

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, October 9, 2024 3:00 p.m.
Courtroom 17 – Hon. Bradford DeMeo
3035 Cleveland Avenue, Santa Rosa**

PLEASE NOTE: In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform. Whether a party or their representative will be appearing in person or by Zoom must be part of the notification given to the Court and other parties as stated below.

CourtCall is not permitted for this calendar.

If the tentative ruling is accepted, no appearance is necessary via Zoom unless otherwise indicated.

TO JOIN ZOOM ONLINE:

D17 – Law & Motion

Meeting ID: 161 126 4123

Passcode: 062178

<https://sonomacourt-org.zoomgov.com/j/1611264123>

TO JOIN ZOOM BY PHONE:

By Phone (same meeting ID and password as listed for each calendar):

+1 669 254 5252

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** Judge DeMeo’s Judicial Assistant by telephone at **(707) 521-6725**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom, by 4:00 p.m. the court day immediately preceding the day of the hearing.**

1. 23CV02195, Looney v. Umamicatessen, LLC

Plaintiff Looney moves to compel Defendant Umamicatessen, LLC, doing business as Umami Burger, and Defendant Adam Fleischman, individually and as personal guarantor of Umamicatessen, LLC, to provide full and complete responses to post-judgment interrogatories and demand for production. The unopposed motion is **GRANTED**, and sanctions are awarded only as to the \$60.00 cost of filing. Defendants shall provide complete, objection-free verified

responses to Plaintiff and pay \$60.00 in sanctions within 30 days of service of the notice of entry of order.

PROCEDURAL HISTORY

Plaintiff Looney propounded post-judgment written interrogatories and demands for production on Defendants on April 25, 2024. (Looney Declaration, ¶ 1.) Defendants never responded to the discovery requests, never requested any extensions, and never acknowledged Plaintiff's efforts to meet and confer regarding the discovery. (*Id.* at ¶¶ 2-4.) Plaintiff notified Defendant of intent to file this motion to compel.

ANALYSIS

Plaintiff's unopposed motion is based on Code of Civil Procedure ("C.C.P.") sections 708.010, 708.020, 708.030, and 2023.030, for Defendants' failure to respond to the post-judgment discovery. Plaintiff requests the Court to compel Defendants' objection-free, verified responses and impose sanctions of \$60.00 for filing costs plus reasonable attorneys' fees.

A judgment creditor may propound interrogatories and requests for documents to a judgment debtor. (C.C.P. § 708.010, et seq.) These may be served on the judgment debtor any time while the judgment is enforceable, except not within 120 days after the judgment creditor examined the judgment debtor, or after the judgment debtor responded to an earlier set of such discovery. (C.C.P. §§ 708.010(a), 708.020(b).)

A responding party who fails to serve timely responses to interrogatories waives all objections, including privilege and work-product based objections, and the propounding party may move for an order compelling responses. (C.C.P. § 2030.290(a)-(b); *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404.) Likewise, failure to serve timely responses to requests for production of documents results in waiver of all objections and allows for a motion to compel responses. (C.C.P. § 2031.300(a)-(b).) Additionally, the Court "shall" award sanctions for failure to respond. (C.C.P. 708.020.)

Plaintiff has sufficiently demonstrated that post-judgment discovery was properly served to Defendants, who failed to respond. Defendants have not been examined by Plaintiff or the judgment creditor or responded to any other discovery within 120 days before the motion was filed. (*Id.* at ¶ 5.) Accordingly, the Court will grant the motion.

CONCLUSION

Based on the foregoing, Plaintiff's motion is **GRANTED**, and sanctions are awarded in the amount of \$60.00 for filing costs. Defendants shall serve complete, objection-free verified responses to Plaintiff and pay \$60.00 in sanctions within 30 days of service of the notice of entry of order. Plaintiff shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

2. 24CV00878, Shrader v. SRPD

Defendants Santa Rosa Police Department, Tamayo, and Chanin (“SRPD”) demur to Plaintiff Shrader’s Complaint and moves to dismiss the Complaint for failure to comply with Government Code section 945.6. SRPD’s demurrer is **SUSTAINED without leave to amend**.

Defendant Sonoma County Sheriff’s Office and Sonoma County Main Adult Detention Facility (together “County Defendants”) demur to Plaintiff’s Complaint for failure to comply with claims presentation requirements of Government Code sections 815(a), 905.2, 911.4, 945.4, and 946.6. Sonoma Sheriff’s demurrer is **SUSTAINED without leave to amend**.

Plaintiff’s request for relief from compliance with claims statute is **DENIED**.

PROCEDURAL HISTORY

On August 29, 2022, Plaintiff called for medical and law enforcement services because she was involved in an altercation with Loletha Martinez who threw an item at Plaintiff’s forehead. (Complaint, First Attachment, ¶ 1.) An EMT arrived and examined her, but determined she had no injuries, so Plaintiff declined further medical services. (*Ibid.*) They did not provide her transportation home, so she panicked and called for emergency services again and tried running to secure areas for her own protection. (Complaint, First Attachment, ¶ 2.) Plaintiff ran towards what she thought was a security vehicle, but it turned out to be a street sweeper. (*Ibid.*) Thinking it was about to run her over, Plaintiff threw a rock at it causing damage, so the driver of the street sweeper called the police. (Complaint, First Attachment, ¶ 2.) SRPD Officers Tamayo and Chanin responded to the call, arrested Plaintiff, and took her to Sonoma County Main Adult Detention Facility (“MADF”). (*Ibid.*)

When she arrived at MADF, she felt faint and was prevented from laying on the floor. (Complaint, Third Attachment, ¶ 1.) She attempted to get medical attention but was ignored until she was brought toilet paper 1 hour and 45 minutes later after she soiled herself. (*Ibid.*) She received a mental health evaluation at MADF and was determined to have a history of complex PTSD, panic attacks, and bipolar disorder including mania. Ultimately, Plaintiff was charged with a misdemeanor for causing \$400.00 worth of damage to the street sweeper, but the charge was eventually dismissed, and she was released.

On August 2, 2023, Plaintiff filed and served SRPD with a Government Tort Claim and an Application for Leave to Present Late Claim, pursuant to Government Code section 945.6. (Hepler Declaration, ¶ 2, Exhibit A.) Her Application for Leave to Present a Late Claim was denied on September 13, 2023, and the denial letter contained a warning stating that if Plaintiff wished to file a court action, that within six months of the date of denial, she would first be required to petition the appropriate court for an order relieving her from the provisions of Government Code section 945.4. (*Id.* at ¶ 3, Exhibit B.)

Plaintiff filed the Complaint on February 29, 2024, which did not contain any request for relief from the provisions of Government Code section 945.4. SRPD met and conferred by phone with Plaintiff regarding her failure to timely file a Government Tort Claim. (Hepler Declaration, ¶ 5.)

SRPD requested that Plaintiff dismiss SRPD from the Complaint based on this failure, but Plaintiff stated she intended to go forward with her cause. County Defendants' counsel also met and conferred via phone to state that they would demur to the Complaint because Plaintiff did not comply with the applicable claims statute and cannot allege general negligence against a public entity, but she stated that she would like to proceed. (Lusby Declaration, ¶ 6.)

DEMURRER

Legal Standard

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. (C.C.P. § 430.30(a).) At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. (*Coshov v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.) Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872.) Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) "The distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree." (*Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 473.) Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. (*The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.)

SRPD's Demurrer

SRPD's demurrer to the Complaint argues that Plaintiff failed to comply with Government Code section 945.6, which requires presentation of a claim for damages as a prerequisite to filing a suit against a public entity or a government employee acting within the course and scope of their duties. Plaintiff's initial incident occurred on August 29, 2022, and she failed to file a Government Tort Claim per section 945.6 until August 2, 2023. Per section 945.6, Plaintiff's deadline to file was February 26, 2023. SRPD argues pursuant to *Torres v. County of Los Angeles* (1989) 209 Cal.App.3d 325, 333, that SRPD's demurrer should be granted without leave to amend because there is no reasonable possibility that the defect can be cured by amendment because the prescribed statutes of limitations for the commencement of actions against government entities are mandatory and must be strictly complied with." If Plaintiff were to be excused from complying with the claim statute, then section 946.6 required her to have filed a separate petition with the Court seeking an order relieving her from Section 945.4 within six months of the date of denial of Plaintiff's Application for Leave to File a Late Claim.

County Defendants' Demurrer

County Defendants demur for the same reason as SRPD. They argue that Plaintiff's application for leave to present a late claim was denied on August 31, 2024, and she later failed to a timely petition for relief from the Court per Government Code section 946.6. Furthermore, County

Defendants argue that public entities are not liable for tortious injuries caused by an act or omission of a public entity or public employee or any other person, except as otherwise provided by statute per Government Code section 815(a). Plaintiff is alleging a single cause of action for general negligence against County Defendants, who are public entities, so they argue that Plaintiff has failed to sufficiently plead a statutory cause of action against them and the demurrer ought to be sustained pursuant to Code of Civil Procedure section 430.10(e).

Plaintiff's Opposition to Demurrers

In her opposition to both the demurrers, Plaintiff seeks relief from the statutory deadlines due to mental health challenges, addressing a criminal case, lack of legal representation, and inaccurate information from legal support services. Plaintiff argues that she has already taken multiple steps in order to try to resolve her claims against Defendants, including filing a complaint with both of them which they found to be without merit, filing a complaint with IOLERO and OIR which were both denied, filing tort claims with her application for leave to present late claims which were both denied, reaching out to self-help and legal aid regarding her claims, and meeting and conferring with counsels for Defendants which failed to resolve the issues stated in the demurrers. Plaintiff also filed a separate motion for relief from the applicable claim statute on the same date as her opposition.

SRPD replied to the opposition to state that Plaintiff conceded her Government Tort Claim was untimely filed, filed this Complaint without first obtaining an order for relief under Government Code section 946.6(b)(3), and that the motion for relief from compliance with applicable claims statute is untimely. County Defendants echo the same arguments in their reply brief. Both Defendants argue that Plaintiff should be held to the same standards as an attorney in the same situation because naivety to the legal process is not a sufficient basis to be excused from applicable claims statutes.

Application

The Court finds that though Plaintiff has taken many steps to try and resolve her claims against Defendants, Plaintiff has not complied with the mandatory statutory deadlines as required for a Government Tort Claim and has otherwise not timely filed for any relief from the Court for failing to meet the deadlines. Furthermore, the Court does not find Plaintiff's naivety to the legal process to be sufficient grounds to be excused from the applicable claims statutes that must be strictly complied with. As shown on the notice from SRPD denying Plaintiff's application for leave to present late claims, Plaintiff had notice that the deadline was six months to ask for relief from the Court from the date of denial but did not heed the warning regarding this deadline. As such, the Court will deny her motion for relief and sustain both demurrers without leave to amend because the mandatory prerequisites have not been complied with for a Government Tort Claim and there is no reasonable possibility for Plaintiff to cure this defect through amendment.

CONCLUSION

Based on the foregoing, the demurrers are **SUSTAINED with leave to amend**. Plaintiff's motion for relief is **DENIED** as untimely. Defendants shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

3. 24CV01822, Rutz v. Hernandez

APPEARANCES REQUIRED. There are three motions set to be heard October 9, 2024, including Defendant Hernandez's demurrer and fees motion and Plaintiff Rutz's motion for reconsideration. Plaintiff filed a Notice of Stay of Proceedings for automatic stay as to only Defendant Hernandez on September 20, 2024, but did not attach anything that appraises the Court of the basis for the automatic stay. Plaintiff also filed a Request for Dismissal on September 30, 2024, dismissing Defendant King with prejudice from this matter. Plaintiff shall appear to present the basis for the automatic stay as to Defendant Hernandez.

4. 24CV03763, Soligent Distribution, LLC v. AMP Smart

Defendants Ares Agent Services, L.P., Ares Alternative Credit Management LLC, Ares Cactus Operating Manager, L.P., Ares Management LLC, Ares Multi-Credit Fund LLC, APF Holdings II L.P., Glenlake Loan Fund II, LLC, and Sonoran Cactus Private Asset Backed Fund LLC ("Defendants") apply for orders of this Court permitting counsels Brandon Bell and Joseph Rovira to appear as counsel *pro hac vice*. Defendants' unopposed applications are **GRANTED** pursuant to California Rules of Court, Rule 9.40. Defendants shall submit a written order consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

5. SCV-271485, Sturm v. Zetzer

Defendants Youngstown Mobile Home Park, WGP Property Management LLC, Debbie A. Zetzer, and Daniel Weisfield, move for judgment on the pleadings per Code of Civil Procedure ("C.C.P.") section 438 regarding the First, Second, Third, Fourth, and Fifth causes of action in Plaintiffs' Complaint. The motion is **GRANTED with leave to amend**. Plaintiffs shall file an amended Complaint within 30 days of receiving notice of this Court's order.

PROCEDURAL HISTORY

Plaintiffs are the children of Gordon Sturm, who was the owner of the Mobilehome located at 132 Pamela Court, Petaluma, CA 94954 (the "Mobilehome"). Gordon Sturm executed a written lease agreement to lease a Mobilehome space in Youngstown Mobilehome Park. Mr. Sturm passed away in February 2022. Then, Defendant Zetzer, the on-site manager for Youngstown sent a letter to Plaintiff Shari Castro on February 14, 2022, offering condolences and informing her of her rights and obligations as an heir under Civil Code section 798.78, which permits an heir to sell a Mobilehome in-place if the financial and maintenance obligations of the deceased tenant and owner of the Mobilehome are kept current. Defendant Zetzer informed Plaintiffs of the monthly utilities and rent and when they would be due every month until the Mobilehome

was sold, or a new tenant moved in. Defendant also informed them that if they failed to timely pay the space rent and charges each month, they would forfeit their right under section 798.78. Plaintiff Jamie Sturm signed a disclaimer acknowledging the monthly rent for the space and that no one was currently residing at the Mobilehome.

Plaintiffs failed to make payment for April 2022, so Youngstown issued a three-day notice to pay or remove the Mobilehome. Plaintiffs paid the rent within the three-day period, but again failed to pay the rent in May 2022, so a second three-day notice was issued. Plaintiffs did not have money to pay the rent for the space, so Youngstown sent Plaintiffs a notice of warehouse lien requiring the payment of the outstanding balance of \$2,703.77, otherwise the Mobilehome would be sold at a lien sale on July 18, 2022. When Plaintiffs failed to pay the balance, Youngstown held a public lien sale and there were no third-party bidders, so it perfected its lien for the outstanding balance by acquiring the Mobilehome.

REQUEST FOR JUDICIAL NOTICE

Defendants request judicial notice of the following items:

1. A true and correct copy of the Title Search issued by the Department of Housing and Community Development (“HCD”) for the Mobilehome located on 132 Pamela Court, Petaluma, California dated February 14, 2022; and
2. A true and correct copy of the Title Search issued by HCD for the Mobilehome located on 132 Pamela Court, Petaluma, California dated July 24, 2024.

Judicial notice of official acts is statutorily appropriate. (Evid. Code § 452(c).) Defendants also argue that a court can take judicial notice of records and files of state administrative agencies per *Fowler v. Howell* (1996) 42 Cal.App.4th 1746, 1750. As such, Defendants’ requests for judicial notice are **GRANTED**.

ANALYSIS

Legal Standard

A defendant may move for judgment on the pleadings on the grounds that (1) “the court has no jurisdiction of the subject of the cause of action alleged in the Complaint” or (2) “the complaint does not state facts sufficient to constitute a cause of action against that defendant.” (C.C.P. § 438(c).)

A motion for judgment on the pleadings performs the same way as a general demurrer. (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999, 79 Cal.Rptr.2d 544.) The grounds for a motion for judgment on the pleadings appears on the face of the challenged pleading or from any matter judicially noticed by the court. (C.C.P. § 438(d).) In considering a motion for judgment on the pleadings, trial courts accept plaintiff’s factual allegations in the pleading as true and give them liberal construction. (*Gerawan Farming, Inc. v. Lyons* (2000) 24 Cal.4th 468, 515.) Presentation of extrinsic evidence is therefore not proper on a motion for judgment on the pleadings. (*Cloud v. Northrop Grumman Corp.*, supra, at p. 999; *Sykora v. State Dept. of State*

Hospitals (2014) 25 Cal.App.4th 1530, 1534.) The complaint must be viewed in isolation and matters set forth in the answer will not be considered. (*Hughes v. Western MacArthur Co.* (1987) 192 Cal.App.3d 951.

Leave to amend should be granted if there is any reasonable possibility that the plaintiff can state a good cause of action. (*Gami v. Mullikin Med. Ctr.* (1993) 18 Cal.App.4th 870, 876.)

Defendants' Motion for Judgment on the Pleadings

Plaintiffs' Complaint alleges causes of action for: (1) statutory violations of Code of Civil Procedure sections 798.55, 1161(b), 1161(h), 1162, 7206, and 7209; (2) conversion; (3) intentional infliction of emotional distress; (4) trespass; and (5) fraud and fraudulent concealment. Plaintiffs also request declaratory relief.

1. *First Cause of Action for Statutory Violations*

Plaintiffs argue that Defendants failed to provide a 90-day notice pursuant to C.C.P. section 1161(b). Plaintiffs allege that Defendants attempted to evict them without proper notice and held an invalid warehouse sale. Defendants argue that this section applies only to "tenants in possession of rental housing during foreclosure sale," but point out that Plaintiffs had no tenancy meaning there can be no "tenants in possession" as to Plaintiffs during the foreclosure sale. Furthermore, no foreclosure sale was involved because Mobilehomes are chattel property and not real property.

2. *Second Cause of Action for Conversion*

As stated in the motion, the elements for a claim of conversion are: "(1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property right; and (3) damages." (*IIG Wireless, Inc. v. Yi* (2018) 22 Cal App 5th 630, 650.) Defendants again point out that Plaintiffs did not own or have a right of possession to the property because they were not tenants. They acknowledge in Paragraph 13 of the Complaint that they did not have a tenancy in Youngstown.

3. *Third Cause of Action for Intentional Infliction of Emotional Distress*

A defendant's conduct must be so extreme and outrageous to result in liability and to permit recovery for intentional infliction of emotional distress. (*Plotnik v. Meihaus* (2012) 208 Cal.App.4th 1590, 1614.) As Defendants explain in the motion, elements of a cause of action for infliction of emotional distress are: (1) extreme and outrageous conduct by the defendant; (2) intent to cause, or reckless disregard of the probability of causing, emotional distress; (3) plaintiff's suffering severe or extreme emotional distress; and (4) actual and proximate causation of the emotional distress by the defendants' outrageous conduct.

The Complaint alleges Defendants lied to them about their ability to sell their parents' residence after taking possession of valuable personal property and mementos, repeatedly and deliberately misled Plaintiffs as to their intentions, and converted and secretly disposed of Plaintiffs' property

while refusing to alert them to their acts and omissions. Defendants argue that lying and misleading are not sufficient to sustain a cause of action for intentional infliction of emotional distress, that conversion is a separate cause of action, and that inaction without some fiduciary duty is not extreme and outrageous conduct.

4. *The Fourth Cause of Action for Trespass*

Trespass requires an unauthorized entry onto another's land disrupting their right to exclusive possession. (*Civic Western Corp. v. Zila Indus., Inc.* (1977) 66 C.A.3d 1, 17-18.) As stated above, Plaintiffs' parents' tenancy terminated upon their death and Plaintiffs as heirs only had the right to sell the Mobilehome as long as the financial and maintenance obligations were current, under section 798.78(d). As Plaintiffs cannot show they had possession, there can be no trespass.

5. *The Fifth Cause of Action for Fraud and Fraudulent Concealment*

A cause of action for fraud must allege: 1) a misrepresentation; 2) knowledge of falsity; 3) intent to induce reliance; 4) reliance; 5) causation; and 6) resulting damages. (*Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 C4th 979, 990.) Defendants argue that Plaintiffs have not alleged any fiduciary relationship between the parties that Defendant was required to disclose facts to them, so they cannot claim an essential element of the cause of action. Defendants argue that Plaintiff has not alleged that Defendants knowingly made false representations with specificity. Defendants claim that Plaintiffs cannot show causation between the allegations in the Complaint.

Plaintiff's Opposition

Plaintiffs request the Court to deny the motion, or otherwise grant them leave to amend the Complaint should the Court decide to grant the motion. Plaintiffs claim that they are the rightful heirs to the property and that they delivered an Intent to Sell to Youngstown as instructed by their on-site manager and were told that there was only 30 days to do that, when there was actually 60 to 90 days to do so. Some Plaintiffs requested an application for tenancy and personally expressed that they were the heir to the property and had formally resided there previously. Their applications were denied by Youngstown. They also claim that the on-site manager refused to accept rent even though they accepted it for two months, and they never received any notice of the of auction. Plaintiffs contend that because Youngstown did a search of the title on the Mobilehome only 72 hours after their father's death, it indicates an intent to deprive them of residency and ownership rights. They allege the on-site manager purchased the property and changed the locks, but apparently this was not true. Plaintiffs also note that they propounded discovery on Defendants, but that they refused to respond and refused to meet and confer regarding the discovery as well.

Application

Based on the above arguments made by the parties, the Court finds that there is a reasonable possibility that Plaintiffs may be able to cure deficiencies in the Complaint by amendment by

pleading additional facts to support their claims. The Court will grant the motion with leave to amend.

CONCLUSION

Defendants' motion is **GRANTED with leave to amend**. Defendant shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b). Plaintiffs shall file an amended complaint within 30 days after receiving notice of entry of this Court's order.