1. NAME CHANGE OF CARRELL, 25CV1571

OSC Re: Name Change

Tamara Harrison brings this petition to change the names of her two minor children who each have different fathers. The petition states the following reason for the proposed name changes: "Mother is deceased and I have full custody. He and his brother are starting school together and I want them to have the same name." (Petn., ¶ 7(c).) The petition identifies the name of each child's other parent, but when asked for the address of the other parent, the petition states, "deceased" and "unknown," respectively.

The court needs clarification regarding the parties involved.

The court notes there is proof of publication in the court's file. (Code Civ. Proc., § 1277, subd. (a)(2)(A).)

TENTATIVE RULING # 1: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, SEPTEMBER 19, 2025, IN DEPARTMENT FOUR.

2. RAMOS, ET AL. v. SAFEWAY, INC., 24CV0288

Defendant's Motion to Compel Plaintiffs' Depositions

Pursuant to Code of Civil Procedure section 2025.450, defendant Safeway, Inc. ("defendant") moves to compel both plaintiffs' depositions, on the grounds that both plaintiffs failed to appear for the noticed deposition on June 10, 2025, without serving a valid objection. Defendant also seeks a total monetary sanction of $1,495.03.

Plaintiffs oppose the motion, claiming it is not necessary where plaintiffs provided alternative deposition dates for August 2025. Plaintiffs' counsel claims that, on July 11, 2025, he sent the defense an email providing the following alternative dates for plaintiffs' depositions: August 11, 14, 15, 18, 20, or 22, 2025. (Opp. at 3:5–7.)

Defendant filed a reply stating that plaintiffs' July 11 email does not protect plaintiffs from being compelled to appear for deposition, and further, that defense counsel replied to plaintiffs' July 11 email within one hour and there have been no further communications regarding depositions since.

Code of Civil Procedure section 2025.450 provides: "If, after service of a deposition notice, a party to the action or … employee of a party … without having served a valid objection … fails to appear for examination, or to proceed with it, or to produce for inspection any document, electronically stored information, or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document, electronically stored information, or tangible thing described in the deposition notice." (Code Civ. Proc., § 2025.450, subd. (a).) "If a motion under subdivision (a) is granted, the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) in favor of the party who noticed the deposition and against the deponent…, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc., § 2025.450, subd. (g)(1).)

In this case, on May 29, 2025, defendant electronically served both plaintiffs with the second amended notice of deposition, set for June 10, 2025. (Ramsey Decl., ¶ 4 & Ex. C.) On June 6, 2025, defense counsel attempted to confirm the depositions but received no response from plaintiffs' counsel. (Ramsey Decl., ¶ 4.) On June 9, 2025, defense counsel followed up by telephone and email. (Ramsey Decl., ¶ 4.) Plaintiffs' counsel responded by email: "Jen, please reschedule tomorrow's depo. Client and myself most likely going different directions. Keep you posted over next couple of weeks. Thank you for understanding." (Ramsey Decl., Ex. D.)

Minutes later, defense counsel emailed plaintiffs, "The depos of both plaintiffs scheduled for tomorrow have been cancelled per your request." (Ramsey Decl., Ex. D.) This evidence shows that defendant voluntarily cancelled the deposition pursuant to plaintiffs' request. Accordingly, defendant has not shown that plaintiffs failed to appear for deposition. The motion to compel is denied.

TENTATIVE RULING # 2: THE MOTION TO COMPEL IS DENIED. 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. STEPHENS v. LAUB LAW PLLC, 25CV1050

Defendant Jordan Morgenstern's Demurrer

On May 28, 2025, defendant Jordan Morgenstern ("defendant") filed a general and special demurrer to "plaintiff's complaint."[1]

On June 6, 2025, plaintiff filed an opposition to the demurrer.

A hearing on the demurrer was initially set for July 18, 2025. However, the court continued the matter to August 22, 2025, for defendant to satisfy the meet and confer requirement under Code of Civil Procedure section 430.41, subdivision (a). On August 11, 2025, defense counsel submitted a declaration stating the parties met and conferred earlier that day by telephone for over 40 minutes (Cullinane-Smith Decl., ¶ 2), thereby satisfying the meet and confer requirement.

On August 10, 2025, the court issued a tentative ruling clarifying the status of the pleadings. On August 11, 2025, the court adopted its tentative ruling as the order of the court. The court, on its own motion, struck the entirety of plaintiff's second amended complaint under Code of Civil Procedure section 436, subdivision (a) as an unauthorized pleading. The court deemed defendant's demurrer directed to plaintiff's first amended complaint ("FAC") – which was the operative pleading at the time defendant filed his demurrer – and continued the matter once more to September 19, 2025.

On August 19 and September 5, 2025, plaintiff submitted multiple unauthorized filings. The court does not consider these filings in ruling on this demurrer.

Also on August 19, 2025, defendant filed a response and supporting declaration to plaintiff's unauthorized filings. The court does not consider defendant's response or supporting declaration in ruling on this demurrer, either.

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[1] The title of defendant's demurrer was ambiguous on its face where plaintiff had, by that time, filed a total of three complaints in this action.

1. Background

Plaintiff is a 100 percent disabled senior citizen who receives over 75 percent of his monthly income from his disability insurer, Reliance Standard Life Insurance ("RSLI"). (FAC, ¶¶ 1.1, 1.8.)

In Spring 2022, RSLI instructed plaintiff to submit an updated disability report, which was required to continue plaintiff's disability benefits. (FAC, ¶ 3.6.)

In July 2022, plaintiff attempted to obtain an updated disability report from his then-medical provider, Kaiser, but was informed that Kaiser no longer prepared those types of reports. (FAC, ¶ 3.7.)

With dwindling bank balances, plaintiff called his ex-wife to ask for time to pay her spousal support while plaintiff updated his disability report for RSLI. (FAC, ¶ 3.8.) Plaintiff's ex-wife was not agreeable. (FAC, ¶ 3.8.)

Thereafter, plaintiff retained defendants Laub Law PLLC, Joey Max Laub, and associated staff to represent him concerning spousal support modification and related disability income matters. (FAC at 2:3–7, ¶¶ 3.8, 3.9.)

The FAC alleges defendant Morgenstern, a California-licensed attorney, is a partner or member of Laub Law PLLC (FAC, ¶ 1.4) and acted as plaintiff's co-counsel in the family law case mentioned above. (FAC, ¶ 2.7.)

On August 8, 2022, defendants accepted $3,800 as a fixed fee for their services. (FAC, ¶ 3.10.) On August 24, 2022, plaintiff reminded defendant Joey Laub that plaintiff could not afford to make his next support payment, which was due on September 1, 2022. (FAC, ¶ 3.11.) On September 6, 2022, plaintiff informed defendant Jill Rusin, a legal assistant at Laub Law PLLC, that plaintiff had not made his spousal support payment that was due September 1. (FAC, ¶ 3.13.) On September 7, 2022, plaintiff sent defendant Rusin the blank disability report that RSLI required to resume plaintiff's disability benefit payments. (FAC, ¶3.14.)

On December 14, 2022, nobody from Laub Law PLLC appeared for or represented plaintiff at a contested hearing in the family law case. (FAC, ¶ 3.26.)

In December 2022, RSLI closed plaintiff's disability case because it had not received any communications from defendants. (FAC, ¶ 3.29.)

On April 5, 2023, a readiness conference was held in the family law case. (FAC, ¶ 3.34.) Plaintiff had expected defendant Joey Laub to appear at the hearing on plaintiff's behalf; however, defendant Morgenstern appeared on behalf of plaintiff in Mr. Laub's place. (FAC, ¶ 3.34.) While scheduling a date for a settlement conference in the family law case, the court indicated there was a date available when defendant Lori London would be serving as a judge pro tem. (FAC, ¶ 3.36.) Plaintiff immediately told defendant Morgenstern that defendant London was plaintiff's ex-wife's attorney for ten years between 2003 and 2013 on this same case, SFL20110189. (FAC, ¶ 3.36.) Plaintiff conferred with defendant Morgenstern off the record. (FAC, ¶ 3.36.) Plaintiff clearly stated to the court his objection to defendant London serving as a judge pro tem on plaintiff's case. (FAC, ¶ 3.36.) However, defendant Morgenstern advised plaintiff that nothing defendant London does is binding, "so just agree." (FAC, ¶ 3.36.)

The transcript from the April 5 hearing reads: "THE COURT: Well, Ms. London has kindly offered some time to oversee a settlement conference. [¶] (Mr. Morgenstern and [plaintiff Jon C. Stephens] confer.) [¶] THE COURT: Mr. Stephens, she's – [¶] MR. MORGENSTERN: Mr. Stephens is not willing to do that because I guess – ." (FAC, ¶ 3.37.) The court then stated to plaintiff: "Well, sir, I'd say it this way: You have an absolute right not to go along with [having defendant London serve as a judge pro tem in the case] due to the conflict. You could also waive that conflict and go along with it. [¶] From my position, a settlement conference is never binding. Ms. London can't do anything to twist your arm to force a resolution." (FAC, ¶ 3.38.) The transcript continues: "MR. STEPHENS: And I am willing to stipulate to agree to that. [¶] THE COURT: I appreciate that. I'd still like Mr. Laub to have you sign a waiver – [¶] MR.

STEPHENS: Okay. [¶] THE COURT: -- so that there is a written waiver available. [¶] MR. STEPHENS: Understood." (FAC, ¶ 3.39.)

Immediately after the April 5 hearing, plaintiff informed defendant Morgenstern that he would not sign the waiver of conflict of interest mentioned by the court. (FAC, ¶ 3.40.) Defendant Morgenstern told plaintiff he would ensure that another judge pro tem was assigned to hear the settlement conference. (FAC, ¶ 3.40.)

During the settlement conference on May 23, 2023, defendant Joey Laub appeared on behalf of plaintiff. (FAC, ¶ 3.47.) Defendant London took the bench, despite plaintiff's many efforts to have her removed. (FAC, ¶ 3.47.) Plaintiff claims this directly violated plaintiff's right to a fair and impartial hearing. (FAC, ¶ 3.47.) Additionally, plaintiff claims defendant Joey Laub required plaintiff to argue his own case to defendant London. (FAC, ¶ 3.47.) Although plaintiff had requested defendant Joey Laub to raise a domestic violence argument (plaintiff's ex-wife allegedly committed acts of domestic violence against plaintiff in the past), Mr. Laub "said he didn't know about the domestic violence issue and he hadn't brought the Plaintiff's case file with him to the Settlement Conference." (FAC, ¶ 3.47.) Plaintiff claims his ex-wife attended the May 23 settlement conference, and plaintiff had to personally communicate with her, his domestic abuser, face-to-face without counsel. (FAC, ¶ 3.47.)

RSLI ultimately resumed payments to plaintiff on May 15, 2024 (approximately two years after suspending his benefits). (FAC, ¶ 3.61.)

The FAC alleges, upon information and belief, that defendants Joe Laub, London, and Morgenstern conspired to suppress plaintiff's legal arguments and obstruct access to remedies to which he was lawfully entitled. (FAC, ¶ 3.62.)

The FAC seeks general, special, and punitive damages totaling $6,390,000. (FAC at 2:20–21.) The FAC also seeks a referral to the California and Nevada State Bars for further investigation. (FAC at 2:21–23.)

2. Request for Judicial Notice

Attached to plaintiff's opposition brief filed June 6, 2025, is a request for judicial notice of two documents: (1) the cover page from the transcript of the April 5, 2023, hearing in the family law case stating defendant Morgenstern appeared on the record representing plaintiff (RJN Ex. B); and (2) an excerpt from the disciplinary order issued by the California Supreme Court in *In re Jordan Morgenstern* (RJN Ex. C).

The court denies plaintiff's request for judicial notice of Exhibit B because, although the document may be judicially noticeable, the truth of the matters stated within the document (i.e., that Morgenstern appeared on behalf of plaintiff) are not subject to judicial notice. (Evid. Code, § 452, subd. (d); see *In re Joseph H.* (2015) 237 Cal.App.4th 517, 541–542 ["[w]e can take judicial notice of official acts and public records, but we cannot take judicial notice of the truth of the matters stated therein"].) The court notes that plaintiff's FAC alleges the same fact that he requests judicial notice – that Morgenstern appeared on behalf of plaintiff at the family law hearing on April 5, 2023. For the purposes of this demurrer, the court accepts that allegation as true.

The court also denies plaintiff's request for judicial notice of Exhibit C because it is not "necessary, helpful, or relevant" to the instant demurrer. (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 311, 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.)

4. Discussion

3.1. First C/A for Professional Negligence

The required elements of a professional negligence (or "legal malpractice") claim include: (1) breach of the attorney's duty to use such skill, prudence, and diligence as other members of the profession commonly possess and exercise; (2) a proximate causal connection between the negligent conduct and the resulting injury; and (3) actual loss or damage resulting from the negligence. (See *Carlton v. Quint* (2000) 77 Cal.App.4th 690, 699.)

The FAC alleges Morgenstern is a partner or member of Laub Law PLLC (FAC, ¶ 1.4) and acted as plaintiff's co-counsel in the family law case mentioned above. (FAC, ¶ 2.7.) The only acts or omissions committed by Morgenstern alleged in the FAC occurred on April 5, 2023. On that date, Morgenstern allegedly appeared in court on behalf of plaintiff for a readiness conference in Mr. Laub's place. While scheduling a future settlement conference, the court indicated there was a date available when defendant Lori London would be serving as judge pro tem. (FAC, ¶ 3.36.) Plaintiff immediately told defendant Morgenstern that defendant London was plaintiff's ex-wife's attorney for ten years between 2003 and 2013 on the same family law case. (FAC, ¶ 3.36.) Plaintiff conferred with defendant Morgenstern off the record. (FAC, ¶ 3.36.) Plaintiff clearly stated to the court his objection to defendant London serving as judge pro tem on plaintiff's case. (FAC, ¶ 3.36.) However, defendant Morgenstern advised plaintiff that nothing defendant London does is binding "so just agree." (FAC, ¶ 3.36.)

The transcript from the April 5 hearing reads: "THE COURT: Well, Ms. London has kindly offered some time to oversee a settlement conference. [¶] (Mr. Morgenstern and [plaintiff Jon C. Stephens] confer.) [¶] THE COURT: Mr. Stephens, she's – [¶] MR. MORGENSTERN: Mr. Stephens is not willing to do that because I guess – ." (FAC, ¶ 3.37.)

The court then stated to plaintiff: "Well, sir, I'd say it this way: You have an absolute right not to go along with [having defendant London serve as Commissioner in the case] due to the conflict. You could also waive that conflict and go along with it. [¶] From my position, a settlement conference is never binding. Ms. London can't do anything to twist your arm to force a resolution." (FAC, ¶ 3.38.) The transcript continues: "MR. STEPHENS: And I am willing to stipulate to agree to that. [¶] THE COURT: I appreciate that. I'd still like Mr. Laub to have you sign a waiver – [¶] MR. STEPHENS: Okay. [¶] THE COURT: -- so that there is a written waiver available. [¶] MR. STEPHENS: Understood." (FAC, ¶ 3.39.)

Immediately after the April 5 hearing, plaintiff informed Morgenstern that he would not sign the waiver of conflict of interest mentioned by the court. (FAC, ¶ 3.40.) Morgenstern told plaintiff he would ensure that another judge pro tem was assigned to hear the settlement conference. (FAC, ¶ 3.40.)

Plaintiff's primary allegation against Morgenstern is that he advised plaintiff to consent to having defendant London serve as the judge pro tem in a future settlement conference, despite plaintiff's stated objection that defendant London previously represented his ex-wife in the same case, and presumably, would be unfairly biased in favor of plaintiff's ex-wife. Even assuming this to be true, as the court must do when ruling on a demurrer, the court finds plaintiff has failed to allege he suffered damages as a proximate cause of Morgenstern's alleged breach. Additionally, the FAC merely states that the first cause of action is directed against "defendants;" it does not specifically identify defendant Morgenstern. The court sustains the demurrer with leave to amend.

The court also notes that, although a law firm may be held vicariously liable on the basis of respondeat superior for negligent conduct by lawyer employees or agents in the scope of the employment or agency (Civ. Code, § 2338), plaintiff does not cite any legal authority that would allow plaintiff to hold defendant Morgenstern, in his individual capacity, liable for the acts of any third party, as alleged in the FAC. Therefore, the FAC

does not allege Morgenstern is personally liable for any of the acts or omissions committed by other employees or agents of Laub Law PLLC (i.e., defendants Joey Laub, Cristina Gomez, and Jill Rusin).

3.2. Second C/A for Intentional Infliction of Emotional Distress

To state a claim for intentional infliction of emotional distress ("IIED"), the plaintiff must allege: "(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct." (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050 (internal quotes omitted); see *Carlsen v. Koivumaki* (2014) 227 Cal.App.4th 879, 896; *So v. Shin* (2013) 212 Cal.App.4th 652, 671.) A defendant's conduct is "outrageous" when it is so " ' "extreme as to exceed all bounds of that usually tolerated in a civilized community." ' " [Citation.] And the defendant's conduct must be " ' intended to inflict injury or engaged in with the realization that injury will result." ' [Citation.]" (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050–1051.)

Severe emotional distress means " 'emotional distress of such substantial quality or enduring quality that no reasonable [person] in civilized society should be expected to endure it.' " (*Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 1004.)

In this case, the FAC fails to allege extreme or outrageous conduct by Morgenstern. The demurrer to the second cause of action is sustained with leave to amend. For any amended complaint filed in this case, plaintiff shall clearly identify, by name, each defendant to which each cause of action is directed.

3.3. Third C/A for Fraud

" 'The elements of fraud … are: (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or "scienter"); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.' " (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638, quoting 5 Witkin, Summary of Cal.

Law (9th ed. 1988), § 676, p. 778.) "[F]raud must be pled specifically; general and conclusory allegations do not suffice." (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) To survive demurrer, plaintiff must plead facts that "show how, when, where, to whom, and by what means the representations were tendered." (*Hamilton v. Greenwich Investors XXVI, LLC* (2011) 195 Cal.App.4th 1602, 1614 (internal quotes omitted).)

The FAC alleges "[d]efendants intentionally misrepresented the scope of legal services they would provide and concealed material facts regarding their qualifications, experience, and the progress of the Plaintiff's case. For example, on August 8, 2022, Defendant Joey Max Laub specifically assured the Plaintiff that the $3,800 fee would cover all legal services related to his family law and RSLI income recovery matters, including court appearances, legal filings, and direct communication with RSLI. Defendants asked thrice more for additional fees for the same services." (FAC, ¶ 6.2.)

The court finds the FAC fails to state a claim for fraud against defendant Morgenstern. There are no specific allegations that defendant Morgenstern made any misrepresentation; nor are there facts to show that defendant Morgenstern is liable for any alleged misrepresentation made by another person. The court sustains the demurrer with leave to amend. For any amended complaint filed in this case, plaintiff shall clearly identify, by name, each defendant to which each cause of action is directed.

3.4. Fourth C/A for Breach of Fiduciary Duty

"[B]reach of fiduciary duty is a species of tort distinct from a cause of action for professional negligence." (*Stanley v. Richmond* (1995) 35 Cal.App.4th 1070, 1086.) "The elements of a claim for breach of fiduciary duty are (1) the existence of a fiduciary relationship, (2) its breach, and (3) damage proximately caused by that breach." (*Mendoza v. Continental Sales Co.* (2006) 140 Cal.App.4th 1395, 1405.)

The FAC alleges, "Defendants in this case abandoned the Plaintiff in court, allowed a [judge pro tem] with a conflict of interest to preside, and failed to advocate for key spousal support protections under Family Code § 4320." (FAC, ¶ 7.2.)

The FAC alleges Morgenstern acted as plaintiff's co-counsel in the family law case. Thus, plaintiff has alleged the existence of a fiduciary relationship. "An attorney owes all clients … duties of undivided loyalty and diligence, among other fiduciary duties." (*White Mountains Reinsurance Co. of America v. Borton Petrini, LLP* (2013) 221 Cal.App.4th 890, 902.) The scope of an attorney's fiduciary duties may be determined based on the California Rules of Professional Conduct, relevant statutes and general common law principles relating to fiduciary relationships. (*Stanley*, *supra*, 35 Cal.App.4th at pp. 1086–1087.)

The court finds that plaintiff has sufficiently alleged a breach of fiduciary claim. However, the FAC merely states the cause of action is directed to "defendants;" it does not expressly identify defendant Morgenstern. For that reason, the court sustains the demurrer to the fourth cause of action with leave to amend.

3.5. Fifth C/A for Civil Conspiracy

"Conspiracy is not a cause of action, but a legal doctrine that imposes liability on persons who, although not actually committing a tort themselves, share with the immediate tortfeasors a common plan or design in its perpetration. [Citation.]" (*Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 510–511.) "Standing alone, a conspiracy does no harm and engenders no tort liability. It must be activated by the commission of an actual tort." (*Id.*, at p. 511.)

Because civil conspiracy is not an independent cause of action, and there is no reasonable likelihood that amendment can cure this defect, the court sustains the demurrer to the fifth cause of action without leave to amend.

TENTATIVE RULING # 3: THE DEMURRER IS SUSTAINED WITH AND WITHOUT LEAVE TO AMEND. REFER TO FULL TEXT. FOR ANY AMENDED COMPLAINT FILED IN THIS CASE, PLAINTIFF SHALL CLEARLY IDENTIFY, BY NAME, EACH DEFENDANT TO WHICH EACH CAUSE OF ACTION IS DIRECTED. 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. CHEEK, ET AL. v. FITZPATRICK, ET AL., 25CV0391

(A) Specially-appearing Defendants James and Gloria Fitzpatrick's Motion to Quash

(B) Specially-appearing Defendants James and Gloria Fitzpatrick's Motion to Strike

(C) Specially-appearing Defendant Zachary Fitzpatrick's Motion to Strike

Specially-appearing Defendants James and Gloria Fitzpatrick's Motion to Quash

Before the court is specially-appearing defendants James Fitzpatrick's and Gloria Fitzpatrick's motion to quash plaintiffs Lindsay Cheek's and minor Sage O'Connor's[2] (collectively, "plaintiffs") service of summons and complaint pursuant to Code of Civil Procedure section 418.10 on the grounds that the court lacks personal jurisdiction (either general or specific) over these specially-appearing defendants.

On September 8, 2025, plaintiffs filed a timely opposition.

On September 12, 2025, specially-appearing defendants filed a timely reply.

1. Background

This is a personal injury action brought against the driver and owners of the allegedly at-fault vehicle. Specially-appearing defendants own the subject-vehicle and are both residents of Nevada. They were not physically present during the underlying incident.

2. Request for Judicial Notice

Included in plaintiffs' opposition brief is a request for judicial notice pursuant to Evidence Code sections 451, subdivision (f) and 452, subdivisions (g) and (h).

First, plaintiffs request the court take judicial notice that "[t]he Tahoe Justice Court has limited jurisdiction as stated in the court's website: tahoejusticecourt.com." The court denies this request.

[2] The minor's claim is being asserted by and through her parent and Guardian Ad Litem Lindsay Cheek.

Next, plaintiffs request the court take judicial notice that Douglas County District Court is located at 1038 Buckeye Road, Minden NV. The court denies this request as it is not "necessary, helpful, or relevant" to the instant motion. (See *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6.)

Lastly, plaintiffs request the court to take judicial notice that specially-appearing defendants' residence in Nevada (located in Zephyr Cove, Nevada) is approximately 19.9 miles away from the closest court that could hear this matter in Nevada (located at 1038 Buckeye Road, Minden, Nevada); and defendant's residence in Nevada is approximately 6.2 miles away from the El Dorado Superior Court (located at 1354 Johnson Boulevard, South Lake Tahoe, California). The court also denies this request because it is not "necessary, helpful, or relevant" to the instant motion. (See *Jordache Enterprises*, *supra*, 18 Cal.4th at p. 748, fn. 6.)

3. Legal Principles

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.)

When a defendant moves to quash service of process, the plaintiff bears the initial burden of demonstrating facts justifying the exercise of jurisdiction. (*Zehia v. Superior Court* (2020) 45 Cal.App.5th 543, 552, citing *Jayone Foods, Inc. v. Aekyung Industrial Co. Ltd.* (2019) 31 Cal.App.5th 543, 553.) To carry this burden, the plaintiff " 'must present evidence sufficient to justify a finding that California may properly exercise jurisdiction over the defendant.' " (*Zehia*, at p. 552, quoting *In re Automobile Antitrust Cases I & II* (2005) 135 Cal.App.4th 100, 110.) If the plaintiff satisfies the initial burden, then the defendant has the burden of demonstrating that the exercise of jurisdiction would be unreasonable. (*Zehia*, at p. 552, citing *Jayone Foods, Inc.*, at p. 553.)

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. 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.*)

4. Discussion

Specially-appearing defendants argue they are Nevada residents without the minimal contacts necessary to allow California to assert jurisdiction under the Due Process Clause of the Fourteenth Amendment of the United States Constitution.

Plaintiffs oppose the motion on the grounds that: (1) specially-appearing defendants "caused an effect in California;" (2) specially-appearing defendants owned the vehicle which was involved in a collision causing injury in California; and (3) California is the most convenient forum for plaintiffs and specially-appearing defendants.

The court easily concludes it does not have general personal jurisdiction over specially-appearing defendants because neither of them has substantial, systematic, and continuous contacts in the forum state. (*Vons*, *supra*, 14 Cal.4th at p. 445.)

The remaining issue is whether the court has special personal jurisdiction over specially-appearing defendants. The first prong of the special personal jurisdiction inquiry is whether the defendant has purposefully availed him or herself of forum benefits. " '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.)

Plaintiffs argue that (1) specially-appearing defendants' action of negligently entrusting a vehicle to defendant-driver "caused an effect" in California; and (2) specially-appearing defendants owned a thing – "the 2011 Toyota Forerunner" – in California.

In the *intentional* tort context, the United States Supreme Court has utilized an effects test. (*Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 269–270; *Gilmore Bank v. AsiaTrust New Zealand Ltd.* (2014) 223 Cal.App.4th 1558, 1569–1570.) Under the effects test, specific personal jurisdiction " 'may be exercised over a defendant who has caused an effect in the forum state by an act or omission occurring elsewhere.' " (*Swenberg v. dmarcian, Inc.* (2021) 68 Cal.App.5th 280, 292, quoting *Taylor-Rush v. Multitech Corp.* (1990) 217 Cal.App.3d 103, 112.) However, the effects test "requires express aiming at

the forum (not necessarily at the plaintiff)." (*Gilmore Bank*, at p. 1570; *Swenberg*, at p. 292.) "[M]ost courts agree that merely asserting that a defendant knew or should have known that his intentional acts would cause harm in the forum state is not enough to establish jurisdiction under the effects test." (*Pavlovich*, at pp. 270–271.)

The instant case involves claims of negligence, not an intentional tort. Further, plaintiffs have not met their initial burden of showing specially-appearing defendants intentionally aimed their conduct to the forum state, California.

Based on the above, the court grants specially-appearing defendants' motion to quash. Plaintiffs' "most convenient forum" argument is not relevant to this analysis.

Specially-appearing Defendants James and Gloria Fitzpatrick's Motion to Strike

Pursuant to Code of Civil Procedure section 418.10, subdivision (e), specially-appearing defendants James and Gloria Fitzpatrick filed their motion to quash simultaneously with the instant motion to strike. Having granted the motion to quash, the motion to strike is denied as moot. The court confirms that these specially-appearing defendants have not made a formal appearance in the case.

Specially-appearing Defendant Zachary Fitzpatrick's Motion to Strike

Pursuant to Code of Civil Procedure section 436, subdivision (a), specially-appearing defendant Zachary Fitzpatrick ("specially-appearing defendant") moves to strike the following portions of plaintiffs' FAC: Paragraphs 17, 32, and 39, as well as the reference to "drug and alcohol abuse" in Paragraph 36; and the two separate requests for punitive damages in the prayer for relief section (FAC at 6:12, 21). Counsel for specially-appearing defendant declares he met and conferred with plaintiffs prior to filing the instant motion, as required under Code of Civil Procedure section 435.5, subdivision (a). (Knaack Decl., ¶¶ 4–5 & Exs. B, C.)

On September 8, 2025, plaintiffs filed a timely opposition.

On September 12, 2025, specially-appearing defendant filed a timely reply.

A motion to strike is generally used to address defects appearing on the face of a pleading that are not subject to demurrer. (*Pierson v. Sharp Memorial Hospital* (1989) 216 Cal.App.3d 340, 342.) Further, "[t]he 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., § 436, subd. (a).) Like a demurrer, the grounds for a motion to strike must appear on the face of the pleading or from any matters judicial noticed. (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 1054, 1519.)

Paragraph 17 of the FAC alleges: "Zachary Fitzpatrick fled the scene of the accident without inquiring as to the condition of Ms. Cheek or her daughter and without exchanging information as required by California Vehicle Code Section 20002(a)(2)."

Specially-appearing defendant's motion does not include any legal argument regarding why Paragraph 17 is irrelevant, false, or improper matter that should be stricken. Therefore, the argument is forfeited. (*Martine v. Heavenly Valley Limited Partnership* (2018) 27 Cal.App.5th 715, 728.) Even if the court strikes the allegations in the FAC related to punitive damages, there is no showing that Paragraph 17 is irrelevant, false, or improper matter.

Next, Paragraph 36 of the FAC alleges: "Plaintiffs are informed and believe, and thereon allege, that James Fitzpatrick and Gloria Fitzpatrick knew or should have known that Zachary Fitzpatrick was incompetent or unfit to drive the 2011 Toyota Forerunner, as Zachary Fitzpatrick had a long history of driving infractions, drug and alcohol abuse" (the instant motion to strike is only directed to the portion of Paragraph 36 that refers to "drug and alcohol abuse").

Again, specially-appearing defendant's motion does not include any legal argument regarding why the reference to "drug and alcohol abuse" in Paragraph 36 is irrelevant,

false, or improper matter that should be stricken. Thus, the argument is forfeited. (*Martine*, *supra*, 27 Cal.App.5th at p. 728.) The court also notes that the allegation is relevant to the negligent entrustment claims asserted against the defendant-owners of the vehicle. The motion to strike this part of Paragraph 36 is denied.

The other challenged portions of the FAC relate to punitive damages.

Paragraph 32 of the FAC alleges: "In doing the acts alleged herein, Defendant, Zachary Fitzpatrick, was guilty of oppression and malice such that Plaintiffs are entitled to damages for the sake of example and by way of punishing Zachary Fitzpatrick. [Citation.]"

Paragraph 39 of the FAC alleges: "Plaintiffs are informed and believe, and thereon allege, that in doing the acts alleged herein, defendants, James Fitzpatrick and Gloria Fitzpatrick, were guilty of oppression and malice such that Plaintiffs are entitled to damages for the sake of example and by way of punishing James Fitzpatrick and Gloria Fitzpatrick. [Citation.]"

Civil Code section 3294 allows a plaintiff to recover exemplary (or "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 exemplary 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 subject 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).)

In this case, the FAC does not include any allegations indicating a willful or conscious disregard of probable injury to others. Although the FAC refers to specially-appearing defendant's drug and alcohol abuse, there is no allegation that drugs or alcohol were involved in the subject-accident. Plaintiffs' arguments to the contrary are unconvincing. The court grants the motion to strike Paragraphs 32 and 39, as well as the two requests for punitive damages in the prayer for relief. Because plaintiffs have not been afforded a previous opportunity to amend, the court grants leave to amend. (*Courtesy Ambulance Serv. v. Superior Court* (1992) 8 Cal.App.4th 1504, 1519, fn. 12.)

TENTATIVE RULING # 4:

(A) THE COURT GRANTS SPECIALLY-APPEARING DEFENDANTS JAMES AND GLORIA FITZPATRICK'S MOTION TO QUASH.

(B) THE COURT DENIES SPECIALLY-APPEARING DEFENDANTS JAMES AND GLORIA FITZPATRICK'S MOTION TO STRIKE AS MOOT.

(C) THE COURT GRANTS IN PART AND DENIES IN PART SPECIALLY-APPEARING DEFENDANT ZACHARY FITZPATRICK'S MOTION TO STRIKE. THE COURT GRANTS THE MOTION TO STRIKE PARAGRAPHS 32 AND 39 OF THE FIRST AMENDED COMPLAINT, AS WELL AS THE TWO REQUESTS FOR PUNITIVE DAMAGES IN THE PRAYER FOR RELIEF, WITH LEAVE TO AMEND. PLAINTIFF'S AMENDED PLEADING SHALL BE FILED WITHIN 10 DAYS AFTER SERVICE OF NOTICE OF ENTRY OF THIS ORDER. THE COURT DENIES THE MOTION TO STRIKE PARAGRAPH 17, AS WELL AS THE REFERENCE TO "DRUG AND ALCOHOL ABUSE" IN PARAGRAPH 36 OF THE FIRST AMENDED COMPLAINT.

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. HUCKABY v. BMO BANK N.A., ET AL., 25CV0486

Demurrer

TENTATIVE RULING # 5: ON THE COURT'S OWN MOTION, MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, OCTOBER 17, 2025, IN DEPARTMENT FOUR. THE COURT APOLOGIZES TO THE PARTIES FOR ANY INCONVENIENCE.

6. GABLER v. LENNEX, 23CV1351

Claim of Exemption

This limited civil action for breach of contract was initiated in August 2023. The complaint alleged defendant failed to make agreed upon payments to satisfy a debt with plaintiff. Plaintiff also claimed he incurred costs to store the vehicles defendant was supposed to have taken physical custody of in August and October 2022.

On December 5, 2023, the court entered judgment, based on stipulation of the parties, in favor of plaintiff in the total amount of $19,916.

On October 10, 2024, plaintiff submitted a memorandum of costs after judgment totaling $5,000.

On October 30 and 31, 2024, plaintiff submitted writs of execution directed to the Sheriff or Marshal of Fresno and Sacramento Counties, respectively. These writs of execution reflect a total amount due of $30,177.28 ($19,916 judgment + $5,000 costs after judgment + $5,261.28 accrued interest), and instruct the levying officer to add daily interest of $20.74 from the date of writ.

On November 20, 2024, plaintiff submitted a new memorandum of costs after judgment totaling $6,278.50. On December 3, 2024, plaintiff submitted new writs of execution that still reflected a total amount due of $30,177.28 and instructed the levying officer to add daily interest of $20.74 from the date of writ.

Also on December 3, 2024, plaintiff submitted an abstract of judgment stating a total amount of $19,916.

On December 11, 2024, plaintiff submitted new writs of execution reflecting a total amount of $32,361.09 and instructing the levying officer to add daily interest of $7.17 from the date of writ.

Also on December 11, 2025, plaintiff submitted a new memorandum of costs after judgment totaling $6,913.70. Later that same day, plaintiff filed new writs of execution

reflecting a total amount of $33,456.33 and instructing the levying officer to add daily interest of $3.65 from the date of writ.

On March 28, 2025, defendant failed to appear for an order of examination hearing. On April 1, 2025, the court issued an order to show cause for failure to satisfy the judgment.

On June 26, 2025, plaintiff submitted a stipulation from the parties stating, "[t]he Defendant having made payments toward the debt and agreeing to arrangements to complete the satisfaction of the debt, the Plaintiff hereby withdraws the request for a debtor's exam and requests the court dismiss the OSC scheduled for 6/27/25…. [¶] Defendant agrees to pay Plaintiff a sanction of $800 for all the time and effort wasted as a result of Defendant's failure to appear as ordered. The parties request the Court order the $800 sanction to be added to the debt as a reimbursable cost effective 6/27/25." The court entered the stipulated order on June 26, 2025.

On August 25, 2025, plaintiff filed a notice of opposition to claim of exemption and a notice of hearing on the claim of exemption (at that time, no claim of exemption had been filed with the court).

On August 26, 2025, plaintiff filed a stipulation executed by the parties on March 28, 2025, stating that defendant agrees to, within the next 60 days, use an early withdrawal from her employer-sponsored 401(k), IRA, or other retirement account to satisfy the judgment in full, as well as interest, fees, and costs; additionally, defendant agrees to pay plaintiff $5,000 from tuition reimbursement within the next 30 days toward the satisfaction of the judgment.

On August 27, 2025, plaintiff submitted a memorandum of costs after judgment totaling $11,093.83. The memorandum indicates the amount of judgment principal remaining due is $11,508.02.

On September 2, 2025, the Sacramento County Sheriff's Office submitted the claim of exemption packet, which includes defendant's claim of exemption (Judicial Council

Form WG-006) executed July 25, 2025. Attached to defendant's claim of exemption is a declaration stating: "I have paid a total of $43,080.20 to [plaintiff]. This amount includes payments that I made up to 6/26/25, directly to him in the amount of $40,402, and two Writ of Garnishment payments of $1339.10 on 6/23/25 and $1339.10 on 7/23/25. To date, I have paid more than the original Court Judgment of $19,916.00 and more than the Writ of Garnishment issued by the Sheriff's Department in the amount of $44,906.76. The payments that I made directly to [plaintiff] do not appear to be recorded with the courts. I have not received the title for the 2nd vehicle as of today. I have paid more than the judgment amount and as of 7/23/25 the Writ of Garnishment states that I have a remaining balance of $31,228.56. Respectfully, I believe that I am paid in full and I believe that I have paid in excess of the amount that I owed."

TENTATIVE RULING # 6: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, SEPTEMBER 19, 2025, IN DEPARTMENT FOUR.