fire Ins. Exch. v. Super. Ct.* (2004) 116 Cal.App.4th 446, 452.

<u>Discussion</u>

Defendant argues that: California Fair Plan Association (CFPA), a plaintiff seeking damages allegedly caused by a decedent's negligence or breach, failed to file a timely creditor's claim; failed to allege in its complaint that it did so, and the liability of a successor-in-interest pursuant to Code of Civil Procedure section 377.40 exists only subject to Probate claim procedures. In opposition, Plaintiff argues Probate Code section 13550, *et seq.*, allows a suit against a surviving spouse for a deceased spouse's debts. Defendant has the better argument.

"An action may not be commenced against a decedent's personal representative on a cause of action against the decedent unless a claim is first filed as provided in this part [4. Creditor Claims] and the claim is rejected in whole or in part." Prob. Code § 9351. Thus, in general, a claim may not be pled against a decedent's estate, and a pending lawsuit against a decedent at time of death cannot be continued against the estate, unless the plaintiff has filed a creditor's claim in the probate proceedings. Prob. Code § 9000 *et seq*.

"Under California law, there are two methods for recovering damages from a deceased [individual]." *Pelayo v. City of Downey*, 570 F.Supp.2d 1183, 1192 (C.D. Cal. 2008). Where, as is the case here, "the decedent's property is distributed through a probate administrator in the probate court, the plaintiff must first file []a claim in probate court." *Id.;* see Prob. Code § 9351. "Section 9351 of the California Probate Code states that '[a]n action may not be commenced against a decedent's personal representative on a cause of action against the decedent unless a claim is first filed as provided in this part and the claim is rejected in whole or in part.' … Filing a suit against an estate is not equivalent to filing a probate claim." *Van Ort v. Estate of Stanewich* (9th Cir. 1996) 92 F.3d 831, 841(applying California Law). A "[c]laim" includes a "demand for payment … whether due, not due, accrued or not accrued, or contingent, and whether liquidated or unliquidated [including] [l]iability of the decedent, whether arising in contract, tort, or otherwise." Prob. Code § 9000(a)(1). "A party with a remedy at law against a decedent for [a claim] must proceed upon the theory that he or she is a creditor of the deceased, having a claim against the estate, and is subject to the provisions of the Probate Code requiring the presentation of claims to the executor or administrator." *Wilkison v. Wiederkehr* (2002) 101 Cal.App.4th 822, 833-834; *see* Prob. Code § 9002(b). "In the absence of such presentation, an action on the [claim] is barred." *Id*. at 834; *see* Prob. Code § 9002(b).

Plaintiff does not dispute that Plaintiff has not followed the procedure specified in Code of Civil Procedure section 377.40. Rather, Plaintiff argues it is permitted to continue the action against Defendant as decedent's surviving spouse under Probate Code section 13550. The Court is not persuaded.

Probate Code section 13550 states, "[e]xcept as provided in Sections 11446, 13552, 13553, and 13554, upon the death of a married person, the surviving spouse is personally liable for the debts of the deceased spouse chargeable against the property described in Section 13551 to the extent provided in Section 13551." "Subject to certain exceptions and limitations, Probate Code sections 13550 and 13551 make a surviving spouse personally liable for the debts of the deceased spouse, but only to the extent such debts are chargeable against the community property of both spouses and the separate property of the deceased spouse passing to the surviving spouse *without formal probate administration*." *Collection Bureau of San Jose v. Rumsey* (2000) 24 Cal.4th 301, 306 (italics added). "[A] surviving spouse who receives a decedent's property *without administration* becomes personally liable for decedent's debts chargeable against such property, within limits." *Estate of Bonanno* (2008) 165 Cal.App.4th 7, 20 (citing Prob. Code § 13550, *et seq*.)(italics added); *see also Spurr v. Spurr* (1979) 88 Cal.App.3d 614, 619 ("In effect, [Probate Code]section 205 [predecessor to Probate Code section 13550] authorizes an action against the surviving spouse, *in lieu of an action against the estate*, where the deceased spouse's assets *have not been subjected to formal probate administration*.") (emphasis added).

At bar, Defendant has established the estate has commenced probate administration and there is no dispute Plaintiff has not submitted a creditor's claim. RJN, H-K. Now, Plaintiff's opposition attempts to reframe disputed tort damages as an attempt to recover a debt. That is not tenable. as the action concerns solely a claim for damages arising from alleged torts. Plaintiff provides no persuasive authority suggesting that "debt" as used in Probate Code section 13550 is intended to include disputed claims for tort damages particularly when formal probate administration has commenced.

CFPA failed to file a timely and proper creditor's claim to the administrator of the estate. As such, its action is now barred. Plaintiff has failed to establish that Probate Code section 13550 *et seq*., provides a basis for Plaintiff to continue this pending action against Decedent's surviving spouse. The Court likewise is not persuaded that there is a reasonable possibility the defect at issue can be remedied by amendment.

Defendant's motion for judgment on the pleadings is granted without leave to amend.

5. CU0002229 Krystal Ukoh, et al. vs. State of California, et al.

Plaintiffs' motion to compel further responses to request for production of documents is denied. However, Defendant Caltrans shall amend its responses to be code-compliant as described in the Joint Status Report within ten (10) days.

<u>Legal Standard</u>

An agreement to comply with a document demand must state whether the responding party will be complying "in whole or in part." Code Civ. Proc., § 2031.220. In addition, the response must indicate whether any documents are being withheld based on an asserted objection. Code Civ. Proc., § 2031.240(b). "A representation of inability to comply with the particular demand for inspection, copying, testing, or sampling shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand." Code Civ. Proc., § 2031.230. "This statement shall also [,among other things,] specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party." *Ibid.*

On receipt of the response to a document demand, the demanding party may move to compel a further response if any of the following apply: (1) a statement of compliance is incomplete; (2) a representation of inability to comply is inadequate, incomplete or evasive; (3) an objection is without merit or too general. Code Civ. Proc., § 2031.310(a).

The motion must set forth specific facts showing good cause justifying the discovery, and it must be accompanied by a separate statement. Code Civ. Proc., § 2031.310(b); Cal. Rules of Court, rule 3.1345. Absent a claim of privilege or attorney work product, the burden of showing good cause may be met by a fact-specific showing of relevance. Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2026) ¶ 8:1495.6. To establish "good cause," the burden is on the moving party to show both: relevance to the subject matter (e.g., how the information in the documents would tend to prove or disprove some issue in the case); and specific facts justifying discovery (*e.g.*, why such information is necessary for trial preparation or to prevent surprise at trial). *Glenfed Develop. Corp. v. Superior Court* (1997) 53 Cal.App.4th 1113, 1117. "If 'good cause' is shown by the moving party, the burden is then on the responding party to justify any objections made to document disclosure." Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2026) ¶ 8:1496.

Analysis

Request for Production No. 1: Plaintiffs state in the Joint Status Report the issue is resolved subject to the reservation of Plaintiffs' right to seek an order compelling production of additional design or discretionary-approval documents should deposition testimony establish that such documents exist. This request, thus, is denied, as moot.

RFP No. 20: Plaintiffs argue the geographic scope produced by Defendant is too narrow, and Defendant should be compelled to produce a total range of 2.25 miles. The Court disagrees.

Plaintiffs argue the range includes intersections that have been modified within the last ten years, and thus may have had a similar configuration to the accident location in the past. In opposition, Caltrans submits a declaration stating the extended area requested "are not the same as, nor substantially similar to, the subject location…. These intersections do not exhibit roadway features, lane configurations, or directional orientation similar to those of the subject location, and therefore are not substantially similar." Wong Decl., ¶ 7. In support of its request, Plaintiff argues Caltrans "spent approximately $113.85 million on corridor improvements". Pltf. Am. Sept. Stmt., 3:19-20. However, Plaintiffs only argue, without proof, the extended range may have included substantially similar areas in the past. On balance, Plaintiffs have failed to persuasively show that the request is reasonably calculated to lead to the discovery of admissible evidence. No good cause has been established to justify further discovery.

RFP No. 25: Plaintiffs again argue Caltrans limitation of the geographic scope is too narrow, and Caltrans should be compelled to produce a report that covers the requested range. The Court disagrees.

As discussed above, Plaintiffs have failed to show the request is reasonably calculated to lead to the discovery of admissible evidence. As such, the request for further production is denied.

6. CU0002301 Jill Wichmann vs. Granite Wellness Centers

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

7. CU0002546 Joann Pennington et al vs. Tahoe Forest Hospital District, et al.

Petitioners' petition for relief from Government Code section 945.4 pursuant to Government Code Section 946.6 is denied.

"A copy of [a] petition [under Code of Civil Procedure section 946.6] and a written notice of the time and place of hearing shall be served before the hearing as prescribed by subdivision (b) of Section 1005 of the Code of Civil Procedure on … the clerk or secretary or board of the local public entity, if the respondent is a local public entity...." Gov. Code, § 946.6(d)(1). In addition, service of the petition must be "effected in the same manner as service of summons in order to give the court jurisdiction to enter an order against the public entity." *Thierfeldt v. Marin Hosp. Dist.* (1973) 35 Cal.App.3d 186, 200.

At bar, the Petition was served by mail, with no returned acknowledgment of service, on: Tahoe Forest Hospital District; County of Nevada, Clerk of the Board of Supervisors; Tahoe Forest Hospital District, Director of Quality and Regulations. *See* 7/20/26 POS. There is no indication the Petition was served on the "clerk or secretary or board of the local public entity" in accordance with the requirements of Code of Civil Procedure section 1005. As such, the Court lacks jurisdiction to consider the petition.

8. CU0001544 Caitlin Peters vs. Cara Krpalek, et al.

Defendant Jiri Krpalek's demurrer to the complaint is sustained without leave to amend as to the seventh cause of action and is sustained with leave to amend as to the first through sixth causes of action. Plaintiff is granted leave to amend within ten (10) days of notice of this Court's order.

<u>Untimely Opposition</u>

Plaintiff filed an untimely opposition on September 16, 2026. There is no proof of service suggesting it was served on Defendant Jiri Krapalek. The Court, in the exercise of its discretion, declines to consider this untimely and seemingly unserved opposition. *See, e.g., Bozzi v. Nordstrom, Inc.* (2010) 186 Cal.App.4th 755, 765 ("A trial court has broad discretion under rule 3.1300(d) of the Rules of Court to refuse to consider papers served and filed beyond the [applicable] deadline without a prior court order finding good cause for late submission."); *Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543 ("Pro. per. litigants are held to the same standards as attorneys.").

<u>Legal Standard on Demurrer</u>

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

All Causes of Action

Defendant argues the complaint fails to specify what Defendant Krpalek allegedly did, when, or how it caused harm to Plaintiff. Defendant also argues the complaint includes conclusory statements but fails to provide any factual or evidentiary basis connecting him to any wrongful act. The Court agrees.

At bar, the Complaint alleges:

> On or about May 31, 2024, Defendant unlawfully took possession of Plaintiff's Emotional Support Animal (ESA), a purebred Boston Terrier named Beau, knowing that Beau belonged to Plaintiff. Despite Plaintiff's extensive efforts to recover Beau, Defendant refused to return him, causing Plaintiff significant emotional distress and financial hardship. Defendant provided false information to law enforcement and animal control officials, obstructing the investigation and hindering the recovery of Beau.

Complaint, 2:7-11.

At bar, there is no distinction made in the Complaint between Defendants Jiri and Cara Krpalek. The Complaint fails to adequately identify which defendant performed the conduct alleged. As such, the demurrer is sustained as to all causes of action on this ground alone. There is a possibility that Plaintiff can remedy this defect.

First Cause of Action – Grand Theft

As to the first cause of action for grand theft pursuant to Penal Code section 487, the essential elements are "the taking of personal property [valued at more than $950] from the owner ... into the possession of the [tortfeasor] without the consent of the owner or under a claim of right, [and] the asportation of the subject matter [with] the specific intent to deprive the owner of his property wholly and permanently." *People v. Whitmer* (2014) 230 Cal.App.4th 906, 922; *see* CALCRIM 1800, 1801; see also *Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1224 ("Civil actions lie in favor of crime victims. Violation of a criminal statute embodying a public policy is generally actionable even though no specific civil remedy is provided in the criminal statute. Any injured member of the public for whose benefit the statute is enacted may bring an action. ")(citations omitted).

At bar, the complaint alleges that Defendants took possession of the dog at issue and did not return the same. These allegations alone are insufficient. There is the possibility Plaintiff can rectify these defects; thus, the Court will allow an opportunity to amend this claim.

Second Cause of Action – Intentional Inflection of Emotional Distress

To state a cause of action for intentional infliction of emotional distress a plaintiff must show: (1) outrageous conduct by the defendant; (2) the defendant's intention of causing or reckless disregard of the probability of causing emotional distress; (3) the plaintiff's suffering severe or extreme emotional distress; and (4) actual and proximate causation of the emotional distress by the defendant's outrageous conduct. *Yau v. Santa Margarita Ford, Inc.* (2014) 229 Cal.App.4th 144, 160.

At bar, the complaint alleges the conduct described above "was outrageous, intentional, and done with reckless disregard for Plaintiff's emotional well-being." Complaint, 2:23-24. These allegations are insufficient. There is the possibility Plaintiff can rectify these defects; thus, the Court will allow an opportunity to amend this claim.

Third Cause of Action – Misrepresentation/Fraud

" 'One who fraudulently makes a misrepresentation of fact ... for the purpose of inducing another to act or to refrain from action in reliance upon it, is subject to liability to the other in deceit for pecuniary loss caused to him by his justifiable reliance upon the misrepresentation.' ". *Lovejoy v. AT&T Corp.* (2001) 92 Cal.App.4th 85, 92-93. "The elements of fraud, which give rise to the 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." *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638. "In California, fraud must be pled specifically; general and conclusory allegations do not suffice. … [¶] This particularity requirement necessitates pleading facts which 'show how, when, where, to whom, and by what means the representations were tendered.' " *Id*. at 645 (original italics, citations and quotation marks omitted). In addition, "[e]very element of a fraud cause of action must be specifically pleaded. This pleading requirement of specificity applies not only to the alleged misrepresentation, but also to the elements of causation and damage." *Moncada v. West Coast Quartz Corp.* (2013) 221 Cal. App. 4th 768, 776.

At bar, the complaint alleges "Defendant knowingly provided false information to … officials to mislead the investigation." 3:1-2. These allegations are insufficient. There is the possibility Plaintiff can rectify these defects; thus, the Court will allow an opportunity to amend this claim.

Fourth Cause of Action – Conversion

"Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages." *Lee v. Hanley* (2015) 61 Cal.4th 1225, 1240. "To prove a cause of action for conversion, the plaintiff must show the defendant acted intentionally to wrongfully dispose of the property of another." *Duke v. Superior Court* (2017) 18 Cal.App.5th 490, 508. "The tort of conversion applies to personal property, not real property." *Salma v. Capon* (2008) 161 Cal.App.4th 1275, 1295.

At bar, the complaint alleges "Defendant wrongfully exercised control over Plaintiff's property, depriving Plaintiff of the use and enjoyment of Beau." Complaint, 3:7-8. These allegations are insufficient. There is the possibility Plaintiff can rectify these defects; thus, the Court will allow an opportunity to amend this claim.

Fifth Cause of Action – Obstruction of Justice

As to the fifth cause of action for obstruction of justice, Plaintiff offers no authority under the common law or under statutory law to support her theory for obstruction of justice. She solely alleges that that "Defendant made false statements to law enforcement regarding Beau's whereabouts, obstructing the investigation and delaying the recovery of Plaintiff's ESA." As noted previously, sometimes "[c]ivil actions lie in favor of crime victims" and an "injured member of the public for whose benefit the statute is enacted may bring an action. " *Angie M.,* 37 Cal.App.4th at 1224. It is not clear, however, based on the facts and theories alleged, that this is a situation where a civil action lies. The demurrer is sustained. It is not wholly clear Plaintiff can rectify this defect. Given the liberality associated with amendments, the Court will permit the same.

<u>Sixth Cause of Action – Trespass to Chattels</u>

> Trespass to chattel, although seldom employed as a tort theory in California. . . , lies where an intentional interference with the possession of personal property has proximately caused injury. Prosser notes trespass to chattel has evolved considerably from its original common law application - concerning the asportation of another's tangible property - to include even the unauthorized use of personal property: 'Its chief importance now,' according to Prosser, 'is that there may be recovery . . . for interferences with the possession of chattels which are not sufficiently important to be classed as conversion, and so to compel the defendant to pay the full value of the thing with which he has interfered. Trespass to chattels survives today, in other words, largely as a little brother of conversion.'

Thrifty-Tel, Inc. v. Bezenek (1996) 46 Cal.App.4th1559, 1566-1567.

"Where the conduct complained of does not amount to a substantial interference with possession or the right thereto, but consists of intermeddling with or use of or damages to the personal property, the owner has a cause of action for trespasser case, and may recover only the actual damages suffered by reason of the impairment of the property or the loss of its use." *Zaslow v. Kroenert* (1946) 29 Cal.2d 541, 551.

At bar, the complaint alleges "Defendant's wrongful taking and retention of Beau constituted a trespass to Plaintiff's personal property, causing harm to Plaintiff." Complaint, 3:18-19. These allegations are insufficient. Again, there is the possibility Plaintiff can rectify these defects; thus, the Court will allow an opportunity to amend this claim.

<u>Seventh Cause of Action – Injunctive Relief</u>

"Injunctive relief is a remedy, not a cause of action." *Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 65. "Although [an] order sustaining [a] demurrer [is] proper because an injunction is not a cause of action, plaintiff[] may still obtain injunctive relief if they prevail on a cause of action." Id. at 65-66. Therefore, the Court sustains the demurrer as to this separate cause of action without leave to amend.

9. CU0002398 Cheryl A Zook vs. Monte J. Smith, DDS

Defendant Monte J. Smith D.D.S.' demurrer to Plaintiff's second amended complaint ("SAC") is sustained with leave to amend. Plaintiff shall serve and file an amended complaint within ten (10) days of notice of this Court's order.

Legal Standard on Demurrer

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.

Second Cause of Action: Breach of Contract

Defendant argues Plaintiff's second cause of action fails to state facts sufficient to constitute a cause of action because it fails to cure the deficiencies noted in the ruling sustaining Defendant's prior demurrer. The Court disagrees.

The elements of a breach of contract cause of action are the existence of the contract, performance by the plaintiff or excuse for nonperformance, breach by the defendant and resulting damages. *First Commercial Mortgage Co. v. Reece* (2001) 89 Cal.App.4th 731, 745. However, the scope of a patient's recovery for breach of contract against a doctor, or as here, a dentist, is more limited.

"[A] doctor may be held liable on a theory of breach of contract where he has clearly and unequivocally warranted that a course of treatment recommended by him will, inevitably, produce a certain result." *Pulvers v. Kaiser Foundation Health Plan, Inc.* (1979) 99 Cal.App.3d 560, 564–565; *accord McKinney v. Nash* (1981) 120 Cal.App.3d 428, 442 ("To recover for breach of warranty or contract in a medical malpractice case, there must be proof of an express contract by which the physician clearly promises a particular result and the patient consents to treatment in reliance on that promise"); *Depenbrok v. Kaiser Foundation Health Plan, Inc.* (1978) 79 Cal.App.3d 167, 171 (where "a surgeon has clearly promised a particular result (as distinguished from a mere generalized statement that the result will be good), and ... the patient consented to an operation or other procedure in reliance on that promise, there can be recovery on the theory of ... breach of contract," fn. omitted). Additionally, to sufficiently allege breach of contract, the complaint must indicate on its face whether the contract is written, oral, or implied by conduct. Code Civ. Proc. § 430.10(g).

Uniformly, courts have held that "an action against a doctor arising out of his negligent treatment of a patient is an action sounding in tort and not one based upon a contract." *Bellah v. Greenson* (1978) 81 Cal.App.3d 614, 625; *accord Stafford v. Shultz* (1954) 42 Cal.2d 767, 775 ("an action by a patient against a physician for injuries sustained by the former, by reason of the negligent or unskilled treatment of the latter, is an action sounding in tort and not upon a contract") (citations omitted); *Huysman v. Kirsch* (1936) 6 Cal.2d 302, 306 (same).

At bar, the SAC states, "Prior to commencing cosmetic dental treatment, Plaintiff and Defendants entered into an oral and/or implied-in-fact agreement for cosmetic dental treatment…." SAC, 7:17-18. The FAC alleges "Defendants provided Plaintiff with digital Smile Vision imagery generated using photographs of Plaintiff depicting the *anticipated* cosmetic result." SAC, 7:22-23 (emphasis added). "Defendants represented that the completed treatment would provide an aesthetic result consistent with the Smile Vision imagery." SAC, 8:4-5. The SAC also alleges that Plaintiff relied on the representations. SAC, 8:7-10. These allegations are sufficient to state a contract action for a purported promised result. The demurrer as to this claim is overruled.

<u>Third Cause of Action – Fraud and Misrepresentation</u>

Defendant contends Plaintiff failed to allege all the required elements of fraud. The Court agrees.

" 'One who fraudulently makes a misrepresentation of fact ... for the purpose of inducing another to act or to refrain from action in reliance upon it, is subject to liability to the other in deceit for pecuniary loss caused to him by his justifiable reliance upon the misrepresentation.' " *Lovejoy v. AT&T Corp.* (2001) 92 Cal.App.4th 85, 92-93. "The elements of fraud, which give rise to the 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." *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638. "In California, fraud must be pled specifically; general and conclusory allegations do not suffice. … [¶] This particularity requirement necessitates pleading facts which 'show how, when, where, to whom, and by what means the representations were tendered.' " *Id.* at 645 (original italics, citations and quotation marks omitted). In addition, "[e]very element of a fraud cause of action must be specifically pleaded. This pleading requirement of specificity applies not only to the alleged misrepresentation, but also to the elements of causation and damage." *Moncada v. West Coast Quartz Corp.* (2013) 221 Cal. App. 4th 768, 776.

At bar, the SAC alleges "Defendants represented to Plaintiff that the completed treatment would achieve an aesthetic result consistent with the Smile Vision imagery…. At the time these representations were made, Defendants knew or should have known…" different aesthetic results could occur. SAC, 9:13-18. It further alleges Plaintiff identified concerns and relied on

Defendants to address her concerns in completing the restorations, and that Plaintiff reasonably relied on Defendants representations when proceeding with the treatment. 9:20-10:2.

These allegations are insufficient. Plaintiff has failed to plead facts which show how, when, where, to whom, and by what means the representations were tendered. She also fails to allege an intent to defraud. The demurrer as to the third cause of action is sustained. The Court finds there is possibility the defect can be corrected by amendment, so leave to amend is granted.

<u>Fourth Cause of Action – Concealment</u>

Defendant argues the fourth cause of action for fraudulent concealment again fails to identify who engaged in what alleged concealment, when the alleged duty to disclose arose, when the alleged concealment occurred, and sufficient facts showing defendants intentionally concealed information with the intent to defraud plaintiff. The Court agrees.

The elements for fraudulent concealment are: (1) the defendant must have concealed or suppressed a material fact; (2) the defendant must have been under a duty to disclose the fact to the plaintiff; (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff; (4) the plaintiff must have been unaware of other fact and would not have acted as he did if he had known of the concealed or suppressed fact; and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage. *Lovejoy*, 119 Cal.App.4th at 157-158.

At bar, the SAC alleges, "Defendants presented Plaintiff with digital Smile Vision imagery generated using photographs of Plaintiff depicting the anticipated cosmetic outcome of the proposed treatment…. The Smile Vision imagery was material to Plaintiff's decision to proceed with treatment…. Defendants did not inform Plaintiff that the Smile Vision imagery would not be retained, would become unavailable, or should be downloaded or preserved for future reference…. Plaintiff notified Defendants' office that the link was not functioning and requested access. Plaintiff was subsequently informed that the imagery had not been retained and was no longer available." SAC, 10:21-11:15.

Here, again, Plaintiff has not sufficiently alleged all elements of a cause of action for fraud by concealment. As such, the demurrer as to the fourth cause of action is sustained. The Court finds there is possibility the defect can be corrected by amendment; accordingly, leave to amend is granted.

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The Court is satisfied, based on its review of the entire record, that the premises must be vacated and all items of personal property removed in order to facilitate the most effective marketing and sale of the property. Pursuant to its statutory and equitable authority, the Court orders Defendant and any other residents on the premises to vacate the premises and to remove all of their personal belongings from the premises within thirty days, that is, by no later than October 18, 2026, noon. Judgment was entered in February 2024 and Defendant has had in excess of two years to prepare a departure from the premises. The premises *shall* be vacated by the deadline noted *without fail*.