January 30, 2026, Civil Law & Motion Tentative Rulings

1. CL0003236 Ali Payravi vs. Lascoe John

Defendants John J. Lascoe's and Pamela A. Lascoe's motion to set aside default and default judgment is denied.

Defendants again argue Plaintiff has failed to establish effective service of the summons and complaint on Defendants, and that based on the service by posting the summons on December 17, 2025, they should have had until January 12, 2026 to file their responsive pleading. The Court disagrees.

Code of Civil Procedure section 415.20(b) states:

> If a copy of the summons and complaint cannot with reasonable diligence be personally delivered to the person to be served, as specified in Section 416.60, 416.70, 416.80, or 416.90, a summons may be served by leaving a copy of the summons and complaint at the person's dwelling house, usual place of abode, usual place of business, or usual mailing address other than a United States Postal Service post office box, in the presence of a competent member of the household or a person apparently in charge of his or her office, place of business, or usual mailing address other than a United States Postal Service post office box, at least 18 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of the summons and of the complaint by first-class mail, postage prepaid to the person to be served at the place where a copy of the summons and complaint were left. Service of a summons in this manner is deemed complete on the 10th day after the mailing.

Code Civ. Proc. § 415.20; *see id.* Comment for subd. (b) ("The papers must be left in the presence of a competent member of the household or a person apparently in charge of such business, as to case may be, who must be at least 18 years of age and be informed of the general nature of the papers. In addition, a copy of the papers thereafter must be mailed (by ordinary first-class mail, postage prepaid) to the person to be served at the place of delivery.")

While "the phrase "apparently in charge" cannot be read to validate service on any employee found at a business location," (*Chinese Theater, LLC v. Starline Tours USA, Inc.* (2025) 115 Cal.App.5th 1048, 1059) a "gate guard…must be considered a competent member of the household and the person apparently in charge. [The defendants] authorized the guard to control access to them and their residence. We therefore assume the relationship between [the defendants] and the guard ensures delivery of process." *Bein v. Brechtel-Jochim Group, Inc.* (1992), 6 Cal.App. 4th 1387, 1393.

In order to consider if a default judgment over a defendant's objection that service did not comply with statutory requirements, "a finding of substantial compliance can only be sustained (1) where the record shows partial or colorable compliance with the requirement on which the objection is predicated; (2) the service relied upon by plaintiff imparted actual notice to the defendant that the suit was pending and that he was bound to defend; and (3) the manner and

objective circumstances of service were such as to make it highly likely that it would impart such notice." *American Express Centurion Bank v. Zara* (2011) 199 Ca.App.4th 383, 391. A "technical defect" will not invalidate service if the defendant received actual notice of the action. *Pasadena Medi-Center Associates v. Superior Court* (1973) 9 Cal.3d 773, 778. "[S]ervice of process should be liberally construed to effectuate service and uphold the jurisdiction of the court if actual notice has been received by the defendant." *Summers v. McClanahan* (2006) 140 Cal.App.4th 403, 410-411. However, actual notice alone "is not a substitute for proper service". *American Express Centurion Bank, supra*, at 392. Service of process based on actual notice will not be upheld where there is a complete failure to comply with the statutory requirements. *Summers, supra*, at 414. Compliance with statutory procedures is essential to establish personal jurisdiction, and so "a default judgment entered against a defendant who was not served…in the manner prescribed by statute is void." *Dill v. Berquist Construction* (1994) 24 Cal.App.4th 1426, 1444.

When a motion to vacate a judgement is based on lack of valid service, it is the plaintiff's burden to establish proper service. *Dill, supra,* 24 Cal.App.4th 1t 1441. At bar, Plaintiff filed a proof of service by substituted service on November 25, 2025. The POS states the documents were left with "security guard at front gate. Male named Russ," and that the documents were thereafter mailed to the person to be served at the place the copies were left. 11/25/2025 POS. The attached declaration states Plaintiff's counsel attempted to gain access to the community to personally serve Defendants but was denied entry by the on-duty security guard, and that he "effected substitute service by leaving the documents with an adult male, 45-55 years of age, 250-300 pounds, security guard who was in uniform and stationed at the security guard check-in for the community who identified himself as Russ," and that "at the time of service, Russ was informed of the content thereof, the names of the defendants, and that the documents were to be delivered ot the defendants at 11573 Inverness Drive, Auburn, California, 95602." Decl. Due Diligence, ¶¶ 3-5. Plaintiff was also granted an order to effect service by posting the summons and complaint on good cause shown on December 15, 2025. 12/15/25 Order to Post.

A process server's return may be impeached by contradictory evidence. *American Express, supra*, 199 Cal.4th at 390. Plaintiff's declaration sets forth facts about where the security guard was encountered on the gated community property (the security guard check-in for the community), his job title (in uniform and stationed at the security guard check-in) and relationship to Plaintiffs (on duty security personnel at the security guard check-in). Decl. Due Diligence ¶¶ 2-4. Plaintiff has not offered any contrary evidence undermining the declaration. See *Chinese Theater, LLC, supra,* 115 Cal.App.5th at 1060.

Based on Defendant's moving papers stating they were "aware of the service by posting", and Plaintiff's declaration showing substantial compliance with the relevant statutory requirements for substituted service, as discussed above, the entry of default and judgment is upheld.

2. CU0001345 Gutierrez Penn Valley Enterprises, Inc., a California corporation vs. D&L Siding Inc., a California corporation et al

The unopposed motions to be relieved as counsel for Defendants D&L Siding Inc., Louis Kolb, and Lou Ann Kolb are granted on the condition that counsel serve dismissed party The North River Insurance Company with the motion and signed order.

Legal Standard

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).

Discussion

Defendants' counsel has submitted all of the mandatory judicial counsel forms. All substantive and procedural requirements have been satisfied as to the existing parties in the case. Good cause has been shown for the relief requested.

The Court notes Defendant The North River Insurance Company appeared in the case on June 3, 2024, and was dismissed on January 2, 2025, but service of the motions to be relieved were not served upon it.

The motion to be relieved as counsel for Defendants is granted, on the condition that counsel serve dismissed party The North River Insurance Company with the motion and signed order.

3. CU0001723 UMPQUA BANK, as Successor by Merger to Columbia State Bank, an Oregon State Chartered Bank vs. Joseph A. Miller, DMD, Inc., a California Corporation et al

- **Receiver's Motion to Approve Final Disposition of Assets and Discharge**

Receiver Amplēo Turnaround & Restructuring, LLC d/b/a Amplēo's (the "Receiver") motion to approve final disposition of assets, terminate the receivership, discharge the receiver, and include the additional protective language found in Exhibit C to the supplemental briefing 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 the

grant of motions to sell identifiable assets, as well as the Court approved sale of 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, which the Receiver has categorized as 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 Ampleo 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.

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

Additional Protective Language Requested by Receiver

The Court finds the additional protective language requested by the Receiver is appropriate. As an agent and officer of the court, and under the control and supervision of the court, Receiver has conducted its duties in accordance with the court's direction. "[B]efore filing a lawsuit against officers appointed or approved by the court", a party must obtain leave from the court that appointed or approved them. *Barton v. Barbour* (1881) 104 U.S. 126. Such doctrine serves to protect receivers from the burden of defending against suits by litigants disappointed by actions made on the court's behalf. *Akhlaghpour v. Orantes* (2022) 86 Ca.App.5th 232, 238-239. Moreover, the litigation privilege insulates the Receiver pursuant to Civil Code § 47. Additionally, United States district courts may not directly review a state court decision unless Congress has specifically authorized such relief. *Rooker v. Fidelity Trust Co.* (1923) 263 U.S.

413. Therefore, based on Dr. Miller's counsel's statements he would be suing the Receiver again following discharge, the protective language requested is warranted.

Conclusion

Based on the foregoing, the Court grants the Receiver's motion to (1) approve final disposition of assets; (2) terminate the receivership; (3) discharge the receiver; and (4) include the additional protective language found in Exhibit C attached to the supplemental brief.

- **Receiver's Motion for Protective Order**

On its own motion, the Court continues the hearing on Receiver's motion for a protective order to March 6, 2026 to allow time for proper notice and sufficient briefing time pursuant to Code of Civil Procedures § 1005(b).

4. CU0002132 MICHAEL SMITH vs. GENERAL MOTORS, LLC, a Limited Liability Company

Defendant's motion for compliance and sanctions is dropped as moot due to the request for dismissal filed by Plaintiff on January 13, 2026.

5. CU0002418 Ehlers, Andrew v. Murray, Brandon et al

Defendant's motion to compel mediation and stay proceedings pending mediation is denied without prejudice.

A party seeking to compel arbitration pursuant to CCP § 1281.2 must "plead and prove a prior demand for arbitration under the parties' arbitration agreement and a refusal to arbitrate under the agreement." *Mansouri v. Sup. Ct.* (2010) 181 Cal.App.4th 633, 640–641. At bar, Defendant argues plaintiff failed to submit the dispute to mediation prior to litigation as required by the master construction agreement. However, Defendant fails to plead and prove a prior demand for arbitration under the agreement and Plaintiff's refusal to arbitrate. Therefore, the motion is denied.

6. CU0001696 GEORGE WATSON vs. GENERAL MOTORS, LLC

Defendant General Motors LLC's demurrer to Plaintiff's Second Amended Complaint ("SAC") is sustained with leave to amend as to the fifth cause of action. The demurrer was otherwise overruled previously in this court's ruling on October 3, 2025 on the demurrer to the First Amended Complaint ("FAC"). Defendant's motion to strike the prayer for punitive damages is granted with leave to amend. Plaintiff shall serve and file an amended complaint within ten (10) days of this court's order.

The Court notes both parties' papers are nearly identical to those filed in the motions to the FAC. Thus, the Court admonishes the parties for a lack of attentiveness to its prior ruling, but will allow one more opportunity for Plaintiff to correct the deficiencies noted below.

Demurrer

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.

Facts that may be inferred from those alleged are also properly taken as true. *Harvey v. City of Holtville* (1969) 271 Cal.App.2d 816, 819. 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. Rather, the court must construe the complaint liberally by drawing reasonable inferences from the facts pleaded. *Wilner v. Sunset Life Ins. Co.* (2000) 78 Cal.App.4th 952, 958. Contentions, deductions, and conclusions of law, however, are not presumed as true. *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.

First through Fourth Causes of Action

Defendant again demurs to the first, second, third, and fourth causes of action of plaintiff's SAC, ignoring the court's ruling overruling the same arguments as to the FAC adopted on October 3, 2025 in the demurrer to the FAC. Defendant continues to argue the first through fourth causes of action are barred by recent amendments to the Song-Beverly Act contained in Code of Civil Procedure §§ 871.20 *et seq*. The court reiterates that, as noted by defendant's own demurrer, such amendment was not effective until January 1, 2025. *See* Code Civ. Proc. § 871.21 ("[A]n action covered by section 871.20 shall not be brought later than six years after the date of original delivery of the motor vehicle.") (Added by Stats. 2024, Ch. 938, Sec. 1. (AB 1755), effective January 1, 2025.) This action was filed on October 31, 2024. Defendant has made no showing that the Legislature intended the statute of repose to be applied retroactively. Therefore, the statute of repose does not apply to this action filed before the effective date of the new law. Defendant's demurrer to the first, second, third, and fourth causes of action remains overruled.

Fifth Cause of Action

Three-Year Statute of Limitations

Defendant again argues that the fifth cause of action, as alleged, is barred by Code of Civil Procedure section 338(d) which imposes a three-year statute of limitations on fraud actions. The court again agrees.

Under Code of Civil Procedure § 430.30(a), when any ground for an objection to a complaint appears on the face of the complaint, including the statute of limitations for a cause of action, it

may be raised in a demurrer. *Cavey v. Tualla* (2021) 69 Cal.App.5th 310, 325. Generally, a cause of action accrues at the time all of its elements are complete. *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806-807 (Fox). An exception to this rule is the "discovery rule," which postpones the accrual of a cause of action until the time a plaintiff has discovered, or has reason to discover, the cause of action. *Id.* In order to plead delayed discovery of the fraudulent concealment sufficient to permit delayed accrual of the cause of action, a plaintiff whose cause of action would be barred without the discovery rule on its face must specifically plead facts to show both the time and manner of discovery, as well as his inability to have made earlier discovery despite his reasonable diligence. *Fox*, 35 Cal.4th at 808.

At bar, the SAC adds no new specific facts sufficient to show why the discovery rule is inapplicable. As in the FAC, the SAC sets forth dates, miles on the subject vehicle, and when the vehicle was taken to defendant's authorized repair facility for warranty repairs. Those dates include: September 15, 2016, November 6, 2018, May 22, 2020, January 9, 2024, February 11, 2025, and April 1, 2025. FAC ¶¶ 21-26. While plaintiff concludes "[d]efendant was under a continuous duty to disclose to plaintiff the true character, quality, and nature of the Vehicles suffering from the defects," he also states he "did not discover…facts that would have caused a reasonable person to suspect that Defendants had concealed information about the defects" until shortly before the filing of the SAC. FAC ¶¶ 35-36. Plaintiff continues to fail to to plead any specific facts showing the manner of his discovery and why he was unable to have made earlier discovery. Therefore, he has not pleaded sufficient, specific facts showing why the discovery rule is applicable. The demurrer is, again sustained. In opposition, Plaintiff argues "he could not have discovered Defendant's breaches of warranty until the Subject Vehicle's defects persisted after the expiration of the warranty." Opposition, 4:11-12. Therefore, the Court finds the defect is subject to potential remedy, and will allow Plaintiff leave to amend the SAC to set forth facts showing the manner of his discovery and what prevented him from earlier discovery.

Pleading with Specificity and Transactional Relationship Between Plaintiff and Defendant

In its prior ruling on the demurrer to the FAC, the court found the FAC sufficiently pled a count for fraudulent concealment and an adequate transactional relationship between plaintiff and defendant. Thus, the court finds no need to discuss these arguments again.

Motion to Strike

Defendant again moves to strike the prayer for punitive damages from the SAC arguing they are unauthorized under the Song-Beverly Consumer Warranty Act ("SBA" or "the Act"), *citing Troensegaard v. Silvercrest Industries, Inc.* (1985) 175 Cal.App.3d 218, 228, and unsupported by sufficient allegations under Civil Code section 3294. The court again agrees in part.

"The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: (a) Strike out any irrelevant, false, or improper matter inserted in any pleading." Code Civ. Proc. § 436. "Irrelevant matter" includes a "demand for judgment requesting relief not supported by the allegations of the complaint." Code Civ. Proc. § 431.10(b)(3), (c). "The grounds for a motion to strike shall appear on the face of the challenged

pleading or from any matter of which the court is required to take judicial notice." Code Civ. Proc. § 437(a).

"[P]laintiffs are not prohibited from receiving both an award for punitive damages based on presale fraudulent inducement and a postsale Song-Beverly Act penalty based on willful noncompliance" premised on "a pattern and practice of misconduct." *Anderson v. Ford Motor Co.* (2022) 74 Cal.App.5th 946, 971.

Such is the case here. In the SAC, plaintiff seeks punitive damage based on presale conduct and a civil penalty based on post-sale willful noncompliance.

Punitive damages are awardable in an action for a breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud or malice. Civ. Code § 3294 (a). If the facts and circumstances are not set out clearly, concisely, and with sufficient particularity to apprise the opposite party of what is called on to answer, the pleading is insufficient to support a claim for punitive damages. *Lehto v. Underground Const. Co.* (1977) 69 Cal.App.3d 933, 944. Moreover, a corporate employer may be liable for punitive damages only if the knowledge, authorization, ratification or act of wrongful conduct was on the part of an officer, director or managing agent of the corporation. *Grieves v. Superior Court* (1984) 157 Cal.App.3d l59, 167. While the SAC asserts "Defendant GM and its directors, officers, employees, affiliates, and/or agents nevertheless concealed and failed to disclose the defective nature of the Vehicle," such is a conclusory statement devoid of any specific facts. SAC, ¶ 71.

At bar, the SAC continues to not sufficiently allege facts to support punitive damages against a corporate entity. This defect can potentially be remedied. Accordingly, the motion to strike the prayer for punitive damage is granted with leave to amend.

7. CU0001237 Peter Lindley vs. Regional Emergency Medical Serv. Authority, et al

On the court's motion, defendant's May 30, 2025, motion for adjudication of stipulated legal issues is continued until March 27, 2025, at 10:00 a.m., in Department 6.

The Court appreciates the supplemental briefing previously provided. Further briefing remains necessary as to the Emergency Ambulance Employee Safety and Preparedness Act (EAESPA).

As noted by the litigants, the EAESPA applies to all "emergency ambulance employees" defined as "a person" who is "an emergency medical technician (EMT), dispatcher, paramedic, or other licensed or certified ambulance transport personnel who contributes to the delivery of *ambulance services*", Lab. Code § 888(a)(1), and is "employed by an emergency ambulance provider." Lab. Code § 888(a)(2) (italics added). The EAESPA defines "emergency ambulance provider" as "an employer that provides *ambulance services*, but not including the state, or any political subdivision thereof, in its capacity as the direct employer of a person meeting the description contained in paragraph (1) of subdivision (a)." Lab. Code § 888(b) (italics added).

What additional dictionary definitions are available for the relevant time (*i.e.*, 2018) with respect to the following term: ambulance, services. Some dictionaries to consider include, without

limitation: The Oxford English Dictionary, The Cambridge Dictionary, The Merriam-Webster's Dictionary, The American Heritage Dictionary, and The American Dictionary of the English Language. Please include hard copies of the same and citations that indicate how the definitions can be referenced electronically.

The parties shall file simultaneous briefs of no more than three pages no later than February 27, 2026, noon.