

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, October 21, 2026 3:00 p.m.
Courtroom 17 – Hon. Jane Gaskell
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.

CourtCall is not permitted for this calendar.

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

TO JOIN D17 ZOOM ONLINE:

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 Gaskell's Judicial Assistant by telephone at **(707) 521-6723**, 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. 23CV01507, Haygooni v. Sunset Aviation LLC dba Solairus Aviation

APPEARANCES REQUIRED.

2. 24CV03981, Brakebill v. Miller

Defendant/Cross-Complainant W. Scott Miller Construction Inc.'s Motion Contesting Application for Good Faith Settlement filed by Cross-Defendant Reda Electric is **DENIED as moot** due to the Notice of Withdrawal of Reda Electric's Application for Good Faith Settlement filed with the Court on October 7, 2026.

3. 25CV02311, Swan v. General Motors LLC

Defendant General Motors LLC ("GM") moves to tax costs from Plaintiff Robyn Swan's ("Plaintiff") memorandum of costs ("MOC") claiming \$807.08. Per Code of Civil Procedure

(“C.C.P.”) sections 998 and 1033.5, the motion is **DENIED**.

I. PROCEDURAL HISTORY

Plaintiff brought this action against GM alleging claims under the Song-Beverly Consumer Warranty Act regarding a new 2022 Cadillac Escalade that Plaintiff leased. (Motion, 3:11-14.) The parties engaged in discovery and ultimately reached a settlement in this matter after GM served a C.C.P. section 998 Offer to Compromise to Plaintiff for the payment of \$120,000.00, with attorney fees, expenses, and costs to be determined by noticed motion. (*Id.* at 3:15-21.) Plaintiff accepted the offer and then filed a MOC seeking \$807.08 in costs, from which amount GM now seeks to tax or strike \$260.04 via this noticed motion. (*Id.* at 3:21-25.) Plaintiff filed an Opposition, to which GM replied.

II. MOTION TO STRIKE OR TAX COSTS

Legal Standard

Fees & Costs

C.C.P. section 1032 allows the prevailing party of an action to recover costs. C.C.P. section 1033.5(a) lists the costs that the prevailing party may claim, while section 1033.5(b) lists the costs that are not allowed.

Motion to Tax Costs

Where items in a memorandum of costs appear to be proper charges, the burden is on a party seeking to tax those costs to show that they were unreasonable or unnecessary. (*Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 774.) If the party seeking to tax costs properly objects to the claimed costs, the burden of proof shifts to the party claiming costs to provide documentary evidence to support the costs. (*Jones v. Dumrichob* (1998) 63 Cal.App.4th 1258, 1265.) If the party claiming costs does provide such documentary evidence, the party challenging the costs must provide contradicting evidence and the trial court will determine if the disputed costs were reasonable and necessary. (*Id.* at 1265-1266.) Costs claimed that are expressly allowed by a statute must be shown to be unnecessary and unreasonable by the party seeking to tax them, while costs not expressly allowed by statute must be shown to be reasonable and necessary by the party claiming them. (*Foothill-De Anza Community College Dist. v. Emerich* (2007) 158 Cal.App.4th 11, 29.)

Analysis

Item 2: Jury Fees

GM argues that the \$155.94 claimed for “Jury Fees” should be stricken because the case never went to trial. (Motion, 5:1-2.) As these fees were unreasonable and not necessary to conduct the litigation as no jury has been convened on this matter, GM argues there is no legal or factual basis for shifting these costs to GM. (*Id.* at 5:6-12.)

Plaintiff argues that she is entitled to the Jury Fees claimed because they are allowed by statute regardless of whether the case settled before trial and because these fees were paid by Plaintiff per C.C.P. section 631 before the first Case Management Conference to preserve her right to jury trial so it was reasonably necessary to further the litigation. (Opposition, pp. 3-4.)

The Reply reaffirms the same arguments made in the motion. (Reply, 3:16-25.)

Item 14: Fees for Electronic Filing or Service

GM argues that the \$104.09 claimed for electronic filing or service fees are unsupported because the invoices provided by Plaintiff demonstrate that Plaintiff's counsel racked up unnecessary charges such as convenience fees, electronic payment fees, administrative fees, and other unnecessary charges. (Motion, 5:13-17.)

Plaintiff argues that there is no justification or explanation for why Plaintiff would not be entitled to the electronic filing and service costs claimed when they are allowed by statute and when Plaintiff has already produced invoices showing she incurred these costs. (Opposition, 4:6-19.)

The Reply reaffirms the same arguments made in the motion. (Reply, 4:3-10.)

Application

The Court finds that the Jury Fees and Electronic Filing and Service fees claimed by Plaintiff in the MOC were reasonably incurred by Plaintiff to further the litigation. These fees are allowable costs per statute and Plaintiff submitted evidence to support that they were reasonably necessary. Thus, the Court will deny the motion.

III. CONCLUSION

GM's motion is **DENIED**. 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).

4. 25CV02951, Oxbow Landscape Contractors, Inc. v. Gunner Procrete, LLC

Plaintiff Oxbow Landscape Contractors Inc.'s ("Plaintiff") unopposed motion for leave to file its First Amended Complaint is **GRANTED**. Plaintiff shall file the proposed First Amended Complaint within 10 days of this service of this Court's order.

Motions for leave to amend pleadings are in discretion of the court, which may, in furtherance of justice, and on such terms as may be proper, allow a party to amend any pleading. (C.C.P. § 473.) Additionally, the court may allow the amendment of any pleading at any time before or after trial begins if it is in the furtherance of justice. (C.C.P. § 576.) C.C.P. section 473 and California Rules of

Court, Rule 3.1324 require that the moving party accompany the motion for leave to amend with a copy of the amended pleading to be filed if leave is granted. When the plaintiff is the moving party, proximity to the trial date is not a ground for denial absent a showing of prejudice to defendant. (See *Mesler v Bragg Mgt. Co.* (1985) 39 Cal.3d 290, 297.) Even if some prejudice is shown, leave to amend may be permitted upon conditions imposed by the Court, such as, continuation of the trial date, reopening discovery, or ordering the party seeking amendment to pay opposing party's costs and fees incurred in preparing for trial. (C.C.P. §§ 473, 576; *Fuller v Vista Del Arroyo Hotel* (1941) 42 Cal.App.2d 400.)

Plaintiff's proposed First Amended Complaint, attached as Exhibit C to the Declaration of Tiwana, contains all the proposed changes in blue text to add new causes of action arising from Plaintiff's settlement agreement with dismissed defendant DKG Construction, Inc. ("DKG") and to add corrections such as removing DKG as a named defendant to conform the pleading to recent updates in this matter. (Motion, pp. 8-10.) The motion is unopposed despite proper and timely service of the moving papers.

The Court finds that Plaintiff has complied with the statutory and procedural requirements for this motion and that no party has opposed to argue prejudice will result in granting leave for Plaintiff to file the First Amended Complaint. Following California's liberal policy to allow leave to amend, the Court **GRANTS** the unopposed motion. Plaintiff shall file and serve the proposed First Amended Complaint within 10 days of service of this Court's order. Unless oral argument is requested, the Court will sign the proposed order lodged with the motion.

5. 25CV05025, Najee v. Tribal First

Self-Represented Plaintiff Erroll Najee's Motion for Relief under Code of Civil Procedure ("C.C.P.") section 473(b) is **DENIED**.

A court may 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, but an 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." (C.C.P. § 473(b).)

The motion briefly states that relief is requested under section 473(b) and states the grounds for relief are "excusable neglect, medical limitations, visual impairment, ongoing rehabilitation, good faith prosecution, and no prejudice to defendants." The Opposition argues that the motion is unintelligible and without merit, but makes the assumption that Plaintiff seems to be requesting to set aside one or more of the existing dismissals entered in this matter. However, as stated in the Opposition, it is entirely unclear to the Court what judgment, dismissal, order, or other proceeding Plaintiff is requesting relief from and due to this the Court is also unable to calculate whether Plaintiff has abided

by the statutory deadline required for such a motion. For these reasons, the Court will deny the unintelligible motion. The minute order shall constitute the Order of the Court.

6. 25CV07227, Ellsworth v. Covarrubias

Defendant PepsiCo Beverage Sales, LLC's ("PBS") Motion for Summary Judgment is **DENIED as moot** due to the Stipulation and Order for the dismissal with prejudice of Defendant PBS from this action, with the dismissal to be filed no later than Friday, October 16, 2026.

7-8. 26CV01869, Doe v. Finley

Defendants Becoming Independent, Paula Finley, Marisa Galindo, and Laura Vega ("Defendants") demur to the Fourth Cause of Action for Intentional Infliction of Emotional Distress ("IIED") in Plaintiff Jane Doe's First Amended Complaint ("FAC"). Pursuant to California Code of Civil Procedure ("C.C.P.") section 430.10, the Demurrer is **OVERRULED**.

The concurrently filed motion to strike punitive damages and attorney's fees from the FAC is **DENIED**.

I. PROCEDURAL HISTORY

Plaintiff, through her guardian ad litem Pamela Groover, brings this action alleging causes of action for: (1) Dependent Adult Abuse, Neglect, and Abandonment; (2) Negligence/Willful Misconduct; (3) Negligent Hiring, Supervision, or Retention; and (4) Intentional Infliction of Emotional Distress. (FAC, ¶¶ 53-98.) Plaintiff alleges that she was born with an intellectual disability and developmental delay with the mental capacity of a 6-year-old and has been conserved since the age of 17 and living with her parents. (*Id.* at ¶¶ 18-19.) Plaintiff is vulnerable and exhibits behaviors like skin-picking until she bleeds and wandering, so she requires 24-hour supervision for her safety and for care of her basic needs like food and hygiene. (*Id.* at ¶ 19.)

Plaintiff was part of Becoming Independent's Adult Day program, which is a non-medical community-based facility that provides vocational, social, and other services to adults in need of personal services, supervision, or assistance essential for sustaining "Activities of Daily Living" or "ADLs" for their program participants. (FAC, ¶ 8.) Plaintiff alleges that on July 1, 2025, Defendant Vega took Plaintiff and two other program participants on an outing to a public park called Windsor Town Green, during which time Plaintiff alleges she was allowed to wander off unsupervised to look for a "friend." (*Id.* at ¶¶ 23-24.) A witness called the City of Windsor's Police Department at approximately 11:50 a.m. that day to report inappropriate behavior between two individuals, who were Plaintiff and a homeless man named Eric Bernard, and the two were found with blood on Plaintiff's shirt and on Bernard's hands. (*Id.* at ¶ 25.) Plaintiff reported to the police that, while she was wandering unsupervised, Bernard approached her and sexually assaulted her. (*Id.* at ¶ 30.) Plaintiff alleges that in December of 2024, an individual who was also a participant of the Becoming Independent program, William Miracle, had introduced Plaintiff to Bernard, who began calling her on

the phone. Plaintiff's parents intercepted these calls and informed Becoming Independent's employees about Bernard's inappropriate contact with Plaintiff. (*Id.* at ¶¶ 34-35.)

Plaintiff alleges that Defendants willfully, recklessly, maliciously, and oppressively disregarded Plaintiff's safety and caused harm to her by failing to have safety measures in place that would prevent the harm Plaintiff endured on July 1, 2025, from Bernard. (FAC, ¶¶ 41, 43.) In Plaintiff's Fourth Cause of Action for IIED, Plaintiff alleges that all Defendants are liable because they acted outrageously by intentionally and knowingly disregarding numerous statements made to them regarding the risk of harm posed by Myracle and Bernard. (*Id.* at ¶ 94.)

Defendants demur to the IIED claim arguing that it is legally insufficient as pleaded in the FAC. (Demurrer, 2:3-7.) Defendants also filed a concurrent Motion to Strike punitive damages and attorney's fees from the FAC. (Motion to Strike, 1:24-28, 2:1-3.) The parties met and conferred regarding Defendants' issues raised about the IIED claim but did not reach a resolution. Plaintiff opposes the motions and Defendants replied to the oppositions.

II. DEMURRER TO FAC

Legal Standard

Demurrer

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 judicially noticed facts 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 if supported by properly pleaded facts, but the distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The burden of proving that there is a reasonable possibility to cure the defect is squarely on the party that filed the pleading, but if that burden is met and leave to amend is not granted, then that constitutes an abuse of discretion by the trial court. (*Ibid.*)

Intentional Infliction of Emotional Distress (IIED)

To plead a cause of action for intentional infliction of emotional distress, a plaintiff must allege that there is "(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the

defendant's outrageous conduct." (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050–1051.) Plaintiff may show that the defendant intended conduct to inflict injury or realized injury would result by conduct that is "outrageous" and "so extreme as to exceed all bounds of that usually tolerated in a civilized community." (*Id.*)

Defendant's Demurrer

Defendants argue that Plaintiff failed to properly state a cause of action for IIED because Plaintiff confirmed with her own allegations that Defendants disagreed with Plaintiff's parents about her level of independence. Further, the allegations that Defendants "authorized, allowed, adopted, approved, aided, abetted, and/or ratified" the conduct of Defendant Vega, Miracle, and Bernard are entirely conclusory. (Demurer Memorandum of Points and Authorities ["Demurrer MPA"], pp. 5-7.)

Opposition

The Opposition argues that Plaintiff sufficiently pleaded the IIED claim by alleging that Defendants knew of Plaintiff's intellectual and developmental disabilities affecting her mental capacity and her emotional vulnerability that caused her to not have any concept of personal boundaries with strangers, but despite this knowledge, still allowed her to wander unsupervised leading to her being sexually assaulted by Bernard. (Opposition, pp. 5-6.)

Reply

In the Reply, Defendants argue that Plaintiff's allegations do not establish the requisite mental state for IIED because, even if they allegedly knew of Plaintiff's vulnerabilities, it does not establish that Defendants conduct constituted a reckless disregard of the probability of causing severe emotional distress to Plaintiff.

Application

The Court finds that, for the purposes of a demurrer, Plaintiff has adequately pleaded sufficient facts to constitute a claim for IIED against Defendants. At the pleadings stage, the Court does not determine whether Defendants' behavior actually was extreme or outrageous, or whether there was any actual intent to cause emotional distress, or any reckless disregard of the probability of causing such distress. As such, the Demurrer is **OVERRULED** as to the IIED claim.

III. MOTION TO STRIKE FAC

Legal Standard

The Court may strike a pleading that contains "irrelevant, false, or improper matter[s]" or is "not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (C.C.P. §§ 435, 436(b).)

Defendant's Motion to Strike

Defendants argue that Plaintiff's demand for punitive damages should be struck because the FAC fails to allege ultimate facts supporting exemplary damages, for the reasons stated above in support of the Demurrer, and because Plaintiff did not allege sufficient facts for corporate punitive liability under Civil Code section 3294(b). (Motion to Strike Memorandum of Points and Authorities, pp. 5-14.) Furthermore, Defendants seek to strike Plaintiff's request for attorney's fees under the Welfare and Institutions Code arguing that Plaintiff must prove by clear and convincing evidence that Defendants are liable for neglect and acted with recklessness, oppression, fraud, or malice. (*Id.* at pp. 14-15.)

Opposition

In the Opposition, Plaintiff argues that the FAC does sufficiently allege that Defendants engaged in oppression, fraud, or malice under Civil Code section 3294(a), and that Defendants are liable for corporate punitive damages. (Oppositions, pp. 5-8.) For the same reasons, Plaintiff also argues that the FAC sufficiently alleges facts to support the request for attorney's fees. (Opposition, pp. 8-9.)

Reply

The Reply generally reaffirms the arguments made in the Motion to Strike.

Application

For the same reasons stated in overruling the Demurrer, the Court finds that the FAC adequately pleads facts sufficient to support Plaintiff's requests for punitive damages and attorney's fees at the pleadings stage, during which Plaintiff is not yet required to submit evidence to prove her claim, but rather must plead ultimate facts to constitute such a claim. The Court finds that Plaintiff has sufficiently done so, so the Court **DENIES** the Motion to Strike.

IV. CONCLUSION

Based on the above, the Demurrer is **OVERRULED** and the Motion to Strike is **DENIED**. Plaintiff shall submit a written order on these motions to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

9. MCV234544, Discover Bank v. Caldo

Plaintiff Discover Bank's unopposed motion to set aside Default Judgment entered against Defendant Caldo on April 9, 2015, and dismiss this action without prejudice is **GRANTED**, pursuant to Code of Civil Procedure ("C.C.P.") section 473(d).

Plaintiff explains that, after the judgment was entered, Plaintiff received information regarding the underlying account as a result of which it would be in the interest of justice and fairness to set aside the default judgment and dismiss the matter without prejudice. The Court assumes that the information provided to Plaintiff renders the default judgment as void. No objection or opposition has been filed, so the Court will grant the unopposed motion and sign the proposed order lodged with the Court.