TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, September 11, 2026, 3:00 p.m.
Courtroom 16 – Hon. Randy Rhodes for Hon. Patrick M. Broderick
3035 Cleveland Avenue, Suite 200, Santa Rosa

TO JOIN "ZOOM" ONLINE,
Courtroom 16
Meeting ID: 161-460-6380
Passcode: 840359
https://sonomacourt-org.zoomgov.com/j/1614606380

TO JOIN "ZOOM" BY PHONE,
By Phone (same meeting ID and password as listed above):
(669) 254-5252 US (San Jose)

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, YOU MUST notify the Court by telephone at **(707) 521-6725**, and all other opposing parties of your intent to appear by 4:00 p.m. the court day immediately before the day of the hearing.

Parties in motions for claims of exemption are exempt from this requirement.

PLEASE NOTE: The Court WILL NOT provide a court reporter for this calendar. If there are any concerns, please contact the Court at the number provided above.

1. 24CV01534, Courtyards East Homeowners' Association v. Penoli

Defendant Heather Penoli ("Defendant") moves pursuant to CCP sections 418.10, 473(d), and 473.5 to set aside the default judgment as void, vacate the entry of default, and quash Plaintiff Courtyards East Homeowners Association's ("Plaintiff's") service of summons and complaint.

I. Legal Standards

"The return of a process server registered pursuant to Chapter 16 (commencing with Section 22350) of Division 8 of the Business and Professions Code upon process or notice establishes a presumption, affecting the burden of producing evidence, of the facts stated in the return." (Evid. Code, § 647.)

The filing of proof of service creates a rebuttable presumption of proper service. (*County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1230.) In *Gorham,* the defendant rebutted the facts stated in the proof of service because the evidence showed he had been incarcerated at the time he was alleged to have been personally served. (*Ibid*.)

Improper service of summons and complaint renders a subsequent default judgment void. (*County of San Diego v. Gorham* (2010) 186 Cal.App.4th 1215, 1226.)

II. Service of Summons and Complaint

Plaintiff filed this action on March 5, 2024. Proof of service of summons and complaint was filed on September 6, 2024. It states that Defendant was served on August 28, 2024, at 5:31 p.m., at 6321 35th Avenue, Sacramento, CA 95824, by registered process server Kayl J. Lagunas.

In her declaration, Defendant states that she was home at the Sacramento address on the date and time listed in the proof of service document but that she was not actually served with any documents. (Penoli decl., ¶6.) Defendant states that the service date of August 28 happens to be her birthday so she remembers the day well. (*Id.,* ¶7.) She states she turned 33 that year and spent the whole day at home with her ex-girlfriend and her new service dog. (*Ibid*.) She states nobody came to her door that day except for a delivery driver bringing her lunch. (*Id.,* ¶8.) She states that her neighbor's Ring camera captures her front door and captures footage whenever someone enters its frame, and that she spoke with her neighbors to see if the camera captured anyone at 5:31p.m, that day. (*Id.,* ¶¶9, 10.) She states it did not. (*Ibid*.)

Defendant also states that she has never received any court documents in the mail either to her Sacramento home or at 198 Courtyards East, Windsor, California ("Subject Property"), which is the property that is the subject of the dispute in this action. (*Id.,* ¶13.)

Defendant states that on or around May 14, 2026, Defendant's tenant living at the Subject Property found a note stating that Plaintiff was going to remove the fence based upon a court order. (*Id.,* ¶14, Exhibit 7.) She states no court order was attached. (*Ibid*.) Defendant states she was contacted on May 19, 2025, by Plaintiff's attorney who gave her a copy of this court's February 6, 2025, judgment. (*Id.,* ¶16.) She states this is the first time she became aware that a lawsuit had been filed against her. (*Id.,* ¶17.)

III. Declaration of Process Server

In his declaration, Kayl Lagunas states that he attempted service at 5:00 p.m. on August 28, 2024. He states there was no answer. There were several vehicles at the house. He noticed someone deliver a bag of food to the doorstep and saw a woman wearing a baseball cap open the door and take the food. He states he returned to the door and knocked again. This time a blonde woman in her mid-20s, about 5'6", 130 lbs., answered the door. He states he told her: "I have a delivery for Heather Penoli." He states the woman said: "I don't know," to which he responded: "What do you mean by that?" She responded, "I don't know." He states he asked whether there was a normal time of day that she's home to which she again responded, "I don't know." He asked for her name and she again said, "I don't know," and closed the door. Mr. Lagunas states he went back to the car and obtained a photo of Defendant which he recognized as the blonde woman who answered the door. He returned to knock again and "called out to Heather" to let her know he was aware that it was her who answered the door and that he was leaving the legal documents for her on the doorstep.

IV. Personal Service of Summons

A summons may be served by personal delivery of a copy of the summons and complaint to the person to be served. Service of a summons in this manner is deemed complete at the time of such delivery. (CCP § 415.10.)

Personal service requires leaving a copy of the summons and complaint with the person who is apparently in charge of the mailing address, or in the presence of a competent member of the household or person in charge. (CCP section 415.20.)

Here, by Mr. Lagunas' own admission, he did not leave the documents with anybody nor in anybody's presence. Nor does he state that he told Defendant that he was serving her with court documents. Rather, he only states he called out to her from outside the house sometime thereafter before he left the documents on the doorstep.

Plaintiff cites *Crescendo Corp. v. Shelted, Inc.* (1968) 267 Cal.App.2d 209. In that case, the process server knocked on the door and heard a man's voice say if it was for him, he wasn't home. (*Id.,* at p. 211.) Immediately thereafter, a woman opened the door, and he saw the defendant laying on the couch, who he recognized from an earlier meeting. (*Ibid*.) The process server "stated loudly that he was serving [the defendant] with a copy of the unlawful detainer." (*Ibid*.) The woman said the defendant was not at home and slammed the door on him. (*Ibid*.) The process server then left the documents under the windshield wiper of a car registered to the defendant where defendant later found them. (*Ibid*.)

Here, unlike in *Crescendo,* Mr. Lagunas did not announce his intention to serve court documents. He only informed Defendant that he had a "delivery." This is insufficient.

V. Conclusion

The motion is GRANTED. Mr. Lagunas' declaration establishes service of summons and complaint was not sufficient to effectuate personal service on Defendant. Therefore, this court did not acquire personal jurisdiction over the Defendant such that the default judgment against her is void.

Defendant is directed to submit a written order to the court consistent with this ruling and in compliance with Cal. Rules of Court, Rule 3.1312.

2. <u>25CV04007, Pawlik v. Dupre</u>

I. Motion to Compel Further Responses – Special Interrogatories

Plaintiff Christopher Pawlik ("Plaintiff") moves for an order compelling Defendant Ernesto Ongaro and Sons, Inc. ("Defendant") to provide further responses to Plaintiff's Special Interrogatories, Set Two, Interrogatory Nos. 41 through 59, without objections, and for monetary sanctions against Defendant and its counsel of record in the amount of $4,260.00.

A. Complaint

This lawsuit arises from a motor vehicle collision on November 27, 2023. Plaintiff alleges his car was T-boned by a vehicle driven by defendant Nathan Dupre ("Dupre"), while he was driving in the course and scope of employment for Defendant.

B. Special Interrogatories

In opposition, Defendant states that based upon this court's ruling on May 29, 2026, on the issue of Plaintiff's discovery of surveillance, Defendant agrees to produce code-complainant discovery responses.

C. Sanctions

Plaintiff seeks $4,260 in sanctions for having to bring this motion.

CCP section 2030.300 requires sanctions unless this court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. (CCP section 2030.300(d).)

Defendant opposes Plaintiff's request for monetary sanctions and attorney's fees arguing that Defendant's objections to Plaintiff's discovery requests were objectively reasonable. This court disagrees. Defendant's position was that the surveillance materials at issue in the discovery requests were subject to the work-product doctrine and attorney-client privilege. However, the surveillance video and photos are not privileged. This was the exact scenario discussed in *Suezaki v. Superior Court of Santa Clara County* (1962) 58 Cal.2d 166, in which the appellate court determined the attorney's private investigator's surveillance video was not privileged. (*Id.,* at pp. 177-178.) While *Suezaki* was decided prior to the current iteration of the statute outlying the work product privilege, the *Suezaki* court determined work product representing an attorney or the attorney's agent's impressions was not represented by surveillance video: "The films are not a graphic representation of the defendants, their activities, their mental impressions, anything within their knowledge, or of anything owned by them. The films are representations of the plaintiff, not of the defendants." (*Suezaki, supra,* at p. 177.) Only notes of the attorney or the attorney's agent's impressions of what is seen on the video or photos are privileged.

In addition, there is a need for the surveillance video and photographs both in order to protect against surprise, and in order to prepare for examination of the person who took the pictures. (*Suezaki v. Superior Court of Santa Clara County*, *supra,* 58 Cal.2d at p. 172.)

Plaintiff's request for the surveillance videos and photos is relevant and reasonably calculated to lead to the discovery of admissible evidence. The material is not privileged. Defendant's belief that the evidence was subject to the work product doctrine and attorney-client privilege was not reasonable in light of the clear legal authority provided in *Suezaki, supra.* Surveillance video and photos do not contain counsel's thoughts, impressions, and defense strategy.

Plaintiff's attorney seeks sanctions in the amount of $4,260 based upon his hourly rate of $400. He states he spent 7.5 hours preparing the motion and engaging in meet and confer efforts. He anticipates spending another 3 hours preparing reply and attending the hearing.

The court finds $2,700 to be a reasonable amount of sanctions on this motion based upon all of the circumstances of the parties' discovery motions, meet and confer efforts, and the legal issues.

D. Conclusion

The motion is GRANTED. Defendant is directed to provide further responses to Plaintiff's Special Interrogatories, Set Two, Interrogatory Nos. 41 through 59, and to pay sanctions in the amount of $2,700, entered against Defendant and its counsel of record, within 20 days of the service of this order.

While Plaintiff has provided a proposed order, it goes beyond the scope of this order by adding information not originally part of the interrogatories, by disallowing objections, and as it contains the wrong sanctions amount. With respect to objections, Plaintiff's motion did not establish that Defendant waived its right to assert valid objections.

Plaintiff's counsel is directed to submit a written order consistent with this court's ruling and in compliance with Cal. Rules of Court, Rule 3.1312.

II. Motion to Compel Further Responses – Requests for Production

Plaintiff Christopher Pawlik ("Plaintiff") moves for an order compelling Defendant Ernesto Ongaro and Sons, Inc. ("Defendant") to provide further responses to Plaintiff's Requests for Production of Documents, Set Two, Request Nos. 22 through 32, and for monetary sanctions against Defendant and its counsel of record in the amount of $5,460.00.

In opposition, Defendant states that it will produce the requested documents based upon this court's May 29, 2026, ruling regarding the discoverability of the subject surveillance videos and photos. However, Defendant opposes Plaintiff's request for sanctions.

The statute governing this motion also requires sanctions unless this court finds Defendant acted with substantial justification in objecting to the discovery requests. As discussed above with respect to Plaintiff's motion to compel further responses to its special interrogatories, this court finds Defendant did not act with substantial justification. This court finds $3,600 to be a reasonable sanction on this motion.

The motion is GRANTED. Defendant is directed to provide further responses to Plaintiff's Requests for Production of Documents, Set Two, Request Nos. 22 through 32, and to pay sanctions in the amount of $3,600, entered against Defendant and its counsel of record, within 20 days of the service of this order.

While Plaintiff has provided a proposed order, it goes beyond the scope of this order by adding information not originally part of the discovery requests and it contains the wrong sanctions amount.

Plaintiff's counsel is directed to provide a written order consistent with this court's ruling and in compliance with Cal. Rules of Court, Rule 3.1312.

3. 25CV06360, Boyda v. Day

Specially appearing Defendants Stuart Day ("Day") and Stuart Day Guitars, LLC ("LLC")(together "Defendants") move pursuant to CCP section 418.10 to quash service of summons in this action for lack of personal jurisdiction.

I. Complaint

Plaintiff Raymond Boyda ("Plaintiff") filed his Verified First Amended Complaint ("FAC") on March 6, 2026. The FAC alleges Plaintiff purchased guitar-making materials from Defendants. Day is the sole owner of LLC, whose principal place of business is in Bessemer, Pennsylvania. The purchased material is referred to as material sets 1, 2, 10, and 12, and a separate tortoiseshell set derived from rare historical Honduran mahogany. Plaintiff alleges he paid over $30,000 for the materials. Plaintiff also directed Defendants to ship the materials to luthiers in New York, New Mexico, and Germany as part of a multi-luthier guitar project using the rare historical instrument wood.

II. Minimum Contacts

Defendants argue they do not have minimum contacts with California such that this court does not have personal jurisdiction over them.

"Minimum contacts" means the relationship between the nonresident and the forum state is such that the exercise of jurisdiction does not offend "traditional notions of fair play and substantial justice" under the U.S. Constitution's Fourteenth Amendment Due Process Clause. (*International Shoe Co. v. State of Wash., Office of Unemployment Compensation & Placement* (1945) 326 US 310, 316; *Burger King Corp. v. Rudzewicz* (1985) 471 US 462, 475.)

Jurisdiction is "limited" or "specific" where the defendant's in-state activity shows "purposeful availment," meaning "some act by which [it] purposefully avails itself of the privilege of conducting activities within the forum State … Or put just a bit differently, there must be an affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." (*Ford Motor Co. v. Montana Eighth Judicial Dist. Ct.* (2021) 592 US 351, 359-360.)

"Specific" personal jurisdiction requires a showing of: (1) "Purposeful availment"—the out-of-state defendant purposefully established contacts with the forum state; (2) Arising out of—the plaintiff's cause of action "arises out of" or is "related to" defendant's contacts with the forum state; and (2) Reasonableness==the forum's exercise of personal jurisdiction in the particular case comports with "fair play and substantial justice." (*Burger King Corp., supra*, 471 US at p. 477-478.)

If the plaintiff shows that the nonresident defendant has "purposefully availed" itself of benefits and protections of forum law, that defendant bears the burden of proving it would be unreasonable for local courts to exercise jurisdiction. (*Burger King Corp., supra*, at p. 476.)

Here, Defendant Day testified that he corresponded with Plaintiff about a business plan starting back in 2017 regarding marketing, sales, and an educational business in the lutherie community. (Plaintiff's Exhibit A.) In addition, Day discussed the Tree Art Project which was one of many collections of instruments that Plaintiff and Day were to work on together as part of a broader business plan. (*Ibid*.) Day was familiar with Plaintiff's business Healdsburg Guitars but was unaware that its corporate entity was Inarts LLC. (*Ibid*.) Healdsburg Guitars was known to Day as the business Plaintiff was trying to start to become the West Coast central hub of the Tree Art Project. (*Ibid*.) Part of the larger plan was to set up a state-of-the-art shop with resawing capability. (*Id.,* Exhibit B.) The long-term plan was to build a shop on Day's farm. (*Ibid*.)

Day's involvement in the business was to hold on to the wood and when Plaintiff informed him he sold it, he would bubble wrap it, make sure it was safely packaged, and ship it out. (*Id.,* Exhibit C.) Some sets were sold and some were set to luthiers. (*Ibid*.) He sent 12 sets to luthiers. (*Ibid*.) One set of wood was sent to Day by Plaintiff. (*Id.,* Exhibit D.) Day unpacked it and put it aside. (*Ibid*.) He has subsequently been unable to locate it. (*Ibid*.)

Day owns and operates LLC. (Day decl., ¶2.)

A July 27, 2021, an invoice indicates that Plaintiff paid $8,691.83 for equipment from Grizzly Industrial Inc. in Bellingham, Washington, and had it sent to Day in New Galilee, Pennsylvania. (*Id.,* Exhibit H.)

A July 30, 2021, invoice indicates that Plaintiff paid $5,656.94 for equipment from Laguna Tools, Inc. in Grand Prairie, Texas, and had it shipped to Day in New Galilee, Pennsylvania. (*Id.,* Exhibit I.)

On August 10, 2021, Plaintiff sent Day $10,000. (*Id.,* Exhibit F.) On August 27, 2021, Plaintiff sent Day $5,000. (*Id.,* Exhibit G.)

On October 14, 2021, Day emailed Plaintiff stating he would like set numbers 2, 12, 1, and 10. (*Id.,* Exhibit K.) He stated he could do 3 flat tops and that he would use #2 for the 335. (*Ibid*.) Day discussed marketing ideas and issues. (*Ibid*.)

On May 19, 2022, Plaintiff sent Day an email stating all agreements and understandings between him and Plaintiff were terminated and requesting that all of his property be returned to him. (*Id.,* Exhibit L.)

On June 7, 2022, Day caused his attorney to send Plaintiff a letter informing Plaintiff that Day was returning certain tree and guitar materials to Plaintiff and he requested Plaintiff to cease all further communications with Day. (*Id.,* Exhibit E.)

On June 11, 2022, Plaintiff requested $450 from Day for shipping and insurance regarding heritage musical instruments. (*Id.,* Exhibit J.) In his reply to this motion, Day acknowledges that he sent payment to InArts LLC located in California.

On June 5, 2025, Defendants filed two UCC 5 statements contesting Plaintiff's right to file a financing statement listing Day as a debtor. (*Id.,* Exhibit M.)

The evidence establishes that Day purposefully directed activities within the forum state by establishing a business plan with Plaintiff; accepting equipment and tree material for use in the business which was intended to be located here; by accepting Plaintiff's personal property to work on and return; and by accepting payment for services. This direct conduct, connected to California, is such that Day should reasonably have anticipated being haled into court here. This action arises out of these activities. In addition, Defendants have not shown that the burdens outweigh Plaintiff's and this forum's interests such that it is unreasonable for this court to exercise jurisdiction.

III. Conclusion

For the foregoing reasons, **the motion is DENIED.**

Plaintiff is directed to submit a written order consistent with this ruling and in compliance with Cal. Rules of Court, Rule 3.1312.

4. <u>25CV07492, Bowden v. Hoskins, DVM</u>

Defendants Redwood Veterinary Clinic ("RVC") and Richard Hoskins, DMV ("Hoskins")(together "Defendants") demurrer and move to strike portions of the First Amended Complaint ("FAC") filed by Plaintiffs Graig Bowden and Carlye Bowden ("Plaintiffs').

I. Procedural Issues

Defendants have improperly filed their demurrer and motion to strike as one motion. Filing two motions as one interferes with this court's ability to manage its workload. In addition, Defendants have not paid the proper amount of filing fees. This court directs Mr. Bacho and his firm in the future to file each motion separately.

II. First Amended Complaint

On March 4, 2026, Plaintiffs filed the FAC against Defendants alleging that on October 22, 2024, Plaintiffs brought their dog, Sierra, to RVC for a femoral head ostectomy surgery. Plaintiffs allege Hoskins negligently performed the surgery and that RVC failed to give Plaintiffs proper discharge instructions. Plaintiffs allege Hoskins represented that he was a board-certified surgeon, which he is not. They allege that due to the Defendants' negligence, Sierra has suffered from luxation of her femur, suspected torn gluteal muscles, left pelvic limb lameness with excessive external rotation, pain and crepitus of the left joint, and has, as a result, required extensive revision procedures and care.

The FAC alleges causes of action for Negligence, Trespass to Chattel, Breach of Bailment, Breach of Contract, Intentional Infliction of Emotional Distress, Intentional Misrepresentation, Fraudulent Concealment, Violation of Civil Code section 1750, Violation of Business and Professions Code section 17500, et seq., and Violation of Business & Professions Code section 17200, et seq.

III. Demurrer

Defendants demur to the fourth through tenth causes of action on the grounds of failure to state facts sufficient to constitute a cause of action and as being uncertain, ambiguous, and unintelligible. They also demur on the grounds of defect or nonjoinder of a necessary party.

A. Sixth and Seventh Causes of Action – Fraud

Defendants argue that Plaintiffs' fraud causes of action are not alleged with the requisite specificity.

The elements of fraud or deceit (see Civ. Code, §§ 1709, 1710) are: a representation, usually of fact, which is false, knowledge of its falsity, intent to defraud, justifiable reliance upon the misrepresentation, and damage resulting from that justifiable reliance. (*Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 72–73.)

To plead fraudulent concealment, a plaintiff must allege: (1) the defendant knowingly concealed or suppressed a material fact, (2) the defendant was under a duty to disclose the fact to the plaintiff, (3) the defendant intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff was 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, the plaintiff sustained damage." (*Boschma v. Home Loan Center, Inc*. (2011) 198 Cal.App.4th 230.)

Every element of a cause of action for fraud must be alleged in the proper manner and the facts constituting the fraud must be alleged with sufficient specificity to allow defendant to understand fully the nature of the charge made. (*Id.,* at p. 73 [citing case].) This particularity requirement necessitates pleading *facts* which "show how, when, where, to whom, and by what means the representations were tendered." (*Ibid*. [citing case.])

Plaintiffs' sixth cause of action for Intentional Misrepresentation alleges Defendants made "numerous misrepresentations" to Plaintiffs including Hoskins' ability to perform the surgery adequately. (FAC, ¶65.) Plaintiffs allege Hoskins was represented as being a board-certified surgeon, that he was not, and that he was not competent to perform the FHO surgery. (FAC, ¶¶13, 66.)

Plaintiffs' seventh cause of action alleges fraudulent concealment. Plaintiffs allege that Defendants failed to disclose "facts" to Plaintiffs "by misrepresentations and omissions." (FAC, ¶73.) They allege Defendants "concealed their qualifications as well as SIERRA's need for rehabilitation care following her surgery." (FAC, ¶73.) Plaintiffs allege that had they been aware that Hoskins was not a board-certified surgeon and that Sierra would need rehabilitation care after the surgery, they would have acted differently. (FAC, ¶75.)

In opposition, Plaintiffs argue that they are unable to provide any more specificity regarding the context of the misrepresentations. However, this is not they type of fact pattern wherein Defendants have more knowledge than the Plaintiffs. Here, Plaintiffs allege that they relied upon statements by one of the Defendants that Hoskins was a board-certified surgeon and that Plaintiffs were harmed based upon their reliance of this alleged misrepresentation. The facts that form the basis of this allegation should be readily available to Plaintiffs.

With respect to the concealment claim, Plaintiffs allege that Defendants were under an obligation to disclose and avoid causing Plaintiffs' emotional harm arising out of the care of Sierra. Plaintiffs have not provided authority to support the existence of a duty to avoid causing Plaintiffs' emotional harm.

Plaintiffs must allege each element of fraud with the requisite specificity. Neither Plaintiffs' sixth nor seventh cause of action is sufficient. The demurrer to Plaintiffs' sixth cause of action for misrepresentation and seventh cause of action for concealment are sustained with leave to amend.

B. Fifth Cause of Action – Intentional Infliction of Emotional Distress

Defendants argue that allegations of veterinary malpractice, even if negligent, do not constitute extreme and outrageous conduct.

Plaintiffs' IIED cause of action alleges Defendants "failed" to care for Sierra and take basic precautions for her. (FAC, ¶55.) This is a negligence standard. The FAC alleges: "On information and belief, the surgery was performed in a negligent manner that breached the standard of care for a surgery under similar circumstances and that left SIERRA in ongoing pain and unable to fully recover from the surgery performed by HOSKINS." (FAC ¶14.) "To make matters worse, upon her discharge from RVC, discharge instructions provided did not indicate the need for rehabilitation care and did not provide aftercare instructions for the proper care of SIERRA, both of which are a critical component of a surgery like this one." (FAC ¶15.) "Due to the negligently performed surgery, and the lack of post-operative care and instructions, SIERRA has suffered from luxation of her femur, suspected torn gluteal muscles, left pelvic limb lameness with excessive external rotation, pain and crepitus of the left joint, and required extensive revision procedures and care." (FAC ¶16.) "At no time were the BOWDENS informed that HOSKINS was not a board-certified surgeon, nor were they informed that they could seek the care of a board-certified surgeon given the complex nature of the required procedure. Even more alarmingly, the BOWDENS were not informed of the risks and potential complications of SIERRA undergoing this complex surgery with a non-board-certified surgeon. Additionally, the BOWDENS were not informed that the lack of rehabilitative care and post-operative care would have a devastating effect on SIERRA." (FAC, ¶18.) There are no allegations of conduct by Defendants beyond negligence of allegedly not fully or properly performing the surgery and not informing Plaintiffs of the risks of the surgery.

Plaintiffs cite *Plotnik v. Meihaus* (2012) 208 Cal.App.4th 1590 for their position that emotional distress damages are available when distress is the result of a defendant's commission of the distinct torts of trespass, nuisance, or conversion. *Plotnik* is easily distinguishable. In that case, the defendant hit the plaintiff's dog with a baseball bat, causing the dog injuries to the dog's leg which required surgery, and he later threatened to kill the dog. A person's intentional injuring or killing a pet will support recovery of damages for intentional infliction of emotional distress. (*Id.,* at p. 1611.) The FAC does not allege any intentional injury to Sierra.

Plaintiffs also cite *Berry v. Frazier* (2023) 90 Cal.App.5th 1258, which is also readily distinguishable. In that case, the plaintiff alleged she procured the defendant's services for a humane euthanasia for her cat. Instead, defendant was alleged to have, without plaintiff's informed consent, performed the euthanasia by means of an unnecessary and unjustified intracardiac injection, resulting in a horrific and painful death for her cat and causing the plaintiff great emotional distress. The plaintiff alleged that defendant represented that she could hold the cat and would give it a sedative. Then, once the plaintiff said goodbye, he would give it a second injection to end its life. Instead, he attempted to insert a catheter, claimed the oral medication that had been prescribed for the cat would take too long, and suggested a "heart stick" injection. The defendant claimed it was quick, the cat would not suffer, and it wouldn't even know what was happening. The plaintiff did not view the euthanasia but later learned that it was generally considered extremely painful and inhumane when performed on a conscious cat. The plaintiff noted that in 2006, the legislature made it illegal to perform on a conscious animal.

Plaintiffs' allegations of Defendants' failure to take unspecified "basic precautions" for Sierra's wellbeing do not sufficiently plead a cause of action for Intentional Infliction of Emotional Distress. The demurrer to this cause of action is sustained with leave to amend.

C. Eighth Cause of Action – CLRA

This cause of action alleges Defendants violated the Consumer Legal Remedies Act ("CLRA") by making misrepresentations about its services: that they offer the best possible veterinary care, that they strive to provide the best service, that they have a state-of-the-art surgical suite, that they are equipped to provide diagnostic and therapeutic services, and that they offer evaluation by board-certified specialists. (FAC, ¶81.)

Defendants argue that Plaintiffs' eighth cause of action under the CLRA fails for multiple independent reasons. First, Plaintiffs fail to allege compliance with the CLRA's mandatory pre-litigation notice requirement. Civ. Code § 1782 requires that, at least 30 days prior to filing an action for damages under the CLRA, a plaintiff must provide written notice identifying the alleged violations and demanding correction. (Civ. Code, § 1782, subd. (a).) This requirement is a prerequisite to recovering damages under the statute. (*Benson v. Southern California Auto Sales, Inc*. (2018) 239 Cal.App.4th 1198, 1206.). Here, the FAC contains no allegation that Plaintiffs provided the required notice.

In opposition, Plaintiffs argue that Defendants have not cited authority that they must plead such notice in the FAC.

Statutory causes of action must be alleged with particularity. (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790.) This would include an allegation of notice under Civil Code section 1782.

Defendants also argue that no conduct is alleged that violates Civil Code section 1770.

In opposition, Plaintiffs allege this ignores their allegation that the surgery was performed in a negligent manner that breached the standard of care for surgery.

Plaintiffs again refer to a negligence standard. It is not clear to this court which section of Civil Code section 1770 Defendants are alleged to have violated.

Based upon the foregoing, the demurrer to this cause of action is sustained with leave to amend.

D. Ninth and Tenth Causes of Action (UCL and FAL)

Defendants argue that the ninth cause of action for violation of Business and Professions Code section 17500 et seq. and the tenth cause of action for Violation of Business and Professions Code section 17200 et seq. are insufficiently alleged.

Plaintiffs' ninth cause of action alleges Defendants made misleading and false statements and representations in marketing materials and advertisements on their website regarding Defendants' skill, training, and capabilities. Plaintiffs' tenth cause of action references the prior allegations without specifying what conduct it alleged to support the cause of action.

It appears that these causes of action refer to the statements that Defendants allegedly made that they offer the best possible veterinary care, that they strive to provide the best service, that they have a state-of-the-art surgical suite, that they are equipped to provide diagnostic and therapeutic services, and that they offer evaluation by board-certified specialists.

Mere expressions of opinion are not actionable. (*Willson v. Municipal Bond Co.* (1936) 7 Cal.2d 144, 150.) Here, it is not clear what alleged advertisements were allegedly made upon which Defendants relied. Allegations such as "we strive to provide the best veterinary care" are statements of opinion and are not actionable. However, a statement such as "all surgical staff are board-certified" when they are not is not merely an opinion. Here, it appears that Plaintiffs intend to rely upon the statement in the FAC that board-certified veterinarians are available for consultation. However, Plaintiffs have not alleged that no board-certified veterinarians were available; or, that all RVA's veterinarians were advertised as being board-certified. Currently, Plaintiffs only allege that RVA represented board-certified specialists were available for consultation, which they have not alleged is untrue. As noted above, statutory causes of action must be alleged with particularity.

The demurrer to these causes of action is sustained with leave to amend.

E. Privity / Consumer / Economic Injury

Defendants argue Plaintiffs fail to allege the necessary privity, that they are a consumer or entered into a transaction with Defendants, or that they incurred an economic injury.

To state a claim for breach of contract, a plaintiff must allege the existence of a contract between the plaintiff and defendant, including mutual assent and consideration. (*CDF Firefighters v. Maldonado* (2008) 158 Cal.App.4th 1226, 1239.)

The CLRA, FAL, and UCL require a plaintiff to be the consumer or person who engaged in the transaction and suffered injury as a result of the defendant's conduct. (Civ. Code, § 1761, subd. (d); Bus. & Prof. Code, §§ 17204, 17535.)

The FAC sufficiently alleges Plaintiffs entered into a contract with Defendants for veterinary care including diagnosis, treatment, and hospitalization, that they sustained damage to their dog Sierra, and that they have incurred further veterinary costs as a result; i.e., economic losses. (FAC, ¶¶47-51.) The demurrer on this ground is overruled.

F. Indispensable Party

Defendants argue that the FAC is subject to demurrer for failure to add an indispensable party because the trainer who allegedly injured Sierra and caused her to need the subject surgery is not joined as a party to the action.

Here, the allegations are based upon the surgery—not the initial injury. Therefore, the trainer is not an indispensable party. The demurrer on this ground is overruled.

G. Motion to Strike

Plaintiffs allege a breach of a bailment contract may be asserted by the bailor when the bailee fails to return that which was bailed or deposited. Plaintiffs allege Defendants allege Bailey was returned in a worse condition than when she was delivered to Defendants.

Defendants argue that Plaintiffs are seeking damages that are beyond what is recoverable under a bailment theory. Defendants argue that Plaintiffs can only recover the value of the damage to the personal property—not emotional distress and punitive damages. Defendants also argue that the remedies under the statutory causes of action are limited, such that the requests for damages under those causes of action should be stricken.

While the bailment cause of action notes that Plaintiffs suffered "severe emotional distress," that cause of action does not actually seek emotional distress damages. Each cause of action specifically states it seeks damages as requested in the prayer. Defendants have not established that no causes of action support an award of emotional distress damages, restitution, or injunctive relief.

Defendants also argue that a breach of contract or bailment cause of action does not support a punitive damages request absent an independent tort. Here, subsequent to the above ruling on the Defendants' demurrer, the remaining causes of action in the FAC are for negligence, breach of contract, and breach of bailment contract. None of these support an award of punitive damages.

IV. Conclusion

Defendants' demurrer to the fifth cause of action for Intentional Infliction of Emotional Distress, Sixth Cause of Action for Misrepresentation, Seventh Cause of Action for Concealment, Eighth Cause of Action for Violation of CLRA, Ninth Cause of Action for Violation of Bus. & Prof. Code section 17500 et seq., and Tenth Cause of Action for Violation of Bus. & Prof. Code section 17200 et seq., is sustained with leave to amend. The demurrer to the fourth cause of action for Breach of Contract and for nonjoinder of a necessary party is overruled.

Conditioned upon Defendants paying an additional filing fee of $60, Defendants' motion to strike punitive damages is GRANTED with leave to amend. Defendants' motion to strike is otherwise DENIED.

Defendants' counsel is directed to submit a written order to this court consistent with this ruling and in compliance with Cal. Rules of Court, Rule 3.1312.

5. <u>25CV08885, Vargas Flaherty v. Kerston</u>

Plaintiffs Casilda Vargas Flaherty and Christopher Flaherty ("Plaintiffs") move for an order advancing and specially setting the hearing on Plaintiffs' Motion to Sever the defaulted Defendants pursuant to Code of Civil Procedure section 579, which is presently set for October 14, 2026. The motion sought to have the hearing continued to the now-past date of August 12, 2026, to be heard concurrently with Defendant's motion to expunge the lis pendens.

The motion is made on the grounds that the only substantial asset from which any judgment in this action can be satisfied, i.e., the real property owned by defaulted defendant CBK, LLC, is actively listed for sale by defendant Peter Kerston such that if defendant Kerston's motion to expunge the lis pendens is granted, a subsequent sale of the real property would defeat Plaintiffs' ability to recover against the defendants in this action. Plaintiffs argue the defendant Kerston has a documented history of not satisfying outstanding judgments unless a lien is placed on his property, as presented in Plaintiffs' application for leave to record the lis pendens granted by this court on April 15, 2026.

Even if Plaintiffs had shown good cause to advance the hearing, this court does not have any available hearing dates before the motion is set to be heard on October 14, 2026. **Accordingly, the motion is DENIED.**

This court's minute order shall constitute the order of the court.

6. <u>26CV00824, Bohanan v. LWP Claims Solutions, Inc.</u>

Defendant LWP Claims Solutions Inc. ("Defendant") demurs to the first through seventh causes of action in the complaint filed by Plaintiff Lucas Bohanan ("Plaintiff") on the grounds that each fails to state facts sufficient to constitute a cause of action.

I. Complaint

Plaintiff alleges on February 26, 2023, he suffered an injury during work as a Firefighter Engineer and paramedic for the Santa Rosa Fire Department. He states that while he was assisting with lifting an unconscious patient and maneuvering the patient in a narrow hallway and down two or three steps to a gurney outside, he started feeling right-sided low back pain and right leg pain, numbness, and tingling. He left work due to the injury. Plaintiff alleges that after the injury, he was subjected to a campaign of harassment. Plaintiff alleges the harassment campaign was ordered by Defendant at the direction of Nick Vinh, the City of Santa Rosa's Risk Manager.

Plaintiff's complaint alleges the following causes of action: (1) Disability Discrimination; (2) Failure to Engage in Interactive Process; (3) Failure to Accommodate; (4) Failure to Prevent Discrimination; (5) Retaliation; (6) Aiding and Abetting; and (7) Retaliation (CFRA).

II. FEHA Causes of Action - Employment Relationship

Defendant argues that the first through fifth and seventh causes of action alleged in Plaintiff's complaint require an employer relationship and the allegations establish that Defendant was not Plaintiff's employer.

The complaint alleges that from April 9, 2018, to January 21, 2024, Plaintiff worked as a Firefighter Engineer for Santa Rosa Fire Department ("SRFD"). (Complaint, ¶31.) He suffered an injury on the job with SRFD. (*Id.,* ¶33.) Defendant is alleged to have acted as the third-party administrator for the City of Santa Rosa's workers' compensation claims, including Plaintiff's. (*Id.,* ¶35.)

Plaintiff's first through seventh causes of action allege violations of the Fair Employment and Housing Act ("FEHA") and the California Family Rights Act ("CFRA").

The FEHA and CRFA predicates potential "liability on the status of the defendant as an employer." (*Vernon v. State of California* (2004) 116 Cal.App.4th 114, 123 [citing Gov. Code section 12926]; *Leek v. Cooper* (2011) 194 Cal.App.4th 399, 408.) Here, the complaint alleges that SRFD was Plaintiff's employer. Defendant was merely an administrator for the City of Santa Rosa.

In opposition, Plaintiff argues that Defendant was SRFD's agent carrying on FEHA-related activities. An employer's business-entity agents can be held directly liable under the FEHA for employment discrimination in appropriate circumstances when the business-entity agent has at least five employees and carries out FEHA-regulated activities on behalf of an employer. (*Raines v. U.S. Healthworks Medical Group* (2023) 15 Cal.5th 268, 273.)

In its motion, Defendant argues that the types of activities it carried on were not FEHA-regulated activities. It lists the following: authorizing surveillance; making worker's compensation benefit decisions; coordinating litigation strategy and selecting defense counsel; and communicating and managing information regarding Plaintiff's work restrictions. Defendant does not cite authority that the tasks attributed to Defendant do not qualify as FEHA-regulated. Therefore, it has not met its burden on this issue.

III. Sixth Cause of Action – Aiding and Abetting (Cal. Gov. Code section 12940(i)

Plaintiff's sixth cause of action alleges the City of Santa Rosa engaged in unlawful employment practices forbidden by the FEHA, including disability discrimination, failure to engage in the interactive process, failure to accommodate, failure to prevent discrimination, and retaliation. He alleges Defendant, with knowledge of the City of Santa Rosa's unlawful employment practices, knowingly and substantially assisted the City in committing these violations of the FEHA. Plaintiff lists specific actions including authorizing surveillance, exercising decision-making authority over Plaintiff's workers' compensation benefits; coordinating litigation strategy; communicating and managing information regarding Plaintiff's work restrictions and ability to return to work in a manner that failed to facilitate the interactive process; and participating in employment-related decisions without engaging in good faith efforts to accommodate Plaintiff's disability. The facts allege that Defendant provided assistance or encouragement to the City.

IV. Conclusion

The demurrer is OVERRULED.

Plaintiff's counsel is directed to submit a written order to this court in compliance with Cal. Rules of Court, Rule 3.1312.

7. <u>26CV01627, Mason v. Total Lenders Solutions, Inc.</u>

This matter is on calendar for the demurrer of Defendants Total Lenders Solutions and Toro Loan Servicing, Inc. to the complaint filed by Plaintiff Paul Mason. On August 28, 2026, Plaintiff filed a First Amended Complaint. Accordingly, **Defendants' demurrer is OVERRULED as MOOT.**