June 27, 2025
Dept. 9
Tentative Rulings

1.	**23CV1108**	**NICHOLSON et al v. COUNTY OF EL DORADO et al**
Compromise Minor's Claim		

On July 10, 2023, Caitlyn Nicholson, the mother of the minor who is the subject of this filed an application to be appointed guardian ad litem for the purpose of this proceeding, which was approved by the court on July 11, 2023.

This is a Petition to compromise a minor's claim. The Petition states the minor sustained shoulder pain and emotional distress resulting from an auto accident in 2022. A copy of the accident investigation report was filed with the Petition as Attachment 5, as required by Local Rule 7.10.12A(4). Petitioner requests the court authorize a compromise of the minor's claim against defendant/respondent in the gross amount of $10,000.00.

The Petition states the minor incurred $3,961.68 in medical expenses, but after negotiated, contractual, or statutory reductions only $802.30 will be deducted from the settlement. However, Attachment 7 shows a total of $908.45 in expenses. Copies of invoices for the claimed medical expenses are attached to the Petition as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6).

The Petition states that the minor has fully recovered and there are no permanent injuries. A doctor's report concerning the minor's condition and prognosis of recovery is attached, as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(3).

The Petition states minor's attorney requests attorney's fees in the amount of $2,175; however, the Declaration of William A. Deitchman states attorney's fees in the amount of $2,475.00. The court uses a reasonable fee standard when approving and allowing the amount of attorney's fees payable from money or property paid or to be paid for the benefit of a minor or a person with a disability. (Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(8); California Rules of Court, Rule 7.955(a)(1).)

The minor's attorney also requests reimbursement for costs in the amount of $99.10. There are no copies of bills substantiating the claimed costs attached to the Petition as required by Local Rules of the El Dorado County Superior Court, Rule 7.10.12A.(6).

With respect to the $6,623.00 due to the minor, the Petition requests that they be deposited into an insured account with JP Morgan Chase Bank, subject to withdrawal with court authorization. However, attachment 18b(2) states $7,365.60 will be deposited in the blocked account.

The minor's presence at the hearing will be required in order for the court to approve the Petition. Local Rules of the El Dorado County Superior Court, Rule 7.10.12.D.

TENTATIVE RULING #1:

APPEARANCES REQUIRED ON FRIDAY, JUNE 27, 2025, AT 8:30 AM IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

2.	**24CV0979**	**THOMASON v. SEQUOIA SENIOR LIVING**
Motion to Approve PAGA and Attorney's Fees		

This is an unopposed motion for an Order for preliminary approval of a class action settlement and to make other orders required to facilitate such settlement. The underlying action involves claims against Defendant for unpaid wages in violation of various California Labor Code provisions as well as claims for civil penalties under the Private Attorney General Act ("PAGA").

Following mediation, the parties reached a Settlement Agreement. See Exhibit 1 to Declaration of Robert Spencer, dated April 24, 2025.

The proposed terms of the Settlement Agreement include:

Gross Settlement Amount	$300,000.00
Attorney's Fees not to exceed one third of Gross Settlement Amount	$100,000.00
Litigation Costs (not to exceed)	$19,615.26
Administrator Costs (not to exceed)	$5,000.00
PAGA Payment to Labor Workforce Development Agency	$125,913.56
Plaintiff's Service Award (one named Plaintiff)	$7,500.00
Net Settlement Amount to PAGA Group Members:	$41,971.19

Individual Settlement Payments would be paid on a pro-rata basis based on the number of Compensable Workweeks during the Class Period. The average payment is estimated to be $63.79. Class Members would not be required to submit claim forms, but each Class member would be mailed the Notice Packets containing information about his or her share, the opportunity to dispute the number of Compensable Workweeks and the opportunity to opt out. All Class Members who do not opt out would receive a settlement check upon the court's final approval.

Specifically, the parties request the court to issue an Order as follows:

1. This Court has jurisdiction over the subject matter of the Action and over the Parties to the Action.
2. The settlement was entered into in good faith, the settlement is fair, reasonable and adequate under the circumstances, and Plaintiff, by and through her counsel, has satisfied the standards and applicable requirements for approval of a settlement of a claim brought under PAGA.
3. Plaintiff has provided the Labor and Workforce Development Agency ("LWDA") with the required notice as to the terms of the settlement and the LWDA has not objected to the terms of the settlement.

4. All capitalized terms used herein shall have the same meaning as given to them in the Settlement Agreement.
5. The Court approves the Parties' selection of Simpluris, Inc. ("Simpluris") as the Settlement Administrator for this action.
6. Defendant shall fund the $300,000 Settlement Amount by making a payment to Simpluris by the deadline set forth in the Settlement Agreement.
7. Pursuant to the terms of the Settlement Agreement, Labor Code § 2699(g)(1), and the authorities, evidence, and arguments set forth in Plaintiff's Motion for an Order Awarding Attorneys' Fees, Costs, Enhancement Payment, and Settlement Administration Fees, an award of attorneys' fees of $100,000 and costs in the amount of $19,615.26 as final payment for and complete satisfaction of any and all attorneys' fees and costs owed to Plaintiff's Counsel is hereby granted. The Court finds that Counsel's request falls within the range of reasonableness and that the result achieved justifies the award. The payment of attorneys' fees and costs to Plaintiff's Counsel shall be made in accordance with the terms of the Settlement Agreement.
8. The Court hereby approves the enhancement award to Plaintiff Thomason in the amount of $7,500. The payment of the enhancement award to Plaintiff Thomason shall be made in accordance with the terms of the Settlement Agreement.
9. The Court approves the payment of up to $5,000 from the Settlement Amount to Simpluris, Inc. for settlement administration services in this matter. If actual administrative costs are less than the parties' estimation, the difference will be included in the Net Settlement Amount. The payment of the settlement administration fees awarded to Simpluris shall be made in accordance with the terms of the Settlement Agreement.
10. The Court approves the settlement of the California Labor Code §§ 2698, et seq. claims alleged in the Action. In accordance with California Labor Code section 2699(i), 75% of the final Net Settlement Amount (i.e., the $300,000 Settlement Amount minus the amounts paid for attorneys' fees and costs, Plaintiff's enhancement award, and the Settlement Administrator's fees) shall be paid to the LWDA in accordance with the terms of the Settlement Agreement. The remaining 25% of the Net Settlement Amount shall be distributed to the PAGA Group in accordance with the terms of the Settlement Agreement.
11. The Court approves the form of notice to members of the PAGA Group attached to the Settlement Agreement as Exhibit A and directs the Parties to ensure that notice is distributed to the members of the PAGA Group along with the settlement checks to be sent to each member of the PAGA Group, as calculated in accordance with the terms of the Settlement Agreement.
12. Each settlement check mailed to a member of the PAGA Group shall be valid for 180 days from the date of issuance in accordance with the Settlement Agreement. At the end of

that 180-day period, the monies represented by any PAGA Group member's uncashed Individual Settlement Payment shall be remitted by Simpluris to the LWDA.

13. Upon entry of this Order, and upon all additional conditions being met by the Parties as outlined in the Settlement Agreement, this Action shall be dismissed with prejudice.
14. Neither the Settlement, nor any of the terms set forth in the Settlement Agreement, is an admission of liability by the Released Parties, nor is the Court's instant Order a finding as to the validity of any claims in the Litigation or of any wrongdoing by the Released Parties.
15. This Order is intended to be a final disposition of the Action in its entirety and is intended to be immediately appealable.
16. This Court shall retain exclusive and continuing jurisdiction over the Action and the Parties for purposes of enforcing and interpreting this Order, the Settlement Agreement, and the settlement funding and distribution process

TENTATIVE RULING #2:

ABSENT OBJECTION, THE MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT IS GRANTED. APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JUNE 27, 2025, TO SET THE DATE OF THE FINAL APPROVAL HEARING.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

3.	**24CV2592**	**KAUFMAN-SHARP v. FARMERS INSURANCE EXCHANGE**
Motion for Sanctions		

Respondent filed a Motion for Terminating, Evidentiary, Issue Preclusion and Monetary Sanctions against Claimant and Claimant's Counsel. However, on May 22, 2025, Respondent filed a Notice requesting that their motion be taken off calendar. Of course, there is no opposition.

TENTATIVE RULING #3:

HEARING DROPPED FROM CALENDAR.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

4.	**25CV0599**	**CARTER v. ROSS DRESS FOR LESS, INC. et al**
Motion for Trial Preference		

The Notice does not comply with Local Rule 7.10.05. Another violation will be grounds for sanctions pursuant to Local Rule 7.12.13.

This case involves personal injury suffered by the 88-year-old Plaintiff, who is requesting trial preference based on Plaintiff's age and health. The Petition states that Plaintiff has macular degeneration and uses a walker to ambulate; after suffering an injury from the electronic doors at Defendant's store, she has suffered additional falls and injuries.

Pursuant to Code of Civil Procedure §36, the court shall grant a petition for trial preference for a party who is over 70 years of age when "(1) the party has a substantial interest in the action as a whole" and "(2) the health of the party is in question such that preference is necessary to prevent prejudicing the party's interest in the litigation." CCP §36 (a) provides "for an early trial date for persons who because of their age or serious medical problems might die or become incapacitated before their cases come to trial." (Rice v. Superior Court (1982) Cal.App. 3d, 81, 88.). The petition can be supported by "nothing more than the attorney's declaration based on 'information and belief as to the medical diagnosis and prognosis of any party.'" (Fox v. Superior Court (2018) 21 Cal. App. 5th 529, 534.

Defendant opposes, arguing that Plaintiff served discovery requesting identity of third parties, Plaintiff did not include a declaration stating all essential parties have been served or appeared per CCP §36(c)(1), and the Motion does not contain any medical records.

Upon filing of an amended Declaration that complies with CCP §36(c)(1), the Court intends to grant the Motion.

TENTATIVE RULING #4:

HEARING CONTINUED TO FRIDAY, JULY 18, 2025, AT 8:30 AM IN DEPARTMENT NINE.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

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5.	**24CV2206**	**CAPITAL ONE, N.A. v. HANSEN**
Motion to Vacate Default Judgment		

The Notice does not comply with Local Rule 7.10.05. Repeated violations may be grounds for sanctions.

Pursuant to California Code of Civil Procedure § 473(b):

> The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken…
>
> [B]ecause the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default (*Waite* v. *Southern Pacific Co*. (1923) 192 Cal. 467, 470-471 [221 P. 204]; *Carli v. Superior Court* (1984) 152 Cal.App.3d 1095, 1099 [199 Cal.Rptr. 583] [in the context of deemed admissions § 473 should be applied liberally "so cases can be tried on the merits"]; *Flores v. Board of Supervisors, supra*, 13 Cal.App.3d at p. 483.) . . . A motion seeking such relief lies within the sound discretion of the trial court, and the trial court's decision will not be overturned absent an abuse of discretion. (*Weitz v. Yankosky* (1966) 63 Cal.2d 849, 854 [48 Cal.Rptr. 620, 409 P.2d 700]; *Martin v. Cook* (1977) 68 Cal.App.3d 799, 807 [137 Cal.Rptr. 434].)

Elston v. City of Turlock, 38 Cal. 3d 227, 233, 695 P.2d 713 (1985).

On May 6, 2025, Defendant brought this Motion to Set Aside and Vacate the Default Judgment entered on December 4, 2024. Defendant argues ineffective service, and Plaintiff opposes. Defendant timely brought this Motion and as stated above, it is strongly favored to resolve cases on their merits.

TENTATIVE RULING #5:

MOTION GRANTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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6.	**24CV2576**	**WELLS FARGO BANK, N.A. v. PEDRI**
Motion to Deem Matters Admitted		

This matter was initially heard on June 6, 2025. The Court requested that Plaintiff file the Request for Admissions and proof of service, prior to granting the Order to Deem Matters Admitted. Plaintiff has since filed those documents with the Court.

TENTATIVE RULING #6:

MOTION GRANTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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7.	**23CV1370**	**FREEMAN v. JABBERGYM LLC, et al**
MSJ		

TENTATIVE RULING #7:

ON THE COURT'S OWN MOTION, MATTER IS CONTINUED TO 8:30 A.M., FRIDAY, JULY 18, 2025, IN DEPARTMENT 9. THE COURT APOLOGIZES TO THE PARTIES FOR ANY INCONVENIENCE.

8.	**24CV2590**	**CALKINS v. FCA US, LLC et al**
Demurrer		

The Notice does not comply with Local Rule 7.10.05. Another violation will be grounds for sanctions pursuant to Local Rule 7.12.13.

This is a lemon law case involving a vehicle purchased by Plaintiff.

Standard of Review - Demurrer

A demurrer tests the sufficiency of a complaint by raising questions of law. *Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 20. In determining the merits of a demurrer, all material facts pleaded in the complaint and those that arise by reasonable implication, but not conclusions of fact or law, are deemed admitted by the demurring party. (*Moore v. Conliffe,* 7 Cal.4th 634, 638; *Interinsurance Exchange v. Narula,* 33 Cal.App.4th 1140, 1143. **The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded. *Flynn v. Higham* (1983) 149 Cal.App.3d 677, 679.**

Rodas v. Spiegel (2001) 87 Cal. App. 4th 513, 517.

Meet and Confer Requirement

Code of Civil Procedure §430.41(a) provides: Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer.

Code of Civil Procedure §430.41(a)(3):

The demurring party shall file and serve with the demurrer a declaration stating either of the following:

(A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer.

(B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.

Dumas v. Los Angeles County Bd. of Supervisors (2020) 45 Cal. App. 5th 348 ("If, upon review of a declaration under section 430.41, subdivision (a)(3), a court learns no meet and confer has taken place, or concludes further conferences between counsel would likely be

productive, it retains discretion to order counsel to meaningfully discuss the pleadings with an eye toward reducing the number of issues or eliminating the need for a demurrer, and to continue the hearing date to facilitate that effort").

The parties have sufficiently met and conferred.

Demurrer

The Complaint includes 6 causes of action: (1) Violation of Subdivision (D) of Civil Code § 1793.2; (2) Violation of Subdivision (B) of Civil Code § 1793.2; (3) Violation of Subdivision (A)(3) of Civil Code § 1793.2; (4) Breach of Implied Warranty of Merchantability; (5) Negligent Repair; and (6) Fraudulent Inducement – Concealment.

Defendant demurs to the Sixth Cause of Action on the grounds that the cause of action fails to state facts sufficient to constitute a cause of action against FCA. Defendant argues this case involves a boilerplate Complaint and the Sixth Cause of Action does not meet California's heightened pleading standard for fraud – by not including "how, when, where, to whom, and by what means the fraud was tendered."

Defendant argues that the only factual allegations in the Complaint are: (1) Plaintiff alleges to be a resident of El Dorado County, California and claims to have entered into a warranty contract with FCA regarding a 2021 Ram 1500 on or about March 26, 2022. (See Complaint, ¶¶ 2, 10); (2) Plaintiff claims various "defects and nonconformities" manifested during the warranty period, including engine defects, transmission defects, and electrical defects. (*Id*. ¶ 15.) Defendant argues that Plaintiff does not provide any factual allegations related to the repair history of their vehicle, such as where the vehicle was repaired, how many times it was repaired, or how many days the vehicle was out for repair.

As the basis for the Sixth Cause of Action, Defendant argues that Plaintiff alleges that FCA allowed the vehicle to be sold to Plaintiff "without disclosing that the Subject Vehicle equipped with the 5.7L engine was defective, and which may result in loss of power, stalling, engine running rough, engine misfires, failure or replacement of the engine" and that "the Engine Defect can cause the vehicle to fail without warning." *Id*. ¶ 64. However, Defendant asserts that Plaintiff fails to meet California's heightened pleading standards for fraud because Plaintiff does not allege what representations were made to Plaintiff with respect to Fraudulent Inducement or Concealment. Defendant states there are no factual allegations whatsoever related to Plaintiff's purchase of the vehicle – such as who sold the vehicle to Plaintiff's, what was said, or what induced Plaintiff to purchase the vehicle. Defendant further argues there is no allegation that FCA even knew or should have known the vehicle was sold to Plaintiff.

California Civil Codes section 1709 and 1710 provide for the definition of fraudulent deceit as follows:

> One who willfully deceives another with intent to induce him to alter his position to his injury or risk, is liable for any damage which he thereby suffers. A deceit, within the meaning of the last section, is either: 1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true; 2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true; 3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or, 4. A promise, made without any intention of performing it.
>
> Consequently: The elements of an action for fraud and deceit based on a concealment are: (1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage. (*Boschma v. Home Loan Ctr., Inc*., 198 Cal. App. 4th 230, 248, 129 Cal. Rptr. 3d 874 (2011). See also CACI 1901.

Plaintiff opposes, admitting that generally each element in a fraud cause of action must be plead with specificity. However, Plaintiff clarifies, in cases claiming fraud through non-disclosure, it is not practical to allege facts showing how, when and by what means something did not happen. (*Alfaro v. Community Housing Improvement System Planning Assn*. (2009) 171 Cal.App.4th 1356, 1384; and see *Vega v. Jones, Day, Reavis & Pogue* (2004) 121 Cal.App.4th 282, 296, "The pertinent question in a concealment case is not who said what to whom. . . .")

Plaintiff argues that he sufficiently alleged the elements of a fraudulent inducement by concealment claim under *Dhital v. Nissan N. Am., Inc.* (2022) 84 Cal.App.5th 828, because Plaintiff has alleged (1) misrepresentation/concealment (Complaint, ¶¶ 23, 64), (2) knowledge of falsity (*Id*., ¶¶ 22, 66a), (3) intent to induce reliance (*Id*., ¶¶ 67-68), (4) justifiable reliance (*Id*., ¶¶ 27, 68-69), and (5) damages (*Id*., ¶¶ 17, 37, 70-71). Here, Plaintiff alleged he entered into a warranty relationship with FCA around March 26, 2022 (Complaint, ¶ 10); Plaintiff identified the material facts FCA knew prior to his acquisition of the Subject Vehicle that FCA withheld from Plaintiff (Id. ¶ 19, 64); Plaintiff alleged that Defendant had superior knowledge of the facts (*Id*., ¶¶ 22, 25-26, 66a-b); the safety risks posed by the Engine Defect (*Id*., ¶ 20); the materiality of that information (*Id*. ¶¶ 68-69); Plaintiff's reliance on the non-disclosure (*Ibid*.); and damages.

Based on *Dhital*, the Court finds that Plaintiff has alleged facts sufficient to constitute a cause of action for fraudulent concealment – inducement against FCA. The Court has considered Defendant's Reply and it does not change the Court's analysis.

TENTATIVE RULING #8:

DEMURRER OVERRULED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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9.	**23CV1256**	**MOORE et al v. SLATER**
MSJ (Plaintiff) and MSA (Defendant)		

Willis Moore and Hua Li ("Plaintiffs") move the Court for summary judgment against Defendant Armie Slater, based on Code of Civil Procedure ("CCP") § 437c, arguing that Defendant's "affirmative defenses fail to state any evidence of material fact."

This case arises out of a January 29, 2023, incident where Defendant Armie Slater's Tesla crashed into the front of Plaintiffs' house. Willis Moore and Hua Li live at 815 Valencia Court in El Dorado Hills. They have lived at this address for approximately 10 years. The incident occurred on January 29, 2023, in the morning, sometime between 10:00 a.m.-12:00 p.m. (Deposition of Willis Moore, at 31:12-23; Deposition of Hua Li, at 20:9-21.)

Before addressing Plaintiffs' Motion, the Court looks to the procedural deficiency of the Motion. CCP § 437c provides that a "party may move for summary judgment in an action…if it is contended that the action has no merit or that there is no defense to the action or proceeding. Summary adjudication, in contrast, is limited to one or more causes of action, affirmative defenses, claims for punitive damages, or issues of whether the defendant owed or did not owe a duty to the plaintiff (CCP § 437c(f)(1).) Plaintiffs cannot move for summary judgment as a ruling on this Motion would not dispense of the entire action.

While Plaintiffs' Motion is somewhat hard to follow, it seems they are actually bringing a Motion to Strike. Plaintiffs request Defendant's general denial and each of her seven affirmative defenses be stricken for failure to comply with Federal Rules of Civil Procedure. However, this case is in State court and is governed by the California Code of Civil Procedure.

<u>Based on the procedural deficiencies outlined, Plaintiffs' Motion is denied. Defendant's Opposition was reviewed by the Court and does not affect this outcome.</u>

* * *

On March 13, 2025, Defendant filed a Motion for Summary Adjudication. On May 30, 2025, Plaintiffs filed a Response, and on June 18, 2025, Defendant filed a Reply.

Defendants bring their motion as a Motion for Summary Adjudication. The legal standard for summary adjudication and summary judgment is the same for each form of relief in all material respects. A motion for summary judgment or adjudication shall be granted if there is no triable issue as to any material fact and the papers submitted show that the moving party is entitled to judgment as a matter of law as to one or more causes of action or claims for damages. Cal. Civ. Pro. § 437c(f)(1). A defendant moving for summary judgment need only show that one or more elements of the cause of action cannot be established. *Aguilar v. Atlantic Richfield Co.,* (2001) 25 Cal.4th 826, 849. This can be done in one of two ways, either by affirmatively presenting evidence that would require a trier of fact *not* to find any underlying material fact more likely than not; or by simply pointing out "that the plaintiff does not possess

and cannot reasonably obtain, evidence that *would* allow such a trier of fact to find any underlying material fact more likely than not." *Id.* at 845; *Brantly v. Pisaro*, 42 Cal. App. 4th 1591, 1601 (1996).

The moving party bears the initial burden of making a prima facie case for summary judgment. *White v. Smule, Inc*., 75 Cal. App. 5th 346 (2022). In other words, the party moving for summary judgment or adjudication must show that it is entitled to judgment as a matter of law. *Doe v. Good Samaritan Hospital*, 23 Cal. App. 5th 653, 661 (2018). Where the defendant makes the required showing, the burden shifts to plaintiff to make a prima facie showing that there exists a triable issue of material fact. *Zoran Corp. v. Chen*, 185 Cal. App. 4th 799, 805 (2010). "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." *Aguilar, Supra* 25 Cal. 4th at 850.

Plaintiffs' Complaint alleges two causes of action: general negligence and motor vehicle negligence. However, while the Complaint states the causes of action are attached, there are no such attachments. <u>There are no factual allegations included with the Complaint.</u> During the course of discovery, Plaintiffs identified property damage to their home and damages for shock, trauma, fear, stress, pain and suffering, and mental and emotional distress. (Deposition of Willis Moore, at 45:4-8.)

The negligent causing of emotional distress is not an independent tort; it is the tort of negligence (*Marlene F. v. Affiliated Psychiatric Medical Clinic, Inc.* (1989) 48 Cal. 3d 583, 588; *Burgess v. Superior Court* (1992) 2 Cal. 4th 1064, 1072; *Wong v. Jing* (2010) 189 Cal. App. 4th 1354, 1377; 6 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, 838, p. 195). The traditional elements of duty of care, breach of duty, causation, and injury or damages apply (*Marlene F. v. Affiliated Psychiatric Medical Clinic, Inc.*, supra). Defendants argues that while many cases have addressed the recoverability of emotional distress damages in various scenarios, no California case has ever allowed recovery for emotional distress arising solely out of property damage, absent a threshold showing of some preexisting relationship or intentional tort. (*Cooper v. Superior Court* (1984) 153 Cal.App.3d 1008, 1011-1013.) The *Cooper* Court ruled that as there was no preexisting relationship between the parties it was not appropriate to extend recovery for emotional distress arising out of property damage.

In *Erlich v. Menezes* (1999) 21 Cal.4th 54, the California Supreme Court took up the issue of whether emotional distress damages were recoverable for damage to property only. "In deciding whether the plaintiff's interests are entitled to legal protection against the defendant's conduct, we must balance the interest of the injured parties against the view that a negligent act should have some end to its legal consequences. . . . We are persuaded that the concerns which have acted to prevent recovery for emotional distress when property is damaged remain relevant and weigh against permitting recovery. While we do not doubt that the Blagroves were justifiably and seriously distressed over the damage to [their home], adopting a rule allowing trial on the issue and recovery if proved would result in unacceptable burdens for both the

judicial system and defendants. We therefore hold that emotional distress damages in connection with property damages are not compensable." (*Erlich v. Menezes* (1999) 21 Cal.4th 543, 557, citing *Blagrove v. JB Mechanical, Inc.* (Wyo. 1997) 934, 1276-1277; see also *Caradonna v. Thorious* (1969) 17 Mich.App. 41; *Jankowski v. Mazzotta* (1967) 7 Mich.App. 483 (no mental anguish remedy available for ineptly constructed home.)

In this case, it is undisputed that Plaintiffs suffered no physical injury from the crash (UMF #16, #22). Plaintiff Moore claims he had a heart attack one year after the crash that was caused by stress of the accident, but does not provide any admissible evidence to support this assertion. Further, we turn to the *Erlich* Court, where they specifically noted there was no physical injury to the Plaintiff. “Here, the breach…did not cause physical injury. No one was hit by a falling beam. Although the Erlichs state they feared the house was structurally unsafe and might collapse in an earthquake, they lived in it for five years. The only physical injury alleged is Barry Erlich's heart disease, which flowed from the emotional distress and not directly from the negligent construction.” (*Erlich v. Menezes* (1999) 21 Cal.4th 543, 557.) It is further undisputed that there was no pre-existing relationship between the parties, aside from living in the same neighborhood. The Complaint does not contain any allegations of intentional conduct, only negligence.

The Court notes that Plaintiffs filed a “Response” on May 30, 2025. <u>There is no proof of service showing service upon Defendants; however, based on Defendants’ Reply, the Court assumes that Defendants did receive a copy.</u> Defendants in their Reply, raise the argument that the Response was served by standard mail and therefore not properly served pursuant to CCP § 1005(c), as it was not received until June 13, 2025, three days before the Reply was due. Regardless, Plaintiffs cite to numerous cases in their Response, which are not applicable in this case. Plaintiffs have not brought a cause of action for intentional infliction of emotional distress, which distinguishes this case from a number of their cited cases – *Agarwal v. Johnson, Dillon v. Legg* (1968) 68 Cal.2d 728, *Golden v. Dungan* (1971) 20 Cal.App.3d 296. Plaintiffs cite to *Fuentes v. Perez* (1977) 66 Cal.App.3d 164, where the court struck the jury’s award of emotional distress damages where the plaintiff had no physical injuries, such as in this case.

Plaintiffs cite to *Lawson v. Management Activities, Inc.* (1999) 69 Cal.App.4th 652, where the court held that they disagreed that California case law “may be read for the broad proposition that emotional distress damages are available whenever one reasonably fears for their safety because of the negligence of another, regardless of actual circumstances or context.” (*Lawson v. Management Activities, Inc*. (1999) 69 Cal.App.4th 652, 661-662.) “Fright alone is not an injury.” (*Id.*, citing *Cook v. Maier* (1939) 33 Cal.App.2d 581.) The court concluded that negligence in causing a plane crash does no give rise to zone of danger claims from people who happen to be standing nearby. Plaintiffs also cite to *Cook v. Maier*, but in that case, plaintiff was walking on the way to a trash burner when a car came through a fence and crashed into the trash burner causing rock and fencing to be thrown over plaintiff and hit her. *Cook,* supra.

Again, Plaintiffs' Complaint brings causes of action for general negligence and motor vehicle; it does not contain any allegations of intentional conduct. Defendant argues Plaintiffs are not entitled to recover general damages for negligent infliction of emotional distress and the Court agrees.

TENTATIVE RULING #9:

1. **PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT IS DENIED.**
2. **DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION IS GRANTED.**

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.