1. MEDINA, ET AL. v. CITY OF SOUTH LAKE TAHOE, ET AL., 25CV0146

Demurrer

Pursuant to Code of Civil Procedure section 430.10, subdivision (e), defendant City of South Lake Tahoe (the "City" or "defendant") generally demurs to plaintiff's second amended complaint ("SAC"). Defense counsel declares he met and conferred with plaintiffs prior to filing the demurrer, in compliance with Code of Civil Procedure section 430.41, subdivision (a). (Bardzell Decl., ¶¶ 6, 9 & Exs. C, F.)

1. Background

On June 8, 2024, plaintiff Carlos Medina was allegedly injured when an unsafe concrete obstruction caused his motorized scooter to crash at or near 3339 Lake Tahoe Boulevard in South Lake Tahoe, California. (SAC, ¶ 1.)

On September 16, 2024, both plaintiffs submitted their own liability claim form to the City. (Def.'s RJN, Exs. A & B.) Both plaintiffs indicated that the location of the incident was 3339 Lake Tahoe Boulevard. (Def.'s RJN, Exs. A & B.) When asked how the damage or injury occurred, Mr. Medina stated, "A dangerous condition in the form of an unsafe concrete obstruction caused Carlos Medina to suffer harm." (Def.'s RJN, Ex. A.) In response to the same question, Mrs. Medina stated, "A dangerous condition in the form of an unsafe concrete obstruction caused Carlos Medina to suffer harm. Sandra Medina is Carlos' wife. She witnessed the injuries sustained by her husband and suffered emotional distress, loss of consortium." (Def.'s RJN, Ex. B.)

On October 31, 2024, the City issued rejection letters to both plaintiffs. (Def.'s RJN, Exs. C & D.)

Plaintiffs' SAC asserts causes of action for: (1) general negligence; (2) loss of consortium; (3) dangerous condition of public property; and (4) negligent infliction of emotional distress ("NIED").

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2. Request for Judicial Notice

Pursuant to Evidence Code section 452, subdivisions (c), (g), and (h), the court grants defendant's unopposed request for judicial notice of Exhibit A (Mr. Medina's liability claim form submitted to the City), Exhibit B (Mrs. Medina's liability claim form submitted to the City),[1] Exhibit C (the City's rejection letter to Mr. Medina), Exhibit D (the City's rejection letter to Mrs. Medina), Exhibit E (recorded grant deed), and Exhibit F (El Dorado County Office of the Assessor's Property Information for 3339 Lake Tahoe Boulevard).

Plaintiffs' request for judicial notice of the liability claim form submitted to the County of El Dorado (Exhibit A), as well as the County of El Dorado's rejection letters[2] (Exhibit B), is denied because the materials are not "necessary, helpful, or relevant" to show what notice plaintiffs gave the City related to the content of plaintiffs' government claims. (See *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6.)

3. Legal Principles

"[A] demurrer challenges only the legal sufficiency of the complaint, not the truth or the accuracy of its factual allegations or the plaintiff's ability to prove those allegations." (*Amarel v. Connell* (1998) 202 Cal.App.3d 137, 140.) A demurrer is directed at the face of the complaint and to matters subject to judicial notice. (Code Civ. Proc., § 430.30, subd. (a).) All properly pleaded allegations of fact in the complaint are accepted as true, however improbable they may be, but not the contentions, deductions or conclusions of facts or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 3111, 318; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A judge gives "the complaint a

[1] Judicial notice of Exhibits A and B is granted for the sole purpose of showing what notice plaintiffs gave the City related to the content of plaintiffs' government claims.

[2] Plaintiffs submitted a government claim with the County of El Dorado prior to filing their government claim with the City. The County of El Dorado's rejection letters (one to each plaintiff) both state, "The accident location falls within the City of South Lake Tahoe limits." Even if the court took judicial notice of the rejection letters, the court cannot take judicial notice of the truth of the matters stated therein. (*In re Joseph H.* (2015) 237 Cal.App.4th 517, 541–542.)

reasonable interpretation, reading it as a whole and its parts in their context." (*Blank*, *supra*, 39 Cal.3d at p. 318.)

4. Discussion

The Government Claims Act (Gov. Code, § 810 et seq.) was enacted in 1963 to provide a "comprehensive statutory scheme governing the liabilities and immunities of public entities and public employees for torts." (*Quigley v. Garden Valley Fire Protection Dist.* (2019) 7 Cal.5th 798, 803.) "[T]he intent of the act is … to confine potential governmental liability to rigidly delineated circumstances." (*Williams v. Horvath* (1976) 16 Cal.3d 834, 838.)

Under the Government Claims Act, "[a] public entity is not liable for an injury" "except as otherwise provided by statute." (Gov. Code, § 815, subd. (a).) "In other words, direct tort liability of public entities must be based on a specific statute declaring them to be liable, or at least creating some specific duty of care…." (*Eastburn v. Regional Fire Protection Authority* (2003) 31 Cal.4th 1175, 1183.)

Defendant argues that the first, second, and fourth causes of action for general negligence, loss of consortium, and NIED, respectively, fail because plaintiffs set forth no statutory basis for liability as required by Government Code section 815. The court agrees with respect to the first and fourth causes of action only (general negligence and NIED). Because there is no reasonable likelihood that these causes of action can be cured by amendment, the court sustains the demurrer as to those causes of action without leave to amend.

The second cause of action for loss of consortium is dependent on Mr. Medina's substantive claims, which include the third cause of action for dangerous condition of public property, in violation of Government Code section 835.

"The Government Claims Act 'established a standardized procedure' for bringing personal injury claims against local governmental entities. [Citation.] As a general rule, no suit for money or damages may be brought against a public entity until a written claim,

known as a government claim, is presented to and rejected by that entity. [Citations.] The required contents of a government claim are set forth in section 910 of the Government Claims Act. Among other mandatory contents, section 910 specifies that a claim 'shall' include '[t]he date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted,' '[a] general description of the ... injury, damage or loss incurred so far as it may be known at the time of presentation of the claim,' and '[t]he name or names of the public employee or employees causing the injury, damage, or loss, if known.' [Citation.] The failure to timely file a proper government claim is fatal to the maintenance of a civil action against a public entity." (*Hernandez v. City of Stockton* (2023) 90 Cal.App.5th 1222, 1230-1231.)

The purpose of the government claim is " 'to provide the public entity sufficient information to enable it to adequately investigate claims and to settle them, if appropriate, without the expense of litigation.' " (*Stockett v. Association of Cal. Water Agencies Joint Powers Ins. Authority* (2004) 34 Cal.4th 441, 446.) Thus, "a [government] claim need not contain the detail and specificity required of a pleading, but [it must] 'fairly describe what [the] entity is alleged to have done.' " (*Ibid.*)

"[T]he factual circumstances set forth in the written claim must correspond with the facts alleged in the complaint; even if the claim were timely, the complaint is vulnerable to a demurrer if it alleges a factual basis for recovery which is not fairly reflected in the written claim." (*Nelson v. State of Cal.* (1982) 139 Cal.App.3d 72, 79; *White v. Moreno Valley Unified School Dist.* (1986) 181 Cal.App.3d 1024, 1031 (*White*) ["Stated another way, the claimant's judicial pleadings are limited to bases for recovery 'fairly reflected in the written claim' "].)

To establish liability under Government Code section 835, a plaintiff must prove that, at the time of the injury, a dangerous condition existed on public property, that it created a reasonably foreseeable risk of the kind of injury suffered, and that it proximately caused the injury. (*Ducey v. Argo Sales Co.* (1979) 25 Cal.3d 707, 716.)

Here, plaintiffs' liability claim forms both allege the incident occurred at 3339 Lake Tahoe Boulevard in South Lake Tahoe, California. According to the judicially noticed documents, said property is owned by the State of California, not the City. (Def.'s RJN, Exs. E & F.) Therefore, the City cannot be liable for the alleged injuries. Because there is no reasonable likelihood that amendment can cure the defect, the demurrer is sustained without leave to amend.

TENTATIVE RULING # 1: THE CITY OF SOUTH LAKE TAHOE'S DEMURRER TO THE ENTIRE SECOND AMENDED COMPLAINT IS SUSTAINED WITHOUT LEAVE TO AMEND. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

2. CALLAHAN v. POTTS, ET AL., 23CV0236

Motion for Summary Judgment

Pursuant to Code of Civil Procedure section 437c, defendants move for summary judgment on plaintiff's complaint.

The court notes that plaintiff's opposing separate statement of undisputed material facts is defective under Code of Civil Procedure section 437c, subdivision (b)(3) and California Rules of Court, Rule 3.1350, subdivision (f)(2). Plaintiff does not actually state whether each of defendants' facts are "disputed" or "undisputed." (Cal. Rules of Ct., R. 3.1350, subd. (f)(2).) An opposing party who contends that the fact (not the entire legal theory) is disputed must state the nature of the dispute and the evidence that supports that contention. This evidence must be supported by a citation to the exhibit, title, page, and line numbers in the evidence submitted. (*Ibid.*)

The judge may treat an opposing party's failure to comply with the requirement of a separate statement as a sufficient ground for granting the motion for summary judgment. (Code Civ. Proc., § 437c, subd. (b)(3).) In general, however, the appropriate response is to give the opposing party an opportunity to correct the deficiencies in the separate statement. (*Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 263.)

The court, on its own motion, continues the matter to June 13, 2025, to allow plaintiff to submit a corrected opposing separate statement. Plaintiff shall file and serve said statement on or before May 23, 2025. Defendants shall file and serve any response to the corrected statement on or before June 6, 2025.

TENTATIVE RULING # 2: MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, JUNE 13, 2025. PLAINTIFF SHALL FILE AND SERVE A CORRECTED OPPOSING SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS ON OR BEFORE MAY 23, 2025. DEFENDANTS SHALL FILE AND SERVE ANY RESPONSE TO THE CORRECTED STATEMENT ON OR BEFORE JUNE 6, 2025.

3. COETZEE v. LOMELLI-DIAZ, ET AL., 24CV2028

(A) Defendant Santiago's Demurrer

(B) Defendant Lomeli-Diaz's Demurrer

(C) Defendant Santiago's Motion to Strike

(D) Defendant Lomeli-Diaz's Motion to Strike

Defendants Ignacio Ramos de Santiago ("Santiago") and Adrian Lomeli-Diaz ("Lomeli-Diaz") separately demur and move to strike portions of plaintiff's second amended complaint ("SAC"), filed February 10, 2025. Defense counsel declares he attempted to meet and confer with plaintiff's counsel prior to filing these motions, in compliance with Code of Civil Procedure sections 430.41, subdivision (a) and 435.5, subdivision (a). (See Jones Decls.)

Plaintiff filed untimely oppositions to the motions on April 2, 2025 (the deadline to serve the opposition electronically was March 27, 2025). Defendants did not request additional time to respond and in fact, did respond to the substance of the oppositions. The court exercises its discretion to consider the untimely oppositions. (Cal. Rules of Ct., R. 3.1300, subd. (d).)

1. Background

This is a personal injury action arising from a motor vehicle accident. Plaintiff's SAC assert causes of action for: (1) motor vehicle negligence; (2) general negligence; and (3) intentional tort.

The SAC alleges that, at the time of the accident, defendant Santiago was unlicensed and driving under the influence of intoxicating substance(s). The SAC alleges defendant Lomeli-Diaz negligently entrusted the motor vehicle to defendant Santiago without checking to see if Santiago was properly licensed, trained, and sober.

The court previously granted defendants' motions to strike plaintiff's claim for punitive damages from the first amended complaint with leave to amend.

2. Legal Principles

"[A] demurrer challenges only the legal sufficiency of the complaint, not the truth or the accuracy of its factual allegations or the plaintiff's ability to prove those allegations." (*Amarel v. Connell* (1998) 202 Cal.App.3d 137, 140.) A demurrer is directed at the face of the complaint and to matters subject to judicial notice. (Code Civ. Proc., § 430.30, subd. (a).) All properly pleaded allegations of fact in the complaint are accepted as true, however improbable they may be, but not the contentions, deductions or conclusions of facts or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 3111, 318; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A judge gives "the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (*Blank*, *supra*, 39 Cal.3d at p. 318.)

A motion to strike is generally used to address defects appearing on the face of a pleading that are no subject to demurrer. (*Pierson v. Sharp Memorial Hospital* (1989) 216 Cal.App.3d 340, 342.) "The court may, upon a motion [to strike] …, or at any time in its discretion … [¶] … [s]trike out any irrelevant, false, or improper matter inserted in any pleading." (Code Civ. Proc., § 463, subd. (a).) Like a demurrer, the grounds for a motion to strike must appear on the face of the pleading or from any matter which the court is required to take judicial notice. (Code Civ. Proc., § 437, subd. (a).) On a motion to strike, the trial court must read the complaint as a whole, considering all parts in their context, and must assume the truth of all well-pleaded allegations. (*Courtesy Ambulance Service v. Superior Court* (1992) 8 Cal.App.4th 1504, 1519.)

3. Discussion

3.1. Defendants' Demurrers

Defendants both demur to the third cause of action for intentional tort on the ground that it fails to state a claim for relief. (Code Civ. Proc., § 430.10, subd. (e).) Specifically, defendants argue there is no allegation that either defendant touched plaintiff, or caused

plaintiff to be touched, with the intent to harm or offend plaintiff. (See CACI No. 1300; *So v. Shin* (2013) 212 Cal.App.4th 652, 669.)

Plaintiff's opposition does not specifically address defendants' demurrers (rather, it addresses the motion to strike punitive damages only).

The court agrees with defendants that the SAC fails to state a claim against either defendant for intentional tort. Because plaintiff alleges that the motor vehicle accident was based on Santiago's and Lomeli-Diaz's negligence, and there is no reasonable likelihood that amendment will cure the defect, the court sustains both demurrers as to the third cause of action without leave to amend. (*Roman v. County of Los Angeles* (2000) 85 Cal.App.4th 316, 322.)

3.2. Defendants' Motions to Strike

Defendants both move to strike the claims for punitive damages in the SAC.

Civil Code section 3294 allows a plaintiff to recover punitive damages "[i]n an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice." (Civ. Code, § 3294, subd. (a).) For the purposes of awarding punitive damages, " '[m]alice' 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." (Civ. Code, § 3294, subd. (c)(1).) " 'Oppression' means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (Civ. Code, § 3294, subd. (c)(2).) " '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, subd. (c)(3).)

Defendants argue the allegations that Santiago was driving unlicensed, untrained, and under the influence of intoxicating substance(s), without more, do not support a claim for punitive damages.

Plaintiff contends "[i]t is enough that plaintiff pleads that defendant Santiago drove the truck while under [sic] unlicensed and the influence. If the law is as defendant claims, then a drunk driver can get away with causing a motor vehicle accident without facing punitive damages because no one could ever prove that a defendant intentionally drove a vehicle into another vehicle…."

The court disagrees with plaintiff. In *Dawes v. Superior Court* (1980), 111 Cal.App.3d 82, the court held that allegations would support recovery of punitive damages where the complaint alleged an intoxicated driver decided to zigzag in and out of traffic at 65 miles per hour in a crowded beach recreation area at 1:30 in the afternoon on a Sunday in June. (*Id.*, at p. 89.)

Additionally, plaintiff cites *Taylor v. Superior Court* (1979) 24 Cal.3d 890. In *Taylor*, the Supreme Court concluded that, "[i]n order to justify an award of punitive damages on [the] basis [of a conscious disregard of the safety of others], the plaintiff must establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he willfully and deliberately failed to avoid those consequences." (*Id.* at pp. 895–896.) Applying that test, the Supreme Court directed the trial court to reinstate a claim for punitive damages where it was alleged the defendant was operating a motor vehicle while intoxicated, under circumstances which disclosed a conscious disregard of the probable dangerous consequences, namely, that the defendant: (1) had been an alcoholic for a substantial period of time; (2) had previously caused a serious automobile accident while driving under the influence of alcohol; (3) had been arrested and convicted for drunken driving on numerous prior occasions; (4) had recently completed a period of probation which followed a drunk driving conviction and that one of his probation conditions was that he refrain from driving for at least six hours after consuming any

alcoholic beverage; (5) was presently facing an additional pending criminal drunk driving charge; (6) notwithstanding his alcoholism, accepted employment which required him both to call on various establishments where alcoholic beverages were sold, and to deliver or transport such beverages in his car; and (7) at the time of the accident, was transporting alcoholic beverages while simultaneously driving and consuming an alcoholic beverage. (*Id.* at pp. 893, 900.)

Here, plaintiff's SAC does not include any allegations indicating a willful or conscious disregard of probable injury to others. The motions to strike are granted. Because plaintiff has had a previous opportunity to amend and has not explained how the defect in the pleading can be cured, the court finds that there is no reasonable possibility that further amendment will cure the defect. Leave to amend is denied.

TENTATIVE RULING # 3: BOTH DEFENDANTS' DEMURRERS TO THE THIRD CAUSE OF ACTION IN THE SECOND AMENDED COMPLAINT (FILED FEBRUARY 10, 2025) FOR INTENTIONAL TORT ARE SUSTAINED WITHOUT LEAVE TO AMEND. BOTH DEFENDANTS' MOTIONS TO STRIKE ALLEGATIONS OF PUNITIVE DAMAGES IN THE SECOND AMENDED COMPLAINT ARE GRANTED WITHOUT LEAVE TO AMEND. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

4. WARD v. HEITGER, 25CV0693

Petition to Release Property from Lien

TENTATIVE RULING # 4: THE PETITION TO RELEASE PROPERTY FROM THE MECHANICS LIEN (EL DORADO COUNTY RECORDS, INSTRUMENT NO. 2024-0019992) IS GRANTED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

5. WESTWOOD v. HEAVENLY VALLEY, LTD. PARTNERSHIP, 23CV1585

Motion to Compel In-person Independent Medical Examination of Plaintiff

Defendants move to compel plaintiff's attendance at an in-person independent medical examination ("IME") on May 22, 2025, in California before defendants' expert witness, Lauren Marasa, M.D., who specializes in interventional and forensic psychiatry. Alternatively, defendants request issue and evidentiary sanctions precluding evidence of and damages for emotional distress. Defendants seek reimbursement of $10,892.70 for attorney fees incurred in bringing the instant motion.

Defense counsel declares they met and conferred with plaintiff prior to filing this motion under Code of Civil Procedure section 2016.040. (Austin Decl., ¶ 2.)

1. Preliminary Matter

Plaintiff claims defendants' motion is defective under Code of Civil Procedure section 2032.310, subdivision (b) because it does not include the scope of the examination. (Code Civ. Proc., § 2032.310, subd. (b).)

The court disagrees. Defendants' notice of motion states, "The examination will consist of a clinical psychiatric interview including a personal and social history, educational and work history, medical history, psychiatric history, and evaluation of current symptoms and severity of mental illness if existent. The interview also includes a mental status examination, which evaluates the individual's affect, mood, speech, thought process, memory, sensorium, orientation, and other mental functions. The scope of the examinations will be to ascertain whether Plaintiff has suffered any mental impairments that impair her executive functions, attention, memory, language, perception, sensorimotor functions, motivation, mood state and emotion, quality of life, personality, and ability to work–as alleged in the Complaint, discovery responses, and discovery productions."

2. Background

This is an employment action in which plaintiff claims severe emotional distress.

Defendants seek to have plaintiff submit to an IME with defendants' expert, Dr. Marasa, to ascertain whether plaintiff has suffered any mental impairments, as alleged in the complaint, as well as plaintiff's discovery responses and discovery productions.

Plaintiff is temporarily living in Australia. Dr. Marasa is located and licensed in the state of California and is not licensed to practice medicine in Australia.

Plaintiff's assigned sex at birth was male. (Westwood Decl., ¶ 2.) Around 2013, plaintiff underwent a sex reassignment transition to female. (*Ibid*.) Plaintiff's current passport, which expires June 17, 2034, indicates she is female. (Westwood Decl., ¶ 3 & Ex. A.)

On January 20, 2025, President Trump signed Executive Order 14168, which declares that "[i]t is the policy of the United States to recognize two sexes, male and female," with the terms "male" and "female" defined to mean "a person belonging, at conception, to the sex that produces the [small and] large reproductive cell[s]," respectively. The order asserts that it is a "false claim that males can identify as and thus become women and vice versa," and states that a person's gender identity "does not provide a meaningful basis for identification." The order directed the Secretary of State to make "changes to require that government-issued identification documents, including passports … accurately reflect the holder's sex," as that term is defined in the order.

3. Legal Principles

A party must submit to a mental examination only on court order. (*Conservatorship of G.H.* (2014) 227 Cal.App.4th 1435, 1441.) A court order for a mental examination must be based on a showing of "good cause." (Code Civ. Proc., § 2032.320, subd. (a).)

Additionally, the place of examination generally may not be more than 75 miles from the examinee's residence. (Code Civ. Proc., § 2032.320, subd. (e).) However, a judge may, after a showing of good cause, order the examinee to travel a greater distance. (Code Civ. Proc., § 2032.320, subd. (e)(1).) This order must be conditioned on the moving party's

advancement of the examinee's reasonable expenses and costs for travel to the place of examination. (Code Civ. Proc., § 2032.320, subd. (e)(2).)

4. Discussion

Plaintiff does not dispute good cause exists for the requested IME. (Opp. at 5:9–10.) The court also finds that plaintiff's mental condition is clearly in controversy and good cause for the examination exists. (Code Civ. Proc., §§ 2032.020, subd. (a), 2032.320, subd. (a); see Compl., ¶¶ 14–15, 17.)

However, plaintiff argues there is no good cause to require her to attend the IME in-person in California in light of the alleged risks plaintiff faces with international travel as a transgender individual. Instead, plaintiff argues the court should allow her to submit to an IME remotely.

Defendants argue that Dr. Marasa is legally prohibited from conducting an IME on an individual who is not located in California. Dr. Marasa currently holds medical licenses in California only. (Marasa Decl., ¶ 5.) Further, Dr. Marasa declares, "My licensing requirements and obligations prohibit me from performing psychiatric medicine and psychiatry services for patients physically located anywhere other than California. These obligations and prohibitions extend to telemedicine and teleconferences." (Marasa Decl., ¶ 7.)

Plaintiff contends that an IME does not create a doctor-client relationship and does not constitute the practice of medicine. However, defendants argue Business and Professions Code section 2052 prohibits the unauthorized practice of medicine, which includes, "diagnos[ing] … [the] physical or mental condition of any person…." (Bus. & Prof. Code, § 2052.) Business and Professions Code section 2038 defines the words "diagnose" and "diagnosis" as: "any undertaking by any method, device, or procedure whatsoever, and whether gratuitous or not, to ascertain or establish whether a person is suffering from any physical or mental disorder. Such terms shall also include the taking of a person's blood pressure and the use of mechanical devices or machines for the purpose of making

a diagnosis and representing to such person any conclusion regarding his or her physical or mental condition." (Bus. & Prof. Code, § 2038.)

Because Dr. Marasa would be diagnosing plaintiff during the IME, the court finds that defendants have shown Dr. Marasa is legally prohibited from performing an IME remotely on plaintiff if plaintiff is physically located in Australia.

While the court understands plaintiff's fear of traveling to the United States right now as a transgender individual, Executive Order 14168 does not explicitly ban individuals from entering or leaving the United States. Rather, it appears to affect the ability to *obtain* a passport with a sex that does not match the individual's sex at birth. Here, plaintiff already has a passport.

Based on the above, the court grants defendants' motion to compel plaintiff's in-person attendance at the IME with defendants' expert, Dr. Marasa, at Dr. Marasa's office on May 22, 2025, on the condition that defendants advance plaintiff's reasonable expenses, including airfare, lodging, and transportation from plaintiff's current residence in Australia. (Code Civ. Proc., § 2032.320, subd. (e)(2).) Defendants are not required to advance expenses for plaintiff's meals, as she would have incurred those expenses regardless.

Code of Civil Procedure section 2032.320 requires the trial court to list the diagnostic tests and procedures to be employed in the mental examination in the court's order. (*Carpenter v. Superior Court* (2006) 141 Cal.App.4th 249, 269.) Appearances are required at 1:30 p.m., Friday, May 9, 2025, in Department Four to confirm the diagnostic tests and procedures to be employed in the IME.

Although defendants request $10,892.70 for attorney fees incurred in bringing the instant motion, defendants do not provide any legal authority or argument to support such award. As such, the court treats the point as forfeited. (*Martine v. Heavenly Valley Limited Partnership* (2018) 27 Cal.App.5th 715, 728.) The request for attorney fees is denied.

TENTATIVE RULING # 5: THE COURT GRANTS DEFENDANTS' MOTION TO COMPEL PLAINTIFF'S IN-PERSON ATTENDANCE AT THE IME WITH DEFENDANTS' EXPERT, LAUREN MARASA, M.D., AT DR. MARASA'S OFFICE ON MAY 22, 2025, ON THE CONDITION THAT DEFENDANTS ADVANCE PLAINTIFF'S REASONABLE EXPENSES, INCLUDING AIRFARE, LODGING, AND TRANSPORTATION FROM PLAINTIFF'S CURRENT RESIDENCE IN AUSTRALIA. (CODE CIV. PROC., § 2032.320, SUBD. (e)(2).) NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, MAY 9, 2025, IN DEPARTMENT FOUR TO CONFIRM THE DIAGNOSTIC TESTS AND PROCEDURES TO BE EMPLOYED IN THE IME.

6. NAME CHANGE OF HOWE, 25CV0319

OSC Re: Name Change

This matter was continued from March 28, 2025, because there was no proof of publication in the court's file, as required under Code of Civil Procedure section 1277, subdivision (a)(2)(A). There were no appearances at the last hearing.

To date, there is still no proof of publication in the court's file.

TENTATIVE RULING # 6: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, MAY 9, 2025, IN DEPARTMENT FOUR.

7. NAME CHANGE OF GONZALEZ, 25CV0639

OSC Re: Name Change

The petition does not state the reason for the requested name change. (Code Civ. Proc., § 1276, subd. (a)(2).) Additionally, there is no proof of publication in the court's file. (Code Civ. Proc., § 1277, subd. (a)(2)(A).)

TENTATIVE RULING # 7: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, MAY 9, 2025, IN DEPARTMENT FOUR.

8. ON SKI RUN, LLC v. MOUNTAIN MEN, LLC, ET AL., 24CV1953

Cross-Defendants' Motion to Strike Portions of Second Amended Cross-Complaint

Cross-defendants Thanya Starr and Supaporn Phillips (collectively, "cross-defendants") move to strike Paragraph 54 and Prayer for Relief Number 1 (both concerning punitive damages) in cross-complainants Mountain Men, LLC's, Lynn Odvody's, and Joshua Hepburn's (collectively, "cross-complainants") second amended cross-complaint ("SACC").

Cross-complainants filed an opposition requesting a continuance on the grounds that they recently retained new counsel, who had issues obtaining the complete motion and notice of motion to strike. Good cause appearing, the court grants cross-complainants' request.

TENTATIVE RULING # 8: AT CROSS-COMPLAINANTS' REQUEST, MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, JUNE 20, 2025, IN DEPARTMENT FOUR. OPPOSITION AND REPLY PAPERS SHALL BE FILED IN ACCORDANCE WITH THE TIME REQUIREMENTS UNDER CODE OF CIVIL PROCEDURE SECTION 1005, SUBDIVISION (b).

9. BAIRD v. LUX VACA LUXURY RENTALS, 23CV2063

Motion to Quash Service of Summons and Complaint

Before the court is specially appearing defendant Tahoe Village Homeowners Association's ("defendant") motion to quash plaintiff's service of summons and complaint pursuant to Code of Civil Procedure section 418.10 on the grounds that (1) service was improper, and (2) the court lacks personal jurisdiction over defendant (either general or specific).

Plaintiff filed no opposition.

Pursuant to Evidence Code section 452, subdivision (d), the court grants defendant's unopposed request for judicial notice of Exhibit 1 (summons and complaint) and Exhibit 2 (July 22, 2024, order granting defendant's previous motion to quash).

1. Discussion

The court begins with defendant's argument that the court lacks general or specific jurisdiction over defendant. If a defendant properly files a motion to quash service of summons for lack of personal jurisdiction, the plaintiff has the burden of establishing by a preponderance of the evidence the prima facie facts entitling the court to assume jurisdiction. (*Viaview, Inc. v. Retzlaff* (2016) 1 Cal.App.5th 198, 209–210.) A judge has jurisdiction to make an initial determination about the court's alleged lack of personal jurisdiction where, as here, it is challenged by a "specially appearing" defendant. (*Ziller Electronics Lab GmbH v. Superior Court* (1988) 206 Cal.App.3d 1222, 1228.)

California's long-arm statute authorizes courts to exercise personal jurisdiction "on any basis not inconsistent with the Constitution of this state or of the United States." (Code Civ. Proc., § 410.10; *Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 268; *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444.) The statute " 'manifests an intent to exercise the broadest possible jurisdiction,' limited only by constitutional considerations of due process." (*Integral Development Corp. v. Weissenbach* (2002) 99 Cal.App.4th 576, 583, quoting *Sibley v. Superior Court* (1976) 16 Cal.3d 442, 445.) A state

court's assertion of jurisdiction comports with due process requirements "if the defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate ' "traditional notions of fair play and substantial justice." ' " (*Vons*, *supra*, at p. 444, quoting *International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316.) The primary focus of that inquiry is "the defendant's relationship to the forum State." (*Bristol-Myers Squibb Co. v. Superior Court* (2017) 582 U.S. 255.)

Courts have recognized two types of personal jurisdiction: general and specific. (*Bristol-Myers*, *supra*, 582 U.S. at p. 262.) "A nonresident defendant may be subject to the general jurisdiction of the forum if his or her contacts in the forum state are 'substantial ... continuous and systematic.' " (*Vons*, *supra*, 14 Cal.4th at p. 445, quoting *Perkins v. Benguet Mining Co.* (1952) 342 U.S. 437, 445.) "In such a case, 'it is not necessary that the specific cause of action alleged be connected with the defendant's business relationship to the forum.' " (*Vons*, at p. 445, quoting *Cornelison v. Chaney* (1976) 16 Cal.3d 143, 147.) "A state court may exercise general jurisdiction only when a defendant is 'essentially at home' in the State." (*Ford Motor Co. v. Montana Eighth Judicial Dist. Court* (2021) 592 U.S. 351.)

A defendant without such continuous contacts nevertheless may be subject to a court's specific jurisdiction if it "has purposefully availed [itself] of forum benefits [citation], and the 'controversy is related to or "arises out of" a defendant's contacts with the forum' " (*Vons*, *supra*, 14 Cal.4th at p. 446, quoting *Helicopteros Nacionales de Colombia v. Hall* (1984) 466 U.S. 408, 414 (*Helicopteros*)), and " 'the assertion of personal jurisdiction would comport with "fair play and substantial justice." ' " (*Vons*, at p. 447.) Specific jurisdiction is thus contingent on the " 'relationship among the defendant, the forum, and the litigation.' " (*Helicopteros* at p. 414.)

" 'The purposeful availment inquiry ... focuses on the defendant's intentionality. [Citation.] This prong is only satisfied when the defendant purposefully and voluntarily directs his activities toward the forum so that he should expect, by virtue of the benefit

he receives, to be subject to the court's jurisdiction based on' his contacts with the forum." (*Pavlovich*, *supra*, 29 Cal.4th at p. 269, quoting *United States v. Swiss American Bank, Ltd.* (1st Cir. 2001) 274 F.3d 610, 623.) "Thus, the ' "purposeful availment" requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of "random," "fortuitous," or "attenuated" contacts [citations], or of the "unilateral activity of another party or a third person." [Citations.]' " (*Pavlovich*, at p. 269, quoting *Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 475.)

The second prong of the specific jurisdiction analysis inquires whether a plaintiff has established that its claims " 'arise out of or relate to defendant's contacts with the forum.' " (*Ford Motor Co.*, *supra*, 592 U.S. at p. 236, italics omitted.) "The first half of that standard asks about causation; but the back half, after the 'or,' contemplates that some relationships will support jurisdiction without a causal showing. That does not mean anything goes. In the sphere of specific jurisdiction, the phrase 'relate to' incorporates real limits, as it must to adequately protect defendants foreign to a forum." (*Ibid.*)

In this case, plaintiff filed no opposition, and thus, plaintiff has failed to meet its burden of establishing by a preponderance of the evidence the prima facie facts entitling the court to assume jurisdiction over defendant. (*Viaview, Inc.*, *supra*, 1 Cal.App.5th at pp. 209–210.)

The court also notes that defendant is a Nevada corporation with its principal place of business in Stateline, Nevada. (Towle Decl., ¶ 9.) Moreover, the current treasurer of defendant's board of trustees declares defendant has not done any of the following: (1) registered to do business in California; (2) had a registered agent or other authorized representative in California; (3) transacted business in California; (4) solicited business in California; (5) held itself out as conducting business in California; (6) derived any revenue from any other source in California; or (7) owned any real property in California. (Towle Decl., ¶ 10.)

Based on the above, the court finds defendant has not conducted systematic and continuous business operations in California, or purposefully availed itself of forum benefits. As such, the court lacks jurisdiction over defendant and the motion to quash is granted. The court does not reach the issue of whether there was proper service of the summons and complaint.

Pursuant to Code of Civil Procedure sections 418.10 and 581, subdivision (h),[3] the court dismisses the complaint, without prejudice, as to moving defendant only.

TENTATIVE RULING # 9: DEFENDANT TAHOE VILLAGE HOMEOWNERS ASSOCIATION'S MOTION TO QUASH IS GRANTED. THE COURT DISMISSES THE COMPLAINT, WITHOUT PREJUDICE, AS TO THIS DEFENDANT ONLY. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

[3] Code of Civil Procedure section 581, subdivision (h) provides, "The court may dismiss without prejudice the complaint in whole, or as to that defendant, when dismissal is made pursuant to Section 418.10." (Code Civ. Proc., § 581, subd. (h).)

10. FLENORY, ET AL. v. ALPINE INN & SPA, ET AL., 24CV0352

Motion to Strike

Pursuant to Code of Civil Procedure section 435, defendant Montoz, LLC ("defendant") moves to strike the following portions of plaintiffs' complaint concerning punitive damages: Paragraphs 61, 78, 89, and 109, and Paragraph 2 of the prayer for relief. Defense counsel declares he met and conferred with plaintiff via telephone prior to filing the instant motion, in compliance with Code of Civil Procedure section 435.5, subdivision (a). (Overlid Decl., ¶ 3.)

Plaintiffs filed no opposition to the motion.

1. Background

This action arises out of plaintiffs' claims that they suffered bedbug bites while staying at dismissed defendant Alpine Inn & Spa's hotel. Moving defendant Montoz, LLC allegedly owned, operated, managed, and did business as Alpine Inn & Spa at the time of the alleged incident. (Compl., ¶ 5.)

On February 18, 2022, plaintiffs allegedly awoke with "numerous bite marks" across their bodies and found what they believe to be bedbugs in their bed. (Compl., ¶¶ 15–16.) When plaintiffs reported the infestation to a front desk staff member, they were advised "that there was a bed bug infestation in the room Plaintiffs had stayed in, but that the Subject Hotel staff had attempted to get rid of the bed bugs just prior to Plaintiffs' stay and had thrown away the old mattresses. This staff member further explained that they had attempted to use a certain 'machine' to get rid of the bed bugs." (Compl., ¶ 17.)

2. Legal Principles

A motion to strike is generally used to address defects appearing on the face of a pleading that are no subject to demurrer. (*Pierson v. Sharp Memorial Hospital* (1989) 216 Cal.App.3d 340, 342.) "The court may, upon a motion [to strike] …, or at any time in its discretion … [¶] … [s]trike out any irrelevant, false, or improper matter inserted in any pleading." (Code Civ. Proc., § 463, subd. (a).) Like a demurrer, the grounds for a motion

to strike must appear on the face of the pleading or from any matter which the court is required to take judicial notice. (Code Civ. Proc., § 437, subd. (a).) On a motion to strike, the trial court must read the complaint as a whole, considering all parts in their context, and must assume the truth of all well-pleaded allegations. (*Courtesy Ambulance Service v. Superior Court* (1992) 8 Cal.App.4th 1504, 1519.)

3. Discussion

Defendant moves to strike the allegations regarding punitive damages in plaintiffs' complaint.

Civil Code section 3294 allows a plaintiff to recover punitive damages "[i]n an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice." (Civ. Code, § 3294, subd. (a).) For the purposes of awarding punitive damages, " '[m]alice' 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." (Civ. Code, § 3294, subd. (c)(1).) " 'Oppression' means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (Civ. Code, § 3294, subd. (c)(2).) " '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, subd. (c)(3).)

Additionally, in order to recover punitive damages from a corporate employer based on the acts of its employees, a plaintiff must show that an officer, director, or managing agent of the corporation had advance knowledge of the employee's unfitness, or that he authorized or ratified actions by the employee which warrant punitive damages. (Civ. Code, § 3294, subd. (b).)

Here, plaintiffs have not alleged any facts in the complaint which support a claim that defendant acted with oppression, fraud, or malice. Therefore, the court grants the motion to strike. Given that plaintiffs did not oppose the motion and have not established that there are additional facts they could allege to cure the defect, leave to amend is denied. (*Roman v. County of Los Angeles* (2000) 85 Cal.App.4th 316, 322.)

TENTATIVE RULING # 10: THE MOTION TO STRIKE PARAGRAPHS 61, 78, 89, AND 109, AND PARAGRAPH 2 OF THE PRAYER FOR RELIEF IN PLAINTIFFS' COMPLAINT IS GRANTED WITHOUT LEAVE TO AMEND. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.