May 11, 2026 Truckee Civil Law & Motion Tentative Rulings

1. CL0003437 Capital One, N.A. successor by merger to Discover Bank vs. Michelle Mattingly

No appearances required. On the Court's own motion and in light of the Declaration filed by counsel for Plaintiff, the Court continues the OSC re Dismissal to July 13, 2026 at 1:30 p.m. in Dept. A. Plaintiff shall file a proof of service, an application to serve by publication (if deemed appropriate), or a request for dismissal of defendant in advance of the continued order to show cause date. The Court notes, the declaration of non-service filed on April 8, 2026 fails to set forth reasonable efforts in and by itself; however, the declaration of counsel evidences Plaintiff is and has been making diligent efforts to effectuate service of process.

2. CL0003511 Barclays Bank Delaware vs. Owen Manville

Appearance required by Plaintiff to show cause as to why this case should not be dismissed and/or Plaintiff sanctioned for failure to serve the Summons and Complaint on Defendants via some approved method after the Declaration of Non-Service was filed on March 2, 2026, and the Court continued the prior appearance date on the OSC. Absent good cause being shown, the Court intends to set the matter for dismissal pursuant to CCP section 583.420.

3. CL0003535 American Express National Bank vs. Heidi Petyo et al

No appearances required. In light of the proofs of service of the Summons and Complaint filed on March 25, 2026, the OSC re Dismissal is vacated.

4. CL0003630 LVNV Funding LLC vs. Salvador Magana

Appearance required by Plaintiff to show cause as to why this case should not be dismissed and/or Plaintiff sanctioned for failure to serve the Summons and Complaint on Defendant despite the fact this case has been pending for almost five (5) months. Absent good cause being shown, the Court intends, on its own motion, to set the matter for dismissal pursuant to CCP section 583.420 and vacate the trial date set for August 21, 2026 at 11:00 a.m.

5. CU0000657 Daniel Botwinis vs. Patrice Fleming et al

Defendants Patrice Fleming and Fleming Family Trust's ("Fleming Defendants" or "Defendants") motion for summary adjudication as to the second cause of action for intentional tort (battery) as well as to the prayer for punitive damages seeking punitive damages against the Fleming Defendants is GRANTED in its entirety.

Request for Judicial Notice

Defendants' unopposed request for judicial notice is granted.

Rulings on Objections

First: Moving parties object to Plaintiff's submitted evidence in support of his Opposition to the Motion for Summary Adjudication. The Court rules on these objections as follows:

- A-B, U-V: Overruled
- C, K-M, O-R, W-AA: Overruled (though the Court notes such is offered solely for Plaintiff's opinion and not for the truth of the matter)
- D-J, N, S-T: Sustained

Second: The moving parties object to the Declaration of Rajinder K. Rai-Neilsen. The Court sustains all of these objections.

Third: The moving parties object to the Declaration of Daniel Botwinis. The Court overrules all of these objections, but notes such is offered solely for Plaintiff's opinion and not the truth of the matter.

Relevant Factual History

This action stems from injuries sustained by Plaintiff when he went to a home located at 15775 Martis Peak Road, Truckee, California ("property" or "residence") titled in the name of Defendant Patrice Fleming, as Trustee of Defendant Fleming Family Trust. Plaintiff, a self-employed carpet cleaner, stepped on a bear deterrence mat ("bear mat") in front of the front door of the home when he arrived to clean the home at the request of the realtor hired by Defendants to ready the home for sale. The bear mat was placed in front of the main entry door to deter bears from breaking into the home, as a bear had previously broken in causing damage. The operative complaint is Plaintiff's Second Amended Complaint ("Complaint") filed on January 18, 2024.

Legal Standard

Code of Civil Procedure 437c(f)(1) provides that, "A party may move for summary adjudication as to one or more causes of action within an action." Such "[a] motion for summary adjudication shall be granted only if it completely disposes of a cause of action…." Code Civ. Proc. §437c(f)(1). The function of a motion for summary judgment or adjudication is to allow a determination as to whether an opposing party cannot show evidentiary support for a pleading or claim and to enable an order of summary dismissal without the need for trial. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843). In analyzing such motions, courts must apply a three-step analysis: "(1) identify the issues framed by the pleadings; (2) determine whether the moving party has negated the opponent's claims; and (3) determine whether the opposition has demonstrated the existence of a triable, material factual issue." *Hinesley v. Oakshade Town Center* (2005) 135 Cal.App.4th 289, 294. Thus, summary judgment or summary adjudication is granted when, after the court's consideration of the evidence set forth in the papers and all reasonable inferences accordingly, no triable issues of fact exist and the moving party is entitled to judgment as a matter of law. Code Civ. Proc. § 437c(c); *Villa v. McFarren* (1995) 35 Cal.App.4th 733, 741.

A defendant moving for summary judgment has the initial burden of showing that a cause of action lacks merit because one or more elements of the cause of action cannot be established or there is an affirmative defense to that cause of action. Code Civ. Proc. § 437c, subd. (o)(1), (2);

Aguilar, 25 Cal. 4th at 850. As to each claim as framed by the complaint, the party moving for summary judgment or summary adjudication must satisfy the initial burden of proof by presenting facts to negate an essential element. *Scalf v. D. B. Log Homes, Inc.* (2005) 128 Cal.App.4th 1510, 1520. Once the moving party has met the burden, the burden shifts to the opposing party to show via specific facts that a triable issue of material facts exists as to a cause of action or a defense thereto. Code Civ. Proc. § 437c(o)(2). When a party cannot establish an essential element or defense, a court must grant a motion for summary adjudication. Code Civ. Proc. § 437c(o)(1)-(2).

In determining whether any triable issues of material fact exist, the court must strictly construe the moving papers and liberally construe the declarations of the party opposing summary judgment. Any doubts as to whether a triable issue of material fact exists are to be resolved in favor of the party opposing summary judgment. *Barber v. Marina Sailing, Inc.* (1995) 36 Cal.App.4th 558, 562; see also *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 900 ("Summary adjudication is a drastic remedy and any doubts about the propriety of summary adjudication must be resolved in favor of the party opposing the motion.").

Second Cause of Action – Intentional Tort (Battery)

"The essential elements of a cause of action for battery are: (1) defendant touched plaintiff, or caused plaintiff to be touched, with the intent to harm or offend plaintiff; (2) plaintiff did not consent to the touching; (3) plaintiff was harmed or offended by defendant's conduct; and (4) a reasonable person in plaintiff's position would have been offended by the touching." *So v. Shin* (2013) 212 Cal.App.4th 652, 669. "The crimes of assault and battery are intentional torts. In the perpetration of such crimes negligence is not involved", nor is contributory negligence a bar to the claim. *Bartosh v. Banning* (1967) 251 Cal.App.2d 378, 385. Moreover, "the tort of battery generally is not limited to direct body-to-body contact….[C]ontact with another's person…does not require that one should bring any party of his own body in contact with another's person." *Mount Vernon Fire Ins. Co. v. Busby* (2013) 219 Cal.App.4th 876, 881 (internal quotations and citations omitted).

In support of summary adjudication, Defendants argue Plaintiff cannot produce any admissible evidence the Fleming Defendants intentionally caused Plaintiff to be touched or harmed, and there is no evidence of any reckless disregard for human safety. See, Motion, pgs. 10-11, generally.

> As a general rule, California law recognizes that '. . . every person is presumed to intend the natural and probable consequences of his acts.' Thus, a person who acts willfully may be said to intend ' " 'those consequences which (a) represent the very purpose for which an act is done (regardless of the likelihood of occurrence), or (b) are known to be substantially certain to result (regardless of desire).' " ' The same definition is applied to many intentional torts.

Gomez v. Acquistapace (1996) 50 Cal.App.4th 740, 746.

"In an action for civil battery the element of intent is satisfied if the evidence shows defendant acted with a 'willful disregard' of the plaintiff's rights." *Ashcraft v. King* (1991) 228 Cal.App.3d

604, 613 (internal citation omitted). If a defendant acts with "wanton, willful or reckless disregard of plaintiff's rights", the element of intent for a civil battery cause of action is satisfied. *Lopez v. Surchia* (1952) 112 Cal.App.2d 314, 318.

> "[W]illful misconduct has a well-established meaning which is clearly differentiated from negligence and gross negligence. (Citations omitted.) Gross negligence involves a failure to act under circumstances that indicate a passive and indifferent attitude toward the welfare of others. Negative in nature, it implies an absence of care. (Citations omitted.) Willful misconduct, on the other hand, requires an intentional act or an intentional failure to act, either with knowledge that serious injury is a probable [not possible] result, or with a positive and active disregard for the consequences. (Citations omitted.) "No amount of descriptive adjectives or epithets may turn a negligence action into an action for intentional or willful misconduct." (Citation omitted.)

Johns-Manville Sales Corp. v. Workers' Comp. Appeals Bd. (1979) 96 Cal. App.3d 923, 930. See also, *Id*. at 931.

In the instant matter, it is undisputed, prior to placement of the bear mat, two or more bear intrusions occurred into the property resulting in damage to the property, and Patrice Fleming's ("Patrice") sons, Brett Fleming ("Brett") and Jeffrey Fleming ("Jeffrey") went to the property to secure the home and repair the damage. SSUMF ## 5-6, 11. It is also undisputed Brett and Jeff created the bear deterrence mat, consisting of a board made with wood and nails nailed through it, which was screwed into the stained deck in front of the front door of the premises on or about November 21, 2020 for the purpose of deterring bears from moving the mat aside, pushing on the front door, and breaking into the property. SSUME #12. Plaintiff disputes "in part" whether Brett informed CB Defendant Wilson ("Wilson") of the existence and location of the Bear Deterrence Mat. SSUMF ## 25-26. Brett's declaration states he informed Wilson of the existence and location of the mat. B. Fleming Decl., ¶ 15. Brett's deposition testimony states he told the property manager or other third party hired to do work on the property, "there's a bear mat and to take a drill up to remove it if you need to." B. Fleming Dep., 74:21-75:4. It is undisputed that on April 6, 2021, CB Defendant Rioja emailed Plaintiff requesting he go to the premises to clean the carpets and gave him the gate and alarm codes but did not mention the existence of the bear mat, and that Rioja was the only person from the CB office who communicated with Plaintiff about the premises prior to the incident. SSUMF #28. It is undisputed Plaintiff testified he had no reason to believe Patrice personally retained him to provide cleaning services on the property on the date of the incident, or knew Plaintiff was coming to the property on the date of the incident. SSUMF ## 30, 37. It is also undisputed Plaintiff testified he had no reason to believe Brett, Jeffrey, or the Fleming Family Trust personally retained him to provide cleaning services on the property on the date of the incident, or knew he was coming to the property on the date of the incident. SSUMF ## 33-36, 38-39. It is undisputed Fleming Defendants never requested Plaintiff visit or perform services at the property, nor did Brett or Jeffrey. SSUMF ## 55-57. It is undisputed, Patrice, Brett, and Jeffrey did not instruct anyone to contact Plaintiff to ask him to visit the property to clean carpets. SSUMF 67-69.

Further, Defendants assert Brett and Jeffrey, not Patrice, were involved in maintaining and protecting the property from the bear break-ins, and Patrice was not involved in any capacity as to how the property would be protected from the bear break-ins. SSUMF ## 14-15. Plaintiff disputes these facts stating Patrice, as the owner/trustee of the property, still had a duty with respect to a dangerous condition at the entryway, but fails to provide any substantial evidence showing Patrice had knowledge of the bear mat. Thus, there is no evidence, and so no plausible argument that Patrice could potentially have an intent to touch or harm Plaintiff, in that Plaintiff provides no evidence Patrice knew a potential for harm existed in relation to the bear mat being placed at the front entry of the home. Brett and Jeffrey are not named Defendants, but could be viewed as akin to subordinate employees. Yet, "a supervisor is not liable to third parties for the acts of his or her subordinates." *Fiol v. Doellstedt* (1996) 50 Cal.App.4th 1318, 1326. " Mere knowledge that a tort is being committed and the failure to prevent it does not constitute aiding and abetting." *Ibid.* Moreover, even if Brett and Jeffrey's acts are imputed to Patrice, there is no evidence Brett or Jeffrey had any intent to harm.

Finally, even examining the evidence in the light most favorable to Plaintiff and imputing the actions/inaction of Brett and Jeffrey to the Fleming Defendants, the Court finds no evidence which creates an issue of material fact as to whether the moving defendants acted with the requisite intent for a civil action of battery. In fact, the evidence submitted by Plaintiff reflects Brett's lack of knowledge of Wilson scheduling Plaintiff's cleaning service, as well as a statement to Wilson to inform people visiting the property about the mat. On April 7, 2021, Wilson emailed Brett stating a carpet and house cleaner were hired, and "[t]his should be completed by early next week." Pltf. Compendium of Exhibits, Ex. A, p. 49. She informs him there will also be a stager and photographer, but does not state Plaintiff was scheduled to clean the carpets on April 8, 2026. *Id*. On April 10, 2021, Brett replies saying "If more people are going to be in and out of the house we need to make sure they know about the nail boards at the entrances of the house. We are on the list to get the electric mats installed but haven't got the start date yet." *Id.* On April 12, 2021, Wilson responds, "Regarding the bear deterrent… We did already have an incident with the carpet cleaner who stepped on the nail pad when entering the house. I believe he is OK and he still was going to clean the carpet…. I am not sure how he didn't see it." *Id.* at p. 50. While the email from Brett was sent after the incident, he was informed that hired vendors would be visiting the house "next week", and he responded three days later stating a need to alert any vendors of the mat, before being told of the incident. Therefore, there is no evidence or plausible argument Brett or Jeffrey, and, therefore, Patrice and the Fleming Trust, could potentially have an intent to touch or harm Plaintiff, in that the need for a warning was vocalized when informed visitors would be on the property. Plaintiff has failed to raise any issue of material fact that rebuts the evidence of the moving defendants.

The showing of intent in relation to civil battery requires more. Reckless disregard for the safety of others is not the equivalent to forgetting to warn even if you know you should. Acting willfully, including acting with reckless disregard for the safety of others, implies a conscious choice ("I know I should warn them, but I'm not going to") or careless disregard for the safety of others ("I know someone is likely to get hurt, but I don't care.") Intent is willful action. Willfulness requires knowledge. Here, there is no evidence of substance the moving defendants intentionally failed to act (warn or remove the bear mat) "with knowledge that serious injury [was] a probable result, or with active disregard for the consequences." *Johns-Manville Sales*

Corp., supra, at 930. In fact, the evidence shows the opposite is true – Brett told Wilson a warning should be made to vendors as soon as he was told they would be visiting the property.

Accordingly, the Fleming Defendants' motion for summary adjudication as to the intentional tort of civil battery is granted.

Punitive Damages

The Fleming Defendants move for summary adjudication as to the prayer for punitive damages, arguing no reasonable jury could find Plaintiff's evidence to be clear and convincing proof of malice, fraud, or oppression as required for any punitive damages claim against the Fleming Defendants. The Court agrees.

Civil Code section 3294 governs when punitive damages can be sought "[i]n an action for the breach of an obligation not arising from contract." This statute mandates, before punitive damages may be awarded, "it must be proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice." Civ. Code §3294(a). Moreover, the statute clearly defines each of these terms.

> As used in this section, the following definitions shall apply:
> (1) "Malice" means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.
> (2) "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights.
> causing injury.
> (3) "Fraud" means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.

Civ. Code §3294(c).

"It is a prime rule of construction that the legislative intent underlying a statute must be ascertained from its language; if the language is clear, there can be no room for interpretation, and effect must be given to its plain meaning. [Citations.]'... The courts may not speculate that the legislature meant something other than what it said. Nor may they rewrite a statute to make it express an intention not expressed therein.' (Fns. omitted.) [Citation.]" J. *R. Norton Co. v. Gen. Teamsters, Warehousemen & Helpers Union* (1989) 208 Cal. App. 3d 430, 442-43 citing *Hennigan v. United Pacific Ins. Co.* (1975) 53 Cal.App.3d 1, 7.

Plaintiff asserts the installation of a device designed to inflict puncture injuries upon contact at the entryway to the residence raises triable issues of fact regarding whether Defendants created a dangerous condition on the property, whether the device was an impermissible mechanical trap, and whether maintaining such a device demonstrates conscious disregard for the safety of others. However, Plaintiff's own opposition contradicts itself as to whether the bear mat was so dangerous it demonstrated a conscious disregard for the safety of others, or if it was an open and obvious condition. Plaintiff cites to evidence that Coldwell Banker agent Christine Curtis

"acknowledge that the protruding nails were visible and testified that the device appeared 'pretty hard to miss.'" Opp. 8:28-9:1. While Plaintiff has presented some evidence of a hazardous condition, he fails to prevent substantial evidence the placement of the bear mat demonstrated a conscious disregard for the safety of others.

Malice

Malice means conduct which is intended by the defendant to cause injury to the plaintiff *or* despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. Code Civ. Proc. § 3294(c)(1) (emphasis added). Under the statute, malice does not require actual intent to harm. *Pfeifer v. John Crane, Inc.* (2013) 220 Cal.App.4th 1270, 1299. Therefore, an allegation that a defendant intended to injure a plaintiff or acted in conscious disregard of her safety will suffice. *G.D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 32-33. Conscious disregard for the safety of another may be sufficient where the defendant is aware of the probable dangerous consequences of her conduct and she willfully fails to avoid such consequences. *Pfeifer, supra,* at 1299. Malice may be proved either expressly through direct evidence or by implication through indirect evidence from which the jury draws inferences. *Id*. Evidence establishing "conscious disregard" is evidence the defendant was aware of the probable consequences of their actions or inactions and willfully and deliberately failed to avoid those consequences. *Weisman v. Blue Shield of California* (1984) 163 Cal.App.3d 61, 66-67.

At bar, the Fleming Defendants assert the failure to inform Plaintiff of the bear mat was not intentional nor did they ever intend to harm Plaintiff. The burden is then on Plaintiff to show evidence exists which might support a finding of clear and convincing evidence the Fleming Defendants acted with malice. By its very definition, malice requires an intentional act or failure to act. As indicated above, the Court finds there is no evidence the Fleming Defendants acted or failed to act intentionally or with willful and conscious disregard for the safety of Plaintiff. Thus, Plaintiff is unable to show by clear and convincing evidence or otherwise point to an issue of material fact which might provide such evidence.

Oppression

Oppression requires a showing of despicable conduct which causes a person to suffer "cruel and unjust hardship in conscious disregard of that person's rights." Civ. Code §3294(c)(2). By its very definition, oppression requires a showing of knowledge for, without knowledge, one cannot consciously disregard that knowledge. Again, as set forth above, there is simply no evidence Plaintiff can point to which creates an issue of material fact as to whether or not the Fleming Defendants acted with conscious disregard.

Fraud

Fraud requires "intentional" acts ("misrepresentation, deceit, or concealment of a material fact know to the defendant") *with the intention to cause injury*. Civ. Code §3294(c)(3) (emphasis added). Here, there is simply no evidence whatsoever the Fleming Defendants intended to cause injury to Plaintiff.

Therefore, the evidence is such that the Fleming Defendants neither intended to harm Plaintiff, nor can any failure to warn be equated, even arguably, with despicable conduct or conscious disregard.

Therefore, Fleming Defendants' motion for summary adjudication as to the prayer for punitive damages is granted.

Conclusion

Accordingly and for the reasons set forth above, the Fleming Defendants' motion for summary adjudication is GRANTED in its entirety.

6. CU0001681 Randy Ryan Agno et al vs. James L Gould, IV. et al

Demurrer / Motion to Strike Cross-Complainants' Second Amended Cross-Complaint

Plaintiffs'/Cross-Defendants' ("Plaintiffs") demurrer to the second amended cross-complaint ("2ACC") is OVERRULED in part and SUSTAINED WITH LEAVE TO AMEND as to counts five, six, seven, and eight. Cross-Complainants are granted leave to amend. Any amended pleading shall be filed and served no later than May 21, 2026. Plaintiffs' motion to strike is denied without prejudice.

Request for Judicial Notice

Plaintiffs' request for judicial notice of the Court's December 19, 2025 Ruling on Plaintiffs' request for preliminary injunction ("Ruling") is granted.

"The trial court shall take judicial notice of any matter specified in [Evidence Code] Section 452 if a party requests it and: (a) Gives each adverse party sufficient notice of the request, through the pleadings or otherwise, to enable such adverse party to prepare to meet the request; and (b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter." Evid. Code § 453. Plaintiffs' request for judicial notice is included as part of their moving papers rather than a separate request. While not procedurally proper, the Court finds the request gives Cross-Complainants' sufficient notice of the request and sufficient information for the Court to enable it to take judicial notice of the document.

Judicial notice is limited to the fact that the documents were filed, but not of the truth of their contents. *Williams v. Wraxall* (1995) 33 Cal.App.4th 120, 130, fn. 7. "We may take judicial notice of the *existence* of judicial opinions and court documents, along with the truth of the results reached—in the documents such as orders, statements of decision, and judgments. *Ibid.* However, even if Plaintiffs expressly requested the court to take judicial notice of any particularly identified fact in the Ruling, judicial notice can "not properly be taken of the truth of the factual findings" of the trial judge. *Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1563. A finding of fact made after hearing cannot "be indisputably deemed to have been a correct finding," because, ""[u]nder the doctrine of judicial notice, certain matters are assumed to be indisputably true, and the introduction of evidence to prove them will not be required." (1 Witkin Cal. Evidence (3d ed. 1986) § 80.) Taking judicial notice of the truth of a judge's factual finding

would appear to us to be tantamount to taking judicial notice that the judge's factual finding must necessarily have been correct and that the judge is therefore infallible." *Id.* at 1568.

Legal Standard

On demurrer, a court's function is limited to testing the legal sufficiency of the complaint. *Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113-114. In determining a demurrer, the court assumes the truth of the facts alleged in the complaint and the reasonable inferences that may be drawn from those facts. *Miklosy v. Regents of the Univ. of Cal.* (2008) 44 Cal.4th 876, 883. A court must determine if the factual allegations of the complaint are adequate to state a cause of action under any legal theory. *Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 103. A demurrer can be used only to challenge defects that appear within the "four corners" of the pleading – which includes the pleading, any exhibits attached, and matters of which the court is permitted to take judicial notice. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994.

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

First and Second Causes of Action: Unpaid Rent - OVERRULED

Plaintiffs argue the first and second causes of action fail to plead facts establishing Cross-Complainants possess any legally cognizable ownership interest in the cabins sufficient to maintain a cause of action for unpaid rent. The Court disagrees.

The first and second causes of action seek unpaid rent for the cabins' occupation on Cross-Complainants' property. Such is sufficient to state causes of action for unpaid rent. The demurrer as to the first and second causes of action is overruled.

Third and Fourth Causes of Action: Cancellation of Instruments and Quiet Title - OVERRULED

Plaintiffs argue the third cause of action fails because it fails to plead facts showing a legally cognizable ownership interest in the cabins. Again, the Court disagrees.

"'To prevail on a claim to cancel an instrument, a plaintiff must prove (1) the instrument is void or voidable due to, for example, fraud, and (2) there is a reasonable apprehension of serious injury including pecuniary loss or the prejudicial alternation of one's position.'" *Thompson v. Ioane* (2017) 11 Cal.App.5th 1180, 1193–1194.

The 2ACC pleads cancellation of the quitclaim deeds to Cabins 7 and 9, alleging cross-complainants "had become and were the owners of" the cabins, and if the quitclaims remained outstanding cross-complainants would be damaged by clouded title and ownership. 2ACC, ¶¶ 37-39. Based on these alleged facts, the Court concludes the third and fourth causes of action adequately state a claim for relief, and overrules the demurrer as to these causes of action.

Fifth Cause of Action: Constructive Trust– SUSTAINED WITH LEAVE TO AMEND

"A constructive trust is an equitable remedy that compels a wrongdoer—one who has property or proceeds to which he is not justly entitled—to transfer same to its rightful owner." *Shoker v. Superior Court of Alameda County* (2022) 81 Cal.App.5th 271, 278. "[W]hen legal title has been acquired through fraud any number of remedies are available and appropriate," including making the legal title holder a constructive trustee for benefit of defrauded equitable titleholder. *Warren v. Merrill* (2006) 143 Cal.App.4th 96, 114.

The elements of a quasi-contract unjust enrichment claim are: "receipt of a benefit and [the] unjust retention of the benefit at the expense of another." *Peterson v. Cellco Partnership* (2008) 164 Cal.App.4th 1583, 1593. However, "mere fact that a person benefits another is not of itself sufficient to require the other to make restitution therefor." *Ibid.* In the absence of allegations of the "actionable wrong, there is no basis for [unjust enrichment] relief." *Hill v. Roll Intl Corp.* (2011) 195 Cal. App. 4th 1295, 1307.

At bar, the 2ACC alleges "Cabins 6, 7, and 9 occupy Cross-Defendants' Property under oral rental agreements entered into at various times in the past between the Agnos, The Johnsons and Carol, and Patricia or their predecessors in interest as Tenants on one hand and Cross-Complainants or Cross Complainants' predecessors in interest as Landlord on the other hand, whereby the owners of Cabins 6, 7, and 9 were permitted to place and maintain their respective cabins on Cross Complainants' Property in exchange for rent and other consideration." 2ACC, ¶ 18. The 2ACC goes on to allege past due rent payments for the cabins' occupation of cross-complainants' property. 2ACC, ¶ 19. The 2ACC further alleges an agreement for cross-complainants to pay past and future property taxes on Cabin 7 which then relinquished possession of Cabin 7 to cross-complainants, as well as the relinquishment of Cabin 9 to cross-complainants. 2ACC, ¶¶ 20-28. The 2ACC fails to allege any actionable wrong. Therefore, the demurrer as to the fifth cause of action is sustained. Perhaps, Cross-Complainants can cure this defect via amendment. Accordingly, leave to amend is granted.

Sixth Cause of Action: Slander of Title – SUSTAINED WITH LEAVE TO AMEND

"Slander of title is effected by one who without privilege publishes untrue and disparaging statements with respect to the property of another under such circumstances as would lead a reasonable person to foresee that a prospective purchaser or lessee thereof might abandon his intentions. It is an invasion of the interest in the vendibility of property. . . . Damages usually consist of loss of a prospective purchaser." *Phillips v. Glazer* (1949) 94 Cal.App.2d 673, 677 (citations omitted). Such a cause of action requires (1) proof of a publication (2) that was without privilege or justification, (3) made either with knowledge the publication was false or without regard for its truthfulness and that (4) causes direct and immediate pecuniary loss. *Howard v. Schaniel* (1980) 113 Cal.App.3d 256, 263–264.

At bar, the 2ACC alleges the recordation of quitclaim deeds in which Plaintiffs claimed to be the owners of Cabins 7 and 9, such deeds disparaged cross-complainants' ownership and/or right to possession and use of the cabins, and the statements were false. 2ACC, ¶ 50-52. Such is insufficient to state a claim for slander of title. The 2ACC fails to allege Plaintiffs recorded the quitclaim deeds with knowledge of their falsity or without regard for their truthfulness. Therefore, the demurrer as to the sixth cause of action is sustained. Because there is possibility the defect can be cured, leave to amend is granted.

Seventh and Eight Causes of Action: Intentional / Negligent Interference with Prospective Economic Advantage – SUSTAINED WITH LEAVE TO AMEND

"Intentional interference with prospective economic advantage has five elements: (1) the existence, between the plaintiff and some third party, of an economic relationship that contains the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentionally wrongful acts designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm proximately caused by the defendant's action." *Roy Allan Slurry Seal, Inc. v. American Asphalt South, Inc.* (2017) 2 Cal.5th 505, 512.

"The elements of negligent interference with prospective economic advantage are (1) the existence of an economic relationship between the plaintiff and a third party containing the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) the defendant's knowledge (actual or construed) that the relationship would be disrupted if the defendant failed to act with reasonable care; (4) the defendant's failure to act with reasonable care; (5) actual disruption of the relationship; (6) and economic harm proximately caused by the defendant's negligence." *Redfearn v. Trader Joe's Co.* (2018) 20 Cal.App.5th 989, 1005.

At bar, the 2ACC fails to plead the existence of a relationship with a third party. Therefore, the 2ACC fails to plead any of the elements of either cause of action, because they all require the existence of a relationship with a third party. Thus, the demurrer as to the seventh and eight causes of action is sustained. Because there is the potential the defect can be cured on amendment, leave to amend is granted.

Ninth Cause of Action: Fraud - OVERRULED

Cross-Complainants argue because the moving plaintiffs are not named in this cause of action, they have no standing to object to it. The Court agrees. Accordingly, the demurrer as to the ninth cause of action is overruled.

Tenth Cause of Action: Declaratory Relief - OVERRULED

"To qualify for declaratory relief, [a party] would have to demonstrate its action presented two essential elements: '(1) a proper subject of declaratory relief, and (2) an actual controversy involving justiciable questions relating to [the party's] rights or obligations.' " *Jolley v. Chase Home Finance, LLC* (2013) 213 Cal.App.4th 872, 909 (citation omitted).

The 2ACC asks for declaratory relief as to the respective rights and duties as to the ownership of the cabins. Such is a proper subject of declaratory relief, and an actual controversy between the parties clearly exists. Therefore, the demurrer as to this cause of action is overruled.

Eleventh COA: Ejectment - OVERRULED

Ejectment is a possessory action used to recover possession of land or a piece of real property to a plaintiff in possession who has been wrongfully ousted from the property by the defendant. *Fuller v. Fuller* (1917) 176 Cal. 637, 638. Under Code of Civil Procedure § 3375, a party who is entitled to specific real property may recover by a judgment for its possession or an order requiring a defendant to deliver possession of the property. Code Civ. Proc. § 3375.
At bar, the 2ACC alleges Cross-Complainants own the real property on which the cabins sit, and seeks removal of the cabins in the event Cross-Complainants do not own them to return possession of the land to Cross-Complainants. The cause of action for ejectment is properly pled. The demurrer as to the eleventh cause of action is overruled.

Motion to Strike

Since the motion to strike is dependent on the demurrer being sustained without leave to amend, the Court denies the motion to strike without prejudice at this time.

Plaintiffs' Motion to Strike Defendants' Affirmative Defenses

Plaintiffs/Cross-Defendants' ("Plaintiffs") motion to strike Defendants' affirmative defenses is denied.

Request for Judicial Notice

Plaintiffs' request for judicial notice of court documents is granted as requested.

"The trial court shall take judicial notice of any matter specified in [Evidence Code] Section 452 if a party requests it and: (a) Gives each adverse party sufficient notice of the request, through the pleadings or otherwise, to enable such adverse party to prepare to meet the request; and (b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter." Evid. Code § 453. Plaintiffs' request for judicial notice is included as part of their moving papers rather than a separate request. While not procedurally proper, the Court finds the request gives Cross-Complainants' sufficient notice of the request and sufficient information for the Court to enable it to take judicial notice of the document.

Judicial notice is limited to the fact that the documents were filed, but not of the truth of their contents. *Williams v. Wraxall* (1995) 33 Cal.App.4th 120, 130, fn. 7. "We may take judicial notice of the *existence* of judicial opinions and court documents, along with the truth of the results reached—in the documents such as orders, statements of decision, and judgments. *Ibid.* However, even if Plaintiffs expressly requested the court to take judicial notice of any particularly identified fact in the Ruling, judicial notice can "not properly be taken of the truth of the factual findings" of the trial judge. *Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548, 1563. A

finding of fact made after hearing cannot "be indisputably deemed to have been a correct finding," because, ""[u]nder the doctrine of judicial notice, certain matters are assumed to be indisputably true, and the introduction of evidence to prove them will not be required." (1 Witkin Cal. Evidence (3d ed. 1986) § 80.) Taking judicial notice of the truth of a judge's factual finding would appear to us to be tantamount to taking judicial notice that the judge's factual finding must necessarily have been correct and that the judge is therefore infallible." *Id.* at 1568.

Legal Standard

"Any party, within the time allowed to respond to a pleading may serve and file a notice of motion to strike the whole or any part thereof, but this time limitation shall not apply to motions specified in subdivision (e) [motions to strike after failure to amend following judgment on the pleadings]." Code Civ. Proc. § 435(b)(1).

The grounds for a motion to strike are found in Code Civ. Proc. § 436, as follows:

"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. (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." Code Civ. Proc. § 436.

Analysis

Plaintiffs move to strike Defendants' eleven affirmative defenses, arguing they are unsupported by factual allegations and are contrary to California law. The Court disagrees. Plaintiffs arguments depend on the Court taking judicial notice of its findings during the evidentiary proceedings and ruling on plaintiffs' request for preliminary injunction. As discussed above, judicial notice is appropriate in stating the court made a particular ruling; however, judicial notice of the truth of a factual finding made by a judge sitting as a trier of fact is not appropriate. *Sosinsky, supra,* 6 Cal.App.4th at 1563 fn. 8.

> It is the consequence of judicial notice that the "fact" noticed is, in effect, treated as true for purposes of proof. "Under the doctrine of judicial notice, certain matters are assumed to be indisputably true, and the introduction of evidence to prove them will not be required. Judicial notice is thus a substitute for formal proof. [Citation.]" (1 Witkin Cal. Evidence (3d ed.1986) § 80, p. 74.) Therefore, a finding of fact that was judicially noticed would be removed as a subject of dispute and would be accepted for evidentiary purposes as true. The effect would be that without resort to concepts of collateral estoppel or res judicata that would litigate whether the issue was fully addressed and resolved, a finding of fact would be removed from dispute in the other action in which it was judicially noticed.

Id. at 1564.

Therefore, because it would be inappropriate for the court to take judicial notice of its findings during the evidentiary proceedings and previous ruling, Defendants' affirmative defenses asserting ownership rights are not unsupported by factual allegations or contrary

to California law. Therefore, Plaintiffs' motion to strike Defendants' affirmative defenses is denied.

7. CU0002183 Adventure Resort Marketing, LLC, (ARM) et al vs. B & W Resorts, Inc., dba Harmony Ridge Resort et al

Plaintiffs' motion to consolidate Case CU0002183 with Case CU0002221 is DENIED.

Procedural Standard

(a) Requirements of motion

(1) A notice of motion to consolidate must:

(A) List all named parties in each case, the names of those who have appeared, and the names of their respective attorneys of record;

(B) Contain the captions of all the cases sought to be consolidated, with the lowest numbered case shown first; and

(C) Be filed in each case sought to be consolidated.

(2) The motion to consolidate:

(A) Is deemed a single motion for the purpose of determining the appropriate filing fee, but memorandums, declarations, and other supporting papers must be filed only in the lowest numbered case;

(B) Must be served on all attorneys of record and all non-represented parties in all of the cases sought to be consolidated; and

(C) Must have a proof of service filed as part of the motion.

(b) Lead case

Unless otherwise provided in the order granting the motion to consolidate, the lowest numbered case in the consolidated case is the lead case.

(c) Order

An order granting or denying all or part of a motion to consolidate must be filed in each case sought to be consolidated. If the motion is granted for all purposes including trial, any subsequent document must be filed only in the lead case.

(d) Caption and case number

All documents filed in the consolidated case must include the caption and case number of the lead case, followed by the case numbers of all of the other consolidated cases.

Cal. Rules Ct., rule 3.350.

At bar, Plaintiffs failed to file a notice of motion in the later filed case and failed to serve all attorneys of record (only serving Defendants' attorney of record and not Plaintiffs' counsel in the later filed case). The remainder of the motion was otherwise properly filed in the lead case. Given counsel for Plaintiff in CU0002183 submitted a declaration in support of the motion, the Court finds the technical rule violation does not prejudice this Plaintiff. Defendants oppose the motion.

Legal Standard

When cases involving a common question of law or fact are pending in the same superior court, i.e., in the same county, the cases can be consolidated on a party's motion or on the Court's own

motion under Code of Civil Procedure section 1048(a). Two types of consolidation exist: a consolidation for purposes of trial only, where the two actions remain otherwise separate; and a complete consolidation where the two actions are merged into a single proceeding under one case number and result in only one verdict or set of findings and one judgment. *Hamilton v. Asbestos Corp., Ltd.* (2000) 22 Cal.4th 1127, 1147. Plaintiffs seek a complete consolidation for all purposes.

To prevail, the movant must establish (1) the cases are pending before the same court, (2) the cases share a common question of law or fact, and (3) the benefits of consolidation outweigh the burdens. See Code Civ. Proc., § 1048(a). In making the decision to grant or deny a consolidation, "the determination is within the discretion of the trial court since it is impossible to foresee all the possibilities of prejudice which might arise from such consolidation." *General Motors Corp. v. Superior Court of Los Angeles County* (1966) 65 Cal.2d 88, 92.

Discussion

It is undisputed both matters are pending in the Nevada County Superior Court. However, the earlier filed case is assigned to this Department A, whereas CU0002221 is assigned to Judge Tice-Raskin in Department 6 of the Nevada City Branch of the Court. The Court notes the present matter, CU0002183, was originally assigned to Judge Tice-Raskin in Department 6 until Plaintiffs in that matter filed a preemptory challenge on June 24, 2026 asserting Plaintiffs could not have a fair and impartial hearing in front of Judge Tice-Raskin, after which the case was reassigned to Department A. Plaintiffs' counsel in matter CU0002221 filed no such preemptory challenge. However, as both matters are pending in the same superior court/county, the Court will consider whether the matters share common questions of law or fact and any benefits or burdens associated with consolidation.

Plaintiffs argue the motion to consolidate arises from a common origin of the claim for defamation—the allegations Defendant Bill Sinor, Sr. accused Plaintiff Sean Graham of committing fraud and embezzling funds as part of a conspiracy with Bill Sinor Jr., and such statements were intended to tarnish Plaintiffs' reputations. However, each case has distinct causes of action. Case No. CU0002221 also alleges causes of action for: (1) Harassment – Hostile Work Environment; (2) FEHA retaliation; (3) Failure to Prevent Discrimination, Retaliation, and Harassment; (4) Breach of Contract – Written; (5) Breach of Contract – Verbal; (6) Breach of Implied Covenant of Good Faith and Fair Dealing; (7) Wrongful Termination in Violation of Public Policy; and (8) Defamation. Case No. CU0002183, on the other hand, solely alleges causes of action for: (1) Breach of Contract and (2) Defamation.

In support of the motion, Plaintiffs essentially contend, because both cases involve a cause of action for defamation, they should be consolidated. The CU0002183 Complaint alleges, "false and defamatory statements included express and implied accusations that Plaintiff had engaged in or been involved in dishonest conduct such as theft of materials belonging to the Company." CU0002183 Complaint, ¶ 77. The CU0002221 Complaint alleges Plaintiff Sean Graham "commit[ed] fraud and embezzl[ed] funds as part of a conspiracy with Bill Sinor, Jr., and Jon Landon, and expressly threatened to tarnish [h]is reputation in the process," as well as accusations of "several illegal acts." CU0002221 Complaint, Att. 1.

Alleging the same cause of action does not make the issues identical, even if some parties overlap. Additionally, the plaintiffs in both cases have alleged factually different and distinct causes of action beyond that of defamation. Consolidating such distinct factual inquiries and legal theories into a single case would tend to greatly increase the complexity of the case risking confusion of the trier of fact, all of which could result in substantial prejudice to all parties. The evidence at trial could easily become quite confusing to a juror as the law and legal theories will be different and involve only some of the same parties and/or facts.

For these reasons, the Court concludes the commonality of some alleged facts yet lack of commonality of legal issues is fatal to Plaintiffs' position consolidation would, overall, be beneficial to either the Court or the parties.

Accordingly, the Court finds any benefit stemming from consolidation would be slight, and any such benefit is far outweighed by the burdens of potential injustice and/or prejudice to some or all of the parties. The Court further finds judicial economy would not be served by consolidation.

Accordingly, the motion to consolidate is DENIED.

8. CU0002513 TRUCKEE CROSSROADS S.C., LP, a Delaware limited partnership vs. SIERRA CREST CORPORATION, a Nevada corporation et al

Appearances required by Defendants, Sierra Crest Corporation dba Blue Zone Sports and Ski James Broman, to show cause as to why Defendants' Answer or, at a minimum, the "Counterclaim" portion of Defendants' Answer should not be STRICKEN for failure to adhere to CCP sections 428.40 and 428.80. More specifically, although using the term "counterclaim" for a cross-complaint does not affect its validity (see, CCP section 428.80), any cross-complaint is to be filed as a separate document and shall not be contained within an answer. See, CCP 428.40. (Defendants should also take note of CCP section 428.50.)

9. CU0002527 Jerome Nocerino vs. Airbnb, Inc. et al

No appearance required. In light of the filed proofs of service, the OSC re dismissal is hereby vacated.

10. CU0002546 Joann Pennington et al vs. Tahoe Forest Hospital District dba Tahoe Forest Hospital D/P SNF et al

No appearance required. On the Court's own motion and in light of the declaration of counsel for Plaintiffs, the OSC re Dismissal is continued to August 21, 2026 at 9:00 a.m. in Department A.

11. CU0002549 PATRICK J. ROMANO vs. AUSTIN SHI-PING WANG

No appearance required. In light of the filed proofs of service, the OSC re dismissal is hereby vacated. However, the proof of service on file fails to indicate notice of the case management

conference was served. The Court reserves the right to re-issue an OSC in relation to improper service resulting in lack of service.

12. CU0002550 Jessica Galindo vs. Kenneth Ideker

Appearance required by Plaintiff to show cause as to why this case should not be dismissed and/or Plaintiff sanctioned for failure to serve the Summons and Complaint on Defendant despite the fact this case has been pending for almost five (5) months. Absent good cause being shown, the Court intends, on its own motion, to set the matter for dismissal pursuant to CCP section 583.420 and vacate the Case Management Conference date set for July 17, 2026 at 9:00 a.m.