February 6, 2026, Civil Law & Motion Tentative Rulings

1. CU0002094 In the Matter of The Mortgage Law Firm, PLC

On the Court's motion, this matter is continued to April 10, 2026, at 10:00 a.m., in Department 6. Petitioner, The Mortgage Law Firm, gave notice to all interested parties of a February 6, 2026, hearing on claims to undistributed surplus funds. By statute the Clerk must give notice. *See Civ. Code § 2924j(d).* Out of an abundance of caution and to ensure that all potential claimants receive legal notice, the hearing will be continued. Any and all claims in connection with the funds must be filed and served on all parties at least 15 days prior to the scheduled hearing. *See id.*

2. CU0001842 Charles Eugene Murdock vs. Jodi Michelle Andrews

Plaintiff Charles Eugene Murdock's January 28, 2026, motion for a limited protective order related to the defense neuropsychological examination of Plaintiff is granted.

Pursuant to Code of Civil Procedure section 2032.530(a), "[t]he examiner and examinee shall have the right to record a mental examination by audio technology." Plaintiff also has a "right to take discovery and cross-examine defendants' expert witnesses, which includes being able to examine the expert on the matter upon which the expert's opinion is based and the reasons for that opinion. (Evid. Code, § 721, subd. (a).)" *Randy's Trucking, Inc. v. Superior Court* (2023) 91 Cal.App.5th 818, 838. "Without the raw data and audio recording, plaintiffs 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." *Ibid.* 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 plaintiffs' access to the audiotape and raw data, plaintiffs cannot adequately protect these interests." *Ibid.*

At bar, Plaintiff has shown a legitimate need for the raw data and audio recording. The proposed protective order adequately addresses any confidentiality concerns and test security concerns of the parties.

3. CU0002313 Jason Christ vs. Target Corporation

The November 7, 2025, demurrer of Defendant Target Corporation to Plaintiff Jason Christ's complaint is sustained with leave to amend in part as to the first through third causes of action, and sustained without leave to amend as to the fourth cause of action. 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 from notice of this court's decision.

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.

A demurrer can be sustained only when it disposes of an entire cause of action. *Poizner v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 119; *Kong v. City of Hawaiian Gardens Redev. Agency* (2003) 108 Cal.App.4th 1028, 1046. Leave to amend should be granted when "there is a reasonable possibility that the defect can be cured by amendment." *Centinela Freeman Emergency Medical Associates v. Health Net of California, Inc.* (2016) 1 Cal.5th 994, 1010; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Shaeffer v. Califia Farms* (2020) 44 Cal.App.5th 1125, 1145.

Late Filed Opposition

The Court has the discretion to deny an untimely filing; it also has the discretion to consider the same. *See Jackson v. Doe* (2011) 192 Cal.App.4th 742, 749; *McAllister v. County of Monterey* (2007) 147 Cal.App.4th 253, 280; Code Civ. Proc. §§ 430.40(a) and 473(a)(1). "There is no absolute right to have a pleading stricken for lack of timeliness in filing where no question of jurisdiction is involved, and where … the late filing was a mere irregularity…." *Id.* at 281–282. Here, in the exercise of its discretion, the court will consider Plaintiff's tardy opposition. Plaintiff is admonished that he must comply with all time requirements for filings under the Rules of Civil Procedure and Local Rules for this Court.

First and Third Causes of Action – Premises Liability and Failure to Warn

Defendant argues Plaintiff fails to allege (1) any causal connection between the alleged dangerous condition, *i.e.*, an improper parking lot layout, and the third-party assault and (2) Defendant's notice of the alleged dangerous condition. The Court agrees.

"The owner of premises is under a duty to exercise ordinary care in the management of such premises in order to avoid exposing persons to an unreasonable risk of harm. A failure to fulfill this duty is negligence." *Brooks v. Eugene Burger Management Corp.* (1989) 215 Cal.App.3d 1611, 1619. "The elements of a negligence claim and a premises liability claim are the same: a legal duty of care, breach of that duty, and proximate cause resulting in injury." *Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1159. "[I]n the context of a claim against a landowner for damages resulting from a criminal assault by a third party on premises, a 'plaintiff must show that the defendant owed [him or] her a legal duty of care, the defendant breached that duty, *and the breach was a proximate cause of* [his or] *her injury*.' " *Stokes v. Forty Niners Stadium Management co., LLC* (2024) 107 Cal.App.5th 1199, 1215-1216 (italics in original, citation omitted).

While "[a] landowner is not an insurer of the safety of persons on his [or her] property, he [or she] does ... have a duty to take reasonable steps to protect invitees from foreseeable injury…." *Noble v. Los Angeles Dodgers, Inc.* (1985) 168 Cal.App.3d 912, 918.

> [E]ven if a proprietor…has no special-relationship-based duty to provide security guards or other similarly burdensome measures designed to prevent future criminal conduct (which measures are required only upon a showing of "heightened foreseeability"), such a proprietor nevertheless owes a special-relationship-based duty to undertake reasonable and minimally burdensome measures to assist customers or invitees who face danger from imminent or ongoing criminal assaultive conduct occurring upon the premises…. [W]ith respect to imminent or ongoing criminal assaultive conduct occurring in the proprietor's presence, such proprietors have a duty to warn or 'take other reasonable and appropriate measures to protect patrons or invitees….'"

Morris v. De La Torre (2005) 36 Cal.4th 260, 270.

However, a defendant cannot be held liable for "abstract negligence…[where plaintiffs] fail[] to prove any causal connection between that negligence and the injury." *Id.* "Where ... there is evidence that the assault could have occurred even in the absence of the landlord's negligence, proof of causation cannot be based on mere speculation, conjecture and inferences drawn from other inferences to reach a conclusion unsupported by any real evidence…." *Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 488 (quotations omitted).

> To the extent plaintiff's special-relationship-based claim rests upon an assertion that defendant was legally required to provide a guard or guards or to undertake any similarly burdensome measures, we initially must consider whether defendant was obligated to do so…. In this respect, of course, plaintiff was required to demonstrate heightened foreseeability in the form of prior similar criminal incidents (or other indications of a reasonably foreseeable risk of violent criminal assaults in the bar or its parking lot….).

Delgado v. Trax Bar & Grill (2005) 36 Cal.4th 224, 245.

Additionally, a plaintiff cannot merely rely on the allegation that a dangerous condition

existed at the time of the accident. To establish liability, the owner's actual or constructive knowledge of the dangerous condition must be established. *See Ortega v. Kmart* (2001) 26 Cal.4th 1200, 1206; *Moore v. Wal-Mart Stores, Inc.*, (2003) 111 Cal.App.4th 472, 476. "There must be some evidence, direct or circumstantial, to support the conclusion that the condition had existed long enough for the proprietor in the exercise of reasonable care to have discovered and remedied it." *Girvetz v. The Boy's Market, Inc.* (1949) 91 Cal.App.2d 827, 829.

At bar, Plaintiff fails to allege any facts sufficient to demonstrate heightened foreseeability in the form of prior similar criminal incidents or any other indication of a reasonably foreseeable risk of a violent criminal assault with respect to his first cause of action. The same is true for the third cause of action. Plaintiff's vague assertion that Defendant knew of the risks of the parking stalls and of "prior incidents of criminal or reckless behavior in the lot," is a conclusory statement devoid of any facts to support it. Moreover, Plaintiff has not alleged any facts that would establish notice of any alleged condition that caused the assault and alleged damages at issue in this action. Thus, the demurrer as to the first and third causes of action is sustained on these grounds.

Plaintiff asserts he may be able to cure the defects by amendment. Given the reasonable possibility of cure, leave to amend is granted.

Second Cause of Action – Negligent Security/Failure to Protect

Defendant contends Plaintiff fails to allege anything more than vague allegations of ineffective security. The Court agrees.

"[A] special relationship exists between a business proprietor and not only its patrons or customers, but also its invitees." *Morris v. De La Torre,* 36 Cal.4th 260, 272. "[A]s a general matter a proprietor's special-relationship-based duty to its patrons or invitees includes an obligation to make … a call [to 911], or to take other similar minimal measures" in "situations involving criminal activity." *Id.* at 277.

At bar, Plaintiff's complaint alleges, among other things, "the Target security guard, after briefly approaching the scene of the assault, abandoned the area without assisting Plaintiff." Complaint, ¶ 22. Plaintiff does not allege facts that demonstrate what, if anything, the security guard witnessed that would give rise to an obligation to take assistance measures. As such, the demurrer as to this cause of action is sustained.

Here again, Plaintiff asserts he may be able to cure the defects by amendment; leave to amend is therefore granted.

Fourth Cause of Action – Negligent Infliction of Emotional Distress ("NIED")

Defendant argues that this cause of action fails to state a claim for relief against Defendant. The Court concurs.

Plaintiff predicates this cause of action on a direct victim theory. "[T]here is no independent tort of negligent infliction of emotional distress." *Potter v. Firestone Tire & Rubber Co*. (1993) 6

Cal.4th 965, 984. Plaintiff has already alleged negligence in the first cause of action. Additionally, ordinary negligence actions for physical injury allow for recovery of emotional distress damages where a plaintiff can demonstrate a physical injury caused by a defendant's negligence and anxiety specifically due to a reasonable fear of future harm attributable to the injury. *Id.* at 981. Therefore, the demurrer as to the fourth cause of action is sustained without leave to amend.

Motion to Strike

Defendant moves to strike the prayer for punitive damages arguing Plaintiff has failed to adequately allege any malice, oppression, or fraud with specific facts. The Court agrees.

"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).

While negligent conduct amounting to wanton and reckless misconduct by a business entity will support punitive damages, Plaintiff has failed to allege any specific facts to support malice, oppression or fraud as to any of the named defendants. *See Today's IV, Inc. v. Los Angeles County Metropolitan Transportation Authority* (2022) 83 Cal.App.5th 1137, 1193 (a pleading must contain specific factual allegations showing that defendant's conduct was oppressive, fraudulent, or malicious to support a claim for punitive damages). Plaintiff has pleaded punitive damages generally, which is inadequate. *See ibid*. The Court grants defendant's motion to strike all requests for punitive damages.

Because cure is reasonably possible, leave to amend is granted.

4. CU22-086174 Michael Robert Pasner vs. Song Kowbell

Petitioner Michael Pasner's motion for attorneys' fees and costs is granted.

Code of Civil Procedure section 527.6(s) provides, "The prevailing party in an action brought pursuant to this section [for a civil harassment order] may be awarded court costs and attorney's fees, if any." "The recovery of attorney fees under subdivision (s) of section 527.6 is committed to the trial court's discretion. … The Legislature's use of the word "may" plainly indicates the issues of *whether to award any fees and, if awarded, the amount recovered* are committed to the trial court's discretion. *Wash v. Banda-Wash* (2025) 108 Cal.App.5th 561, 568 (italics added), *citing Krug v. Maschmeier* (2009) 172 Cal.App.4th 796, 802.

Courts utilize Code of Civil Procedure section 1032 as guidance for determining who is the prevailing party for purposes of section 527.6. *Elster v. Friedman* (1989) 211 Cal. App. 3d 1439, 1443.

> Code of Civil Procedure section 1032 . . . states in part: "(a) ... (4) 'Prevailing party' includes the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. *When any party recovers other than monetary relief and in situations other than as specified, the 'prevailing party' shall be as determined by the court ....*

Ibid. (italics added).

In the case at bar, there is no dispute Petitioner is the prevailing party. Respondent requested to renew the restraining order against Petitioner which request was denied after a full evidentiary hearing on October 24, 2024. As prevailing party, Petitioner now moves for an order of attorney's fees and costs. He notes that the fees were necessarily incurred and further notes that he is an individual of limited means, *i.e.*, monthly income of $2,418.00. In opposition, Respondent does not challenge the amount of fees requested, the hourly rate, or the number of hours spent by Petitioner's counsel. Rather, Respondent asserts she has limited monthly income of $1,381.00. She argues that that fees must be reasonable and proportionate to the circumstances of the case and financial condition of the parties, and, in in determining reasonableness, the Court should consider the financial hardship such an award would impose on her.

> "It is well established that the determination of what constitutes reasonable attorney fees is committed to the discretion of the trial court .... [Citations.] The value of legal services performed in a case is a matter in which the trial court has its own expertise. [Citation.] The trial court may make its own determination of the value of the services contrary to, or without the necessity for, expert testimony. [Citations.] The trial court makes its determination after consideration of a number of factors, including the nature of the litigation, its difficulty, the amount involved, the skill required in its handling, the skill employed, the attention given, the success or failure, and other circumstances in the case."

PLCM Group v. Drexler (2000) 22 Cal.4th 1084, 1096 (quotations omitted).

At bar, in the exercise of its discretion and based on the totality of the circumstances (including the parties' reported respective financial conditions), the Court awards reasonable attorney's fees to Petitioner in the aggregate amount of $5,250.00 (the equivalent of 15 hours of work at a rate of $350/hour.)

6. CU0002148 Jane Doe E.M., vs. Nevada City School District, et al.

Defendant Nevada City School District's ("NCSD") demurrer to Plaintiff's complaint is overruled.

Legal Standard on Demurrer

A demurrer tests whether the complaint sufficiently states a valid cause of action. *Hahn v. Merda* (2007) 147 Cal.App.4th 740, 747. A demurrer may only challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. Code Civ. Proc. § 430.30(a). In the event a demurrer is sustained, leave to amend should be granted where the complaint's defect can be cured by amendment. *The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.

Complaints are read as a whole, in context, and are liberally construed. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Stevens v. Superior Court* (1999) 75 Cal.App.4th 594, 601. In reviewing the sufficiency of a complaint, courts accept as true all material facts properly pleaded and matters that may be judicially noticed, but not contentions, deductions, or conclusions of fact or law, or the construction of instruments pleaded, or facts impossible in law. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591; *Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43; *see also South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 732. Opinions, speculation, or allegations contrary to law or judicially noticed facts are also disregarded. *Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.

Generally, the pleadings "must allege the ultimate facts necessary to the statement of an actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts." *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1390; *FPI Development v. Nakashima* (1991) 231 Cal.App.3d 367, 384. Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872. Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.

Fourth Cause of Action – Failure to Report Suspected Child Abuse in Violation of Penal Code Section 11166, *et seq.*

Defendant argues that Plaintiff's fourth cause of action fails to state facts sufficient to maintain a cause of action. The Court disagrees.

The Child Abuse and Neglect Reporting Act (CANRA) requires a "mandated reporter," which includes teachers and certain other school employees, "to make a report to a law enforcement agency or a county welfare department 'whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect.'" *Doe v. Lawndale Elementary School Dist.* (2021) 72 Cal.App.5th 113, 138 (citation omitted). Failure to make the required report is a misdemeanor. *Ibid.*; Pen. Code § 11166(c). "[A]n injured minor may bring a civil action where "'a breach of the mandated reporter's duty to report child abuse'" causes the minor's injuries. *Doe,* 72 Cal. App 5th at 138, *citing B.H. v. County of San Bernardino* (2015) 62 Cal.4th 168, 188 at fn. 6; *see Kassey S. v. City of Turlock* (2013) 212 Cal.App.4th 1276, 1280. Moreover, the Legislature has "recognized case law that…permitted a civil suit for injury to a child where there was a breach of the mandated reporter's duty to report child abuse." *All Angels Preschool/Daycare v. County of Merced* (2011) 197 Cal.App.4th 394, 405.

Under the doctrine of respondeat superior and Government Code section 815.2, a public entity employer may be held vicariously liable for torts committed by an employee within the scope of employment. *Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, 208. "A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative." Gov. Code § 815.2(a). The California Supreme Court allows for a finding of vicarious liability based on claims arising from negligence. *C.A.*, 53 Cal.4th at 868–869.

At bar, CANRA may be used as the basis for civil liability as discussed above, and NCSD is potentially subject to vicarious liability for any injuries caused by its *employees* as mandatory reporters under Penal Code section 11166. Plaintiff has adequately pled a claim for vicarious liability against NCSD under Government Code section 815.2. Therefore, the demurrer as to this cause of action is overruled.

Fifth and Sixth Causes of Action-Negligent Supervision and Negligent Failure to Warn, Etc.

Defendant argues Plaintiff's fifth and sixth causes of action fail to state separate and distinct causes of action and are duplicative of Plaintiff's third cause of action. The Court is not persuaded.

In the third cause of action, Plaintiff alleges NCSD, acting through its employees, "had the responsibility and mandatory duty to adequately and properly investigate, hire, train, and supervise their employees…to protect their students from harm caused by unfit and dangerous employees…including Defendant Davenport." Complaint, ¶ 30. In the fifth cause of action, Plaintiff alleges NCSD, acting through its employees "had a duty to adequately and properly supervise, monitor, and protect Plaintiff from known and knowable dangers," through their "care, custody, control, supervision, and protection of the minor students entrusted to them." Complaint, ¶ 53. In the sixth cause of action, Plaintiff alleges NCSD "had a duty to warn, train, and educate the students in its custody, care, and control, like Plaintiff, on known and knowable dangers posed by its faculty and staff", as well as "a duty to warn, train, and educate its faculty and staff on its sexual harassment policy and inappropriate boundary crossing with students." Complaint ¶ 61. Each of these cause of action alleges a distinct legal theory for recovery. As such, they are not duplicative. *Compare Award Metals, Inc. v. Superior Court* (1991) 228 Cal.App.3d 1128, 1134–1135 ("stating [virtually identical allegations for negligence claim and statutory claim] in two causes of action, as real party has done, is merely duplicative pleading which adds nothing to the complaint by way of fact or theory. For that reason, the demurrer should have been sustained as to this [negligence] cause of action …."); *see also Rodrigues v. Campbell Industries* (1978) 87 Cal.App.3d 494, 501 ("The fifth alleged cause of action contains, by necessary implication, all of the allegations of each of the preceding four alleged causes and thus adds nothing to the complaint by way of fact or theory of recovery. There is no authority for a pleading of this type and the demurrer was properly sustained without leave to amend as to that cause."). The demurrer to the fifth and sixth causes of action is overruled on this basis.

Sixth Cause of Action – Negligent Failure to Warn, Etc.

Defendant also argues the sixth cause of action fails to state facts sufficient to maintain a cause of action and cannot be maintained against NCSD as a matter of law. The Court disagrees.

"[A] duty to warn or protect may be found if the defendant has a special relationship with the potential victim that gives the victim a right to expect protection." *Regents of University of California v. Superior Court* (2018) 4 Cal.5th 607, 619. "The determination whether a particular relationship supports a duty of care rests on policy and is a question of law." *Id.* at 621. "Relationships that have been recognized as "special" share a few common features. Generally, the relationship has an aspect of dependency in which one party relies to some degree on the other for protection. [Citations.]" *Id.*at 620-621. "The relationship between a school and its students parallels aspects of several other special relationships – it is a custodian of students, it is a land possessor who opens the premises to a significant public population, and it acts partially in the place of parents." Rest.3d Torts, Liability for Physical and Emotional Harm, § 40(b)(5), com. *l,* p. 45. "[B]ecause of the wide range or students…what constitutes reasonable care is contextual" and dependent on the extent and type of supervision required of the pupils. *Ibid.* "The corollary of dependence in a special relationship is control. Whereas one party is dependent, the other has superior control over the means of protection." *Regents of University of California, supra*, at 621. "Special relationships also have defined boundaries. They create a duty of care owed to a limited community, not the public at large." *Ibid.* "[A] special relationship is formed between a school district and its students so as to impose an affirmative duty on the district to take all reasonable steps to protect its students." *Rodriguez v. Inglewood Unified School Dist.* (1986) 186 Cal.App.3d 707, 715. When circumstances put a school on notice that a student is at risk from violence at the school, "the school's failure to take appropriate steps to warn or protect foreseeable victims can be causally connected to injuries the victims suffer as a result of that violence." *Regents of University of California,* 4 Cal.5th at 631.

Here, Plaintiff's complaint adequately pleads that Defendant had and breached its duty to warn or protect Defendant with whom it had a special relationship, and all other required elements to state a claim. *See* Complaint, ¶¶ 61-65. Therefore, the demurrer on this basis is overruled.

7. CU0002242 Kelly L. Hall vs. Matthew A. Mantovan Hudgens

The January 14, 2026, demurrer of Defendant Mantoven to the verified complaint of Kelly Hall is sustained with leave to amend as to the third claim and otherwise overruled. Plaintiff shall serve and file an amended complaint within ten (10) days from notice of this court's decision.

Meet and Confer Requirement

The Court was specific in its ruling on December 12, 2025 as to what meet and confer tasks were to be completed, and by when. Defendant failed to complete the tasks in a timely manner, despite multiple attempts from Plaintiff's counsel to ensure compliance with the order, and provides no satisfactory explanation for the delay in his opposition papers. Defendant is admonished that he must comply in good faith with all meet and confer requirements during the course of the instant litigation. The Court retains discretion to impose sanctions on litigants that do not comply with the requirements of the Code of Civil Procedure and this Court's Local Rules.

Legal Standard

A demurrer challenges the sufficiency of a complaint based on defects that appear on its face or from matters that are subject to judicial notice. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; CCP §430.10. To survive a demurrer, a complaint must plead specific facts to establish every element of a cause of action. *Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 879. A court should treat a demurrer as admitting all material facts that are properly pled, but need not accept conclusions, contentions or deductions of law or fact. *Blank, supra,* 39 Cal.3d at 318.

Plaintiff is required to plead factual allegations addressing the elements of each cause of action. Although pleadings are to be liberally construed, they must nonetheless set forth essential facts with reasonable precision. *Semole v. Sansoucie* (1972) 28 Cal.App.3d 714. Further, a court in examining the sufficiency of a complaint should "treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of law or fact." *Blank, supra,* 39 Cal.3d at 318.

First Claim-Breach of Contract

Defendant argues that Plaintiff has failed to state a claim for relief and that the cause of action is uncertain. Per Defendant, "The Breach of Contract claim fails to allege the contract terms, performance, breach, and damage with the required specificity and is uncertain as to the contract's nature." The Court disagrees.

To state a claim for breach of contract, a plaintiff must allege: (1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff. *D'Arrigo Bros. of California v. United Farmworkers of America* (2014) 224 Cal.App.4th 790, 800. Pursuant to Code of Civil Procedure § 430.10(g), a party may demur to a pleading in an action founded upon a contract, if it cannot be ascertained from the pleading whether the contract is written, oral, or implied by conduct. Code Civ. Proc. § 430.10(g).

At bar, the complaint alleges that in November 2022, the parties "executed a Construction Contract" and includes a description of the terms of the contract. Complaint, ¶ 16. An "executed document" is "[a] document that has been fully and properly signed by all the parties" and the definition of "execute (v.)" includes "[t]o make (a legal document) valid by signing." Black's Law Dictionary 659 (12th ed. 2024). It is ascertainable from the pleading that the contract at issue is written. The complaint also sufficiently alleges Plaintiff's performance, breach, causation, and damages. *See* Complaint, ¶¶ 17, 10-13, 18-22, 23-24. The claim is sufficiently certain. The demurrer as to the first cause of action is overruled.

Second Claim-Negligence

Defendant argues that Plaintiff has failed to state a claim for relief and that the cause of action is uncertain. Per Defendant, "The Negligence claim fails to allege a duty, breach, or causation and improperly attempts to transform a contract dispute into a tort claim." The Court is not persuaded.

The elements of a cause of action for negligence are well established. Plaintiff must show: (a) a legal duty to use due care; (b) a breach of such legal duty; and that (c) the breach was the

proximate or legal cause of the resulting injury. *Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917. A breach is the failure to meet the standard of care, and the element of causation requires there be a connection between the defendants' breach and the plaintiff's injury. *Coyle v. Historic Mission Inn Corp.* (2018) 24 Cal.App.5th 627, 643.

The contract specifically alleges Defendant owed Plaintiff the duty of care of a reasonably prudent contractor, that defendant breached the duty by failing to complete the work pursuant to the contract, and that such breach caused plaintiff's damages. Complaint, ¶ 28. Sufficient facts are alleged to state a claim for negligence against Defendant. Moreover, the claim is pled with sufficient certainty.

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

> When evaluating whether the parties' expectations and risk allocations bar tort recovery, the court must consider the alleged facts. First, applying standard contract principles, it must ascertain the full scope of the parties' contractual agreement, including the rights created or reserved, the obligations assumed or declined, and the provided remedies for breach. Second, it must determine whether there is an independent tort duty to refrain from the alleged conduct. Third, if an independent duty exists, the court must consider whether the plaintiff can establish all elements of the tort independently of the rights and duties assumed by the parties under the contract.
>
> The guiding and distinguishing principle is this. If the alleged breach is based on a failure to perform as the contract provides, and the parties reasonably anticipated and allocated the risks associated with the breach, the cause of action will generally sound only in contract because a breach deprives an injured party of a benefit it bargained for. However, if the contract reveals the consequences were not reasonably contemplated when the contract was entered and the duty to avoid causing such a harm has an independent statutory or public policy basis, exclusive of the contract, tort liability may lie.

Id. at 26.

At bar, Plaintiff's second cause of action for negligence alleges Defendant breached its duty by improperly installing renovations that resulted in damage, and that Plaintiff "had to utilize another contractor to…correct all improperly installed renovations" by defendant, causing separate damages in excess of the amount of the contract. Complaint, ¶ 23. Therefore, Plaintiff has sufficiently alleged Defendant's negligence resulted in injury outside the risks reasonably contemplated by the parties upon entering the contract.

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

Third Claim-Negligence Per Se

Defendant argues that Plaintiff has failed to state a claim for relief and that the cause of action is uncertain. Specifically, Defendant contends, "The Negligence Per Se claim is not a valid standalone cause of action and alleges no statutory violation or facts." The Court agrees in part.

"[T]he doctrine of negligence per se is an evidentiary presumption rather than an independent right of action." *Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1286.

> The doctrine of negligence per se does not establish tort liability. Rather, it merely codifies the rule that a presumption of negligence arises from the violation of a statute which was enacted to protect a class of persons of which the plaintiff is a member against the type of harm that the plaintiff suffered as a result of the violation. Even if the four requirements of Evidence Code section 669, subdivision (a), are satisfied, this alone does not entitle a plaintiff to a presumption of negligence *in the absence of an underlying negligence action.*

Id. at 1285 (italics added).

The demurrer as to the third cause of action is sustained on this ground. As there is a reasonable probability that this defect can be remedied, leave to amend is granted.

Fourth Claim-Fraud

Defendant argues that Plaintiff has failed to state a claim for relief and that the cause of action is uncertain. He specifically contends that, "The Fraud claim is not pled with particularity and lacks factual support for each element, rendering it insufficient and uncertain." The Court does not agree.

"A complaint for fraud must allege the following elements: (1) a knowingly false representation by the defendant; (2) an intent to deceive or induce reliance; (3) justifiable reliance by the plaintiff; and (4) resulting damages." *Service by Medallion, Inc. v. Clorox Co.* (1996) 44 Cal.App.4th 1807, 1816. "'[I]n California, fraud must be pled specifically; general and conclusory allegations do not suffice. Particularity requires a showing of "how, when, where, to whom, and by what means the representations were tendered." *Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 993 (citations omitted).

At bar, the complaint sufficiently pleads: that Defendant made a false representation to complete a renovation in two months, that he knew such representation was impossible, that he intended to induce reliance on such representation (by asking them to "lock this in with a deposit"), that Plaintiff justifiably relied on the false representation because of Defendant's status as a contractor, and that, as a result of such reliance, Plaintiff was harmed. Complaint, ¶¶ 37-41. This claim is sufficiently pled and sufficiently clear. Accordingly, the demurrer as to the fourth cause of action is overruled.

Fifth Claim-Negligent Misrepresentation

Defendant argues that Plaintiff has failed to state a claim for relief and that the cause of action is uncertain. He suggests, "The Negligent Misrepresentation claim similarly lacks specifics and is

contradicted by the fraud allegations, making it unclear and defective." The Court is not convinced.

"Negligent misrepresentation requires an assertion of fact, falsity of that assertion, and the tortfeasor's lack of reasonable grounds for believing the assertion to be true. It also requires the tortfeasor's intent to induce reliance, justifiable reliance by the person to whom the false assertion of fact was made, and damages to that person. An implied assertion of fact is 'not enough' to support liability." *SI 59 LLC v. Variel Warner Ventures, LLC* (2018) 29 Cal.App.5th 146, 154 (citation omitted).

At bar, the complaint alleges that representations were made in the estimate by Defendant to Plaintiff regarding the cost and timeline projections, that those representations were misstated based on the project running for longer than represented, that Defendant had no reasonable grounds for believing the representations to be true, that Plaintiff justifiably relied on the statements, and Plaintiff was damaged as a result. Complaint, ¶¶ 44-49. The claim is sufficiently pled and is sufficiently certain. The demurrer as to the fifth cause of action is overruled.

Sixth Claim-Forfeiture of Bond

Defendant demurs to the forfeiture of bond claim on various grounds. This cause of action is pled only against Defendant Western Surety Company, who filed its answer to the complaint on August 25, 2025. As such, the demurrer as to the sixth cause of action is overruled.

8. CU0000316 Mardi L. Fisher v. Brandon O. Williams, et al.

Appearances are required by all parties, counsel and the Referee regarding the order to show cause as to why an injunction should not issue. The parties shall be prepared to address the order to show cause. The Referee shall be prepared to update the Court regarding her progress towards satisfaction of the August 2, 2024, interlocutory judgment for sale of real property.

9. CU0002475 Pacific Gas and Electric Company vs. David Sauer

Plaintiff Pacific Gas & Electric's ("PG&E") application for a preliminary injunction is granted. The Court is favorably inclined to adopt the proposed preliminary injunction lodged January 30, 2026.

Defendant's Evidentiary Objections

The Court rules on Defendant's evidentiary objections to the following declarations:

Tanner Paschke

Objection 1- The foundation, improper expert opinion, and speculation objections are sustained.

Timothy Sheehan

Objection 2- The foundation, improper expert opinion, speculation, and hearsay objections are sustained.

Jason Iseley

Objection 3- The foundation, improper expert opinion, and speculation objections are sustained *solely* as to the phrase "PG & E also has rights…that serve the Sauer Property." The objections are otherwise overruled.

Objection 4- The foundation, improper expert opinion, and speculation objections are sustained *solely* as to the phrase "and the tariffs approved by the California Public Utilities Commission." The objections are otherwise overruled.

Objection 5- The foundation, speculation and hearsay objections are sustained.

Marshall Varrone

Objection 6- The foundation and speculation objections are sustained *solely* as to the phrase "PG & E has owned, operated …and rights by law for decades." The objections are otherwise overruled.

Objection 7- The foundation and speculation objections are sustained *solely* as to the phrase "Mr. Sauer is jeopardizing the safety of the community and the safe distribution of electricity." The objections are otherwise overruled.

Objection 8- The foundation and speculation objections are sustained *solely* as to the phrase "putting the safety of the community at risk … and damage by." The objections are otherwise overruled.

Plaintiff's Objection to Defendant's Request for Judicial Notice

The Court need not adjudicate the objection to Defendant's request for judicial notice of Exhibit A. The Court would reach the same outcome with or without consideration of this document.

Merits of the Request

"[T]he question whether a preliminary injunction should be granted involves two interrelated factors: (1) the likelihood that the plaintiff will prevail on the merits, and (2) the relative balance of harms that is likely to result from the granting or denial of interim injunctive relief." *White v. Davis* (2003) 30 Cal.4th 528, 554.

Having considered the record presented by all parties and applicable law, the Court concludes that (1) Plaintiff has demonstrated a reasonable probability of prevailing on the merits, specifically with respect to its claim for breach of easement; and (2) that the harm to the Plaintiff and the public resulting from not granting the preliminary injunction outweighs the harm to the Defendant from imposing the injunction. The Court has considered and is not persuaded by any of Defendant's arguments to the contrary. Specifically, the request for an injunction is not moot. Moreover, the Court lacks subject matter jurisdiction to decide any challenge by Defendant to the reasonableness of cutting trees along the electric facilities in the easements for public safety.

See Sarale v. Pacific Gas & Electric Co. (2010) 189 Cal.App.4th 225, 235-243 (trial courts "lacked jurisdiction to adjudicate … challenges to the trimming by PG&E as excessive.").

Lastly, as for the temporary restraining order, the Court entered an order, in short, enjoining Defendant from interfering with Plaintiff's easement rights, including accessing Defendant's property to inspect trees and vegetation on the Sauer Property. 1/13/26 TRO, 2:2-16. (The Court intended, but inadvertently neglected, to strike the phrase "other wood management that PG&E may perform." *See id.* at 2:12). The Court made it clear, in response to inquiry by Plaintiff, that the Court was *not* entering any temporary order to *either authorize or prohibit hazardous tree removal* by Plaintiff. The Court indicated that Plaintiff could exercise any independent authority it had to engage in hazardous tree removal in its discretion *and* at its own risk should it exceed any such lawful authority.