October 26, 2026 Truckee Civil Law & Motion Tentative Rulings

1. CL0004355 Velocity Investments, LLC vs. MARY HORN

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 over two (2) 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 March 19, 2027 at 11:00 a.m.

2. CU0001584 Matthew Coulter vs. Mark Olsen et al

Plaintiff Matthew Coulter's demurrer to Defendants' Amended Answer to the Third Amended Complaint is OVERRULED with respect to the first, sixth, seventh, eighth, ninth, and eleventh affirmative defenses and otherwise SUSTAINED with leave to amend. Defendants shall have thirty (30) days leave to amend.

Legal Standard

A party against whom an answer has been filed may object by demurrer on the following grounds: (a) the answer does not state facts sufficient to constitute a defense, (b) the answer is uncertain, or (c) where the answer pleads a contract and it cannot be ascertained from the answer whether the contract is written or oral. Code Civ. Proc. § 430.20. A demurrer may be taken to the entire answer or to any one or more of several defenses in it. Code Civ. Proc. § 430.50(b). "A demurrer reaches only to the contents of the pleading and such matters as may be considered under the doctrine of judicial notice." *South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 732. The allegations of the pleading demurred to are regarded as true. *Ibid*.

"Unlike the usual general demurrer to a complaint the inquiry is not into the statement of a *cause of action*. Instead it is whether the answer raises a *defense* to the plaintiff's stated cause of action." *Timberidge Enterprises, Inc. v. City of Santa Rosa* (1978) 86 Cal.App.3d 873, 879-880 (emphasis in original). The analysis of whether an answer states a defense is governed by the same principles as that of whether a complaint states a cause of action. *South Shore Land Co., supra*, 226 Cal.App.2d 725, 732.

The sufficiency of an answer is evaluated with reference to the complaint it purports to answer. *South Shore Land Co., supra*, 226 Cal.App.2d 725, 733. A defendant must set forth only the "essential facts" of the affirmative defense, "sufficient to acquaint [plaintiff] with the nature, source and extent" of the defense. *Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 608. This is known as the "fair notice" test. *Ibid*. "There is no need to require specificity in the pleadings because "modern discovery procedures necessarily affect the amount of detail that should be required in a pleading." *Ibid*.

Code of Civil Procedure § 431.30(b) provides that an answer to a complaint shall contain: (1) the general or specific denial of the material allegations of the complaint controverted by the defendant, and (2) a statement of any new matter constituting a defense. "The phrase 'new matter' refers to something relied on by a defendant which is not put in issue by the plaintiff.

Thus, where matters are not responsive to essential allegations of the complaint, they must be raised in the answer as 'new matter.'" *State Farm Mut. Auto. Ins. Co. v. Superior Court* (1991) 228 Cal.App.3d 721, 725, internal citations omitted. Where, however, the answer sets forth facts showing some essential allegation of the complaint is not true, such facts are not 'new matter,' but only a traverse." *State Farm Mut. Auto. Ins. Co., supra*, 228 Cal.App.3d at 725. Traverse need not be specifically alleged. *Ibid*.

Allegations of new matter in an answer should not be proffered in the form of terse legal conclusions but rather they should be averred as carefully and with as much detail as the facts that constitute the cause of action alleged in the complaint. *FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384; *Quantification Settlement Agreement Cases* (2011) 201 Cal.App.4th 758, 812-813. Equitable defenses are "new matter" requiring ultimate facts pled. *Wade v. Howe* (1934) 2 Cal.App.2d 435, 439-440. "It is elementary that if one wishes to avail himself of an equitable defense he must set it up in his answer." *Fillmore v. Reilly* (1938) 28 Cal.App.2d 460, 463.

Analysis

First, Eighth, and Eleventh Affirmative Defenses

The Court has previously overruled the demurrer as to these affirmative defenses. Therefore, the demurrer as to the first, eighth, and eleventh affirmative defenses is again overruled.

Second Affirmative Defense: Self-Defense

Plaintiff argues the Second Affirmative Defense fails to plead facts which would sustain the defense, because it fails to identify which defendant(s) was allegedly attacked by Plaintiff. The Court agrees.

"In a suit for assault and battery, the defendant is not liable if that defendant reasonably believed, in view of all the circumstances of the case, that the plaintiff was going to harm him or her and the defendant used only the amount of force reasonably necessary to protect himself or herself." *J.J. v. M.F.* (2014) 223 Cal.App.4th 968, 976.

The defense is not new matter, based on the background allegations in the Third Amended Complaint ("TAC") stating the police report recorded Defendant Nelson making the statement: "Nelson witnessed Coulter "jump" onto Olson and bite him on the neck" regardless of alleging such statement was "false/misleading". TAC, 5:6-7, 5:1. However, the defense in the Amended Answer fails to sufficiently state which defendant reasonably believed plaintiff was going to harm him/them.

Accordingly, the Demurrer to the second affirmative defense is SUSTAINED WITH LEAVE TO AMEND.

Third Affirmative Defense: Duty to Mitigate

The Third Affirmative Defense alleges, "plaintiff had a duty to mitigate his damages and, to the extent he failed to do so, any damages awarded to plaintiff should be reduced and/or limited accordingly." Amended Answer to TAC, 2:22-23.

As with Defendants' previous defense "failure to mitigate", to the extent the defense introduces factual theories not at issue in Plaintiff's TAC, it constitutes new matter and must be pled with ultimate facts. Code Civ. Proc. § 431.30(b)(2); *State Farm Mut. Auto. Ins. Co., supra,* 228 Cal.App.3d at 725; *FPI Development, Inc., supra*, 231 Cal.App.3d at 384; *Quantification Settlement Agreement Cases, supra,* 201 Cal.App.4th at 812-813. Defendants have not alleged in what manner, even generally, Plaintiff had a duty to mitigate and how he then failed to mitigate his damages. Thus, the affirmative defense is insufficiently pled. Plaintiff cannot reasonably determine from the face of this defense in what way he failed to mitigate his damages, and thus the defense is uncertain within the meaning of Code of Civil Procedure § 430.20(b).

Accordingly, the demurrer to the third affirmative defense is SUSTAINED WITH LEAVE TO AMEND.

Fourth Affirmative Defense: Injury Caused by Plaintiff's Condition

Plaintiff argues that any prior medical conditions of Plaintiff are not relevant in the context of liability for an intentional tort. The Court agrees.

"Even in cases involving only negligent conduct, where the victim has a preexisting physical or mental condition that makes him unusually susceptible and results in harm greater than might reasonably be expected, the actor is nevertheless liable for all such harm." *Fisher v. Fisher* (2026) 118 Cal.App.5th 899, 923.

Here, the TAC alleges Defendants intentional actions caused "emotional and mental distress from the aggravation of Plaintiff's pre-existing Post Traumatic Stress Disorder". TAC, 8:16-18. Therefore, the answer does not raise an affirmative defense to liability based on asserting injury caused by Plaintiff's condition.

To the extent Defendant's argue the affirmative defense is asserted as to damages, such is not clear based on the Amended Answer's phrasing including "injury caused by Plaintiff's condition" and "answering Defendant alleges that any injury or damage suffered by plaintiff…was a direct, proximate and sole result of plaintiff's emotional, mental and/or physical bodily condition…on prior and subsequent to all times mentioned…" in the TAC. Amended Answer, 2:25-3:2. The affirmative defense currently asserts a defense as to both liability and damages, and so the demurrer must be sustained.

Therefore, the demurrer to the fourth affirmative defense is SUSTAINED WITH LEAVE TO AMEND.

Fifth Affirmative Defense: Negligence/Intentional Torts of Third Parties

Plaintiff argues the affirmative defense does not plead sufficient facts regarding the actions of a third party sufficient to assert such defense. The Court agrees.

The TAC does not allege any third party was involved in Plaintiff's claims. Therefore, this defense constitute new matter. Code Civ. Proc. § 431.30(b)(2); *State Farm Mut. Auto. Ins. Co., supra*, 228 Cal.App.3d at 725. The defense is not merely a denial of Plaintiff's allegations, they introduce distinct factual claims that third parties were negligent or engaged in intentional torts, which conduct contributed to Plaintiff's damages. The defense is not responsive to any essential allegation contained in the TAC. *State Farm Mut. Auto. Ins. Co., supra*, 228 Cal.App.3d at 725. Thus, Defendants must plead ultimate facts supporting the defenses; terse legal conclusions are insufficient. *FPI Development, Inc., supra*, 231 Cal.App.3d at 384; *Quantification Settlement Agreement Cases, supra*, 201 Cal.App.4th at 812-813.

In opposition to Plaintiff's argument a defense based on a negligence theory may not be raised as a defense to claims based upon intentional torts, Defendants argue the TAC alleges the phrase "substantial factor" which converts the cause of action for Respondeat Superior Liability into one of negligence. The Court disagrees. A defendant may be held liable for an intentional tort inflicted on a plaintiff if such intentional conduct was a substantial factor in causing the harm. *Fisher, supra*, 118 Cal.App.5th 899, 922. As such, the principle is not one rooted solely in negligence. Therefore, the TAC stating "substantial factor" does not automatically plead negligence in the alternative.

Accordingly, the demurrer to the fifth affirmative defense is SUSTAINED WITH LEAVE TO AMEND.

Sixth and Ninth Affirmative Defenses: Avoidable Consequences – Assault/Battery

Defendants argue the affirmative defenses are pled to Plaintiff's damages. The Court agrees.

As stated in the Court's prior ruling on Plaintiff's demurrer to Defendant's Answer:

> "Under the avoidable consequences doctrine as recognized in California, a person injured by another's wrongful conduct will not be compensated for damages that the injured person could have avoided by reasonable effort or expenditure." *State Dept. of Health Services v. Superior Court* (2003) 31 Cal.4th 1026, 1043. Thus, the doctrine lies with respect to mitigation of damages as opposed to any theory of negligence, and Plaintiff's assertion the doctrine is founded in negligence is incorrect. It pertains solely to the issue of damages, and whether one asserts an intentional tort or one which lies in a negligence theory, such is irrelevant to the applicability of the doctrine. It is only once a party is found to have suffered damage applicability of the doctrine of avoidable consequences comes into question.

July 27, 2026 Tentative Ruling.

These defenses are focused on Plaintiff's damages and are not new matter. Additionally, they assert the damages were caused by Plaintiff's own acts and "Plaintiff initiated provoked, and/or intentionally induced the alleged acts on which the causes of action for assault and battery are based when plaintiff attacked defendants". Amended Answer, 3:19-25; 4:9-15. The background allegations in the Third Amended Complaint ("TAC") include the police report recording

Defendant Nelson making the statement: "Nelson witnessed Coulter "jump" onto Olson and bite him on the neck" regardless of alleging such statement was "false/misleading" and allegations "there were multiple heated interactions between" Plaintiff and Defendants at SFCC job sites prior to the incident. TAC, 5:6-7, 5:1 6:19-21. Thus, the affirmative defenses are sufficiently pled.

The demurrer as to the sixth and ninth affirmative defenses are OVERRULED.

Seventh Affirmative Defense: Statute of Limitations

Plaintiff argues Defendants fail to plead sufficient facts showing what statute of limitation has run for a particular cause of action. The Court disagrees.

To properly plead a statute of limitations defense, a party must either allege facts showing that the action is time barred and allege the lateness of the action as a defense, or plead the specific section and subdivision. Code Civ. Proc. § 458; *Martin v. Van Bergen* (2012) 209 Cal.App.4th 84, 91. "It is necessary for defendant who pleads the statute of limitations to specify the applicable section, and, if such section is divided into subdivisions, to specify the particular subdivision or subdivisions thereof. If he fails to do so the plea is insufficient." *Brown v. World Church* (1969) 272 Cal.App.2d 684, 691.

Here, Defendants allege plaintiff's recovery is barred due to the running and expiration of the applicable statute of limitations, including but not limited to, the limitations periods contained in California Code of Civil Procedure §§ 335.1, 338, 340, and 343." Amended Answer, 4:1-3. Accordingly, the demurrer to the seventh affirmative defense is OVERRULED.

Tenth Affirmative Defense: Consent

Defendants' tenth affirmative defense alleges consent and contains the same language as that in their prior answer to which the demurrer was sustained with leave to amend. As stated previously, the defense constitutes new matter, and Defendants have failed to plead ultimate facts supporting the defense.

The demurrer to the tenth affirmative defense is SUSTAINED WITH LEAVE TO AMEND.

Leave to Amend

When a demurrer is sustained, the Court determines whether there is a reasonable possibility that the defect can be cured by amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. California law imposes the burden on the party who filed the pleading to demonstrate the manner in which they can amend their pleadings to state their claims. See *Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349. "Denial of leave to amend constitutes an abuse of discretion unless the [pleading] shows on its face it is incapable of amendment. [Citation.] Liberality in permitting amendment is the rule, if a fair opportunity to correct any defect has not been given." *Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1227.

Here, Defendants have not shown the manner in which they could amend the answer to properly state their defenses against Plaintiff's claims. Yet, given the liberal standard for permitting amendment of the pleadings, and the defects in the answer arising merely from a paucity of alleged facts, the Court will exercise its discretion to permit leave to amend the answer. The Court, however, will be disinclined to grant further leave to amend should Defendants fail to make amendments showing a meaningful effort to comply with the Court's ruling.

The Court is also aware not all facts are known to a pleader at the time of filing as discovery may not yet have commenced or may not have concluded. Despite this fact, the law requires a certain level of specificity from litigants when filing a complaint or an answer.

Conclusion

Accordingly, the Demurrer to the Amended Answer is OVERRULED with respect to the first, sixth, seventh, eighth, ninth, and eleventh affirmative defenses and otherwise SUSTAINED with leave to amend. Defendants shall file any amended answer within thirty (30) days from service of notice of entry of this order.

3. CU0002276 Amanda L Bestor vs. Robert Mueller

Adppearances required for Examination.