TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, November 20, 2026 3:00 pm
Courtroom 19 –Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa

The 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, **YOU MUST NOTIFY** the Judge's Judicial Assistant by telephone at **(707) 521-6602**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

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

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1. 25CV03803, Molland v. Braswell

Plaintiff Barbara Molland ("Plaintiff"), both individually and as the personal representative of the estate of Michael Molland ("Decedent"), filed the currently operative first amended complaint (the "FAC") in this action against the County of Sonoma (sued both as the County of Sonoma and the Sonoma County Sheriff's Department, hereinafter the "County"), Eddie Engram ("Engram"), Darin Braswell ("Braswell"), Miguel Garcia ("Garcia"), Micah Hope ("Hope" together with the County, Engram, Braswell, and Garcia, "Defendants"), and Does 1-50 with causes arising out of a criminal incident allegedly committed by Adrian Yanez ("Yanez") at Plaintiff and Decedent's home which resulted in Decedent's death.

This matter is on calendar for Defendants' motion for judgment on the pleadings to the FAC pursuant to Cal. Code Civ. Proc. ("CCP") §§ 438 for failure to state facts sufficient to constitute a cause of action as to each cause of action. The motion for judgment on the pleadings is **GRANTED with leave to amend.**

I. Governing Law

A. Judgment on the Pleadings

A motion for judgment on the pleadings may only be made on the grounds specified in the statute. CCP § 438(c)(1). "A motion for judgment on the pleadings is analogous to a general demurrer." *So v. Shin* (2013) 212 Cal.App.4th 652, 662. If the moving party is a defendant, the motion may be made on the grounds that the complaint does not state facts sufficient to constitute a cause or causes of action against the defendant. CCP § 438(c)(1)(B). A motion for judgment on the pleadings may be targeted to the entire complaint, or to any of the causes of action therein. CCP § 438 (c)(2)(A). "The fundamental question for the reviewing court is whether any cause of action is framed by the facts alleged in the complaint." *Surina v. Lucey* (1985) 168 Cal.App.3d 539, 541; cited by *Guild Mortgage Co. v. Heller* (1987) 193 Cal.App.3d 1505, 1508 ("Our primary task is to determine whether the facts alleged provide the basis for a cause of action against defendants under any theory."). As with a demurrer, the challenged pleading must be "liberally construed, with a view to substantial justice between the parties" and the court should give the pleading "a reasonable interpretation, reading it as a whole and its parts in their context." Code Civ. Proc. §452; see also, *Perez v. Golden Empire Transit Dist*. (2012) 209 Cal.App.4th 1228, 1238 (where allegations are subject to different reasonable interpretations, court must draw "inferences favorable to the plaintiff, not the defendant."). "A plaintiff 'need not particularize matters 'presumptively within the knowledge of the demurring' defendant." *Elder v. Pacific Bell Telephone Co.* (2012) 205 Cal.App.4th 841, 858. "This includes matters such as a defendant's knowledge or notice or intent." *Thomas v. Regents of University of California* (2023) 97 Cal.App.5th 587, 611.

The grounds for a motion for judgment on the pleadings must appear on the face of the challenged pleading or be based on facts which the court may judicially notice, and not upon other extrinsic evidence. CCP § 438 (d). Where the motion is based on matters the court may judicially notice (under Evidence Code §§ 452, 453), such matters must be specified in the notice of motion or supporting points and authorities. CCP § 438(d); compare *Saltarelli & Steponovich v. Douglas* (1995) 40 Cal. App. 4th 1, 5.

"A motion for judgment on the pleadings is properly granted when the 'complaint does not state facts sufficient to constitute a cause of action against that defendant.' (Citation.) The grounds for the motion must appear on the face of the challenged pleading or from matters that may be judicially noticed. (Citation.) The trial court must accept as true all material facts properly pleaded, but does not consider conclusions of law or fact, opinions, speculation, or allegations contrary to law or facts that are judicially noticed." *Stevenson Real Estate Services, Inc. v. CB Richard Ellis Real Estate Services, Inc.* (2006) 138 Cal.App.4th 1215, 1219–1220; see also *Serrano v. Priest* (1971) 5 Cal.3d 584, 591. Generally, the pleadings "must allege the ultimate facts necessary to the statement of an actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts." *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1390; *FPI Develop., Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384. 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.

If the motion for judgment on the pleadings is granted, it may be granted with or without leave to amend. (CCP § 438(h)(1).) In ruling on the motion, the trial court should, ordinarily, permit the party whose pleadings are attacked to amend if it so desires. *Hardy v. Admiral Oil Co*. (1961) 56 Cal.2d 836, 841–842. 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. However, "(i)f there is no liability as a matter of law, leave to amend should not be granted." *Schonfeldt v. State of California* (1998) 61 Cal.App.4th 1462, 1465.

B. Wrongful Death and Negligent Infliction of Emotional Distress

> To prevail against (defendant) on (a) claim of wrongful death, plaintiffs must prove "(1) a 'wrongful act or neglect' on the part of one or more persons [(that is, negligence)] that (2) 'cause[s]' (3) the 'death of [another] person.' " (*Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 390, 87 Cal.Rptr.2d 453, 981 P.2d 79.) A person may be liable either for (1) *his own* negligence, in which case he is *directly* liable for the resulting death, or (2) *someone else's* negligence, in which case he is *vicariously* liable because—in the eyes of the law—the other person's negligence is deemed to be his own. (E.g., *Hooker v. Department of Transportation* (2002) 27 Cal.4th 198, 210, 115 Cal.Rptr.2d 853, 38 P.3d 1081; *de Villers v. County of San Diego* (2007) 156 Cal.App.4th 238, 247, 67 Cal.Rptr.3d 253.) A person acts negligently only if he " 'had a duty to use due care' " and " 'breached that duty.' " (*Brown, supra*, 11 Cal.5th at p. 213, 276 Cal.Rptr.3d 434, 483 P.3d 159.)

Musgrove v. Silver (2022) 82 Cal.App.5th 694, 705.

Put another way, "(t)he elements of the cause of action for wrongful death are the tort (negligence or other wrongful act), the resulting death, and the damages, consisting of the *pecuniary loss* suffered by the *heirs. Lattimore v. Dickey* (2015) 239 Cal.App.4th 959, 968 (emphasis original, internal quotations omitted).

" '[The] negligent causing of emotional distress is not an independent tort but the tort of negligence ....'[Citation.] 'The traditional elements of duty, breach of duty, causation, and damages apply. [¶] Whether a defendant owes a duty of care is a question of law. Its existence depends upon the foreseeability of the risk and upon a weighing of policy considerations for and against imposition of liability.' " *McMahon v. Craig* (2009) 176 Cal.App.4th 1502, 1509. Negligent infliction of emotional distress claims are categorized according to whether plaintiff is a direct victim, or a bystander. *Burgess v. Superior Court* (1992) 2 Cal.4th 1064, 1073. A direct victim may recover "damages for serious emotional distress are sought as a result of a breach of duty owed the plaintiff that is 'assumed by the defendant or imposed on the defendant as a matter of law, or that arises out of a relationship between the two.'" *Id*. at 1073.

C. Liability for Third Party Conduct

"As a general rule, one owes no duty to control the conduct of another, nor to warn those endangered by such conduct. Such a duty may arise, however, if '(a) a special relation exists

between the actor and the third person which imposes a duty upon the actor to control the third person's conduct, or (b) a special relation exists between the actor and the other which gives the other a right to protection.'" *Davidson v. City of Westminster* (1982) 32 Cal.3d 197, 203.

> [W]hether to recognize a duty to protect is governed by a two-step inquiry. First, the court must determine whether there exists a special relationship between the parties or some other set of circumstances giving rise to an affirmative duty to protect. Second, if so, the court must consult the factors described in *Rowland* to determine whether relevant policy considerations counsel limiting that duty.

Brown v. USA Taekwondo (2021) 11 Cal.5th 204, 209.

"As a general rule, the court explained, 'one owes no duty to control the conduct of another, nor to warn those endangered by such conduct.'" *Id*. at 211. "An exception to this no-duty-to-protect rule exists for cases in which the defendant has a special relationship with either the dangerous third party or with the victim." *Ibid*. "But even when the so-called special relationship exception applies, the policy considerations described in *Rowland*…may weigh against imposing a duty to protect in a given case." *Ibid*. "A special relationship between the defendant and the victim is one that 'gives the victim a right to expect' protection from the defendant, while a special relationship between the defendant and the dangerous third party is one that 'entails an ability to control [the third party's] conduct.'" *Id*. at 216.

"(A)lthough law enforcement officers, like other members of the public, generally do not have a legal duty to come to the aid of a person, in carrying out routine traffic enforcement duties or investigations, a duty of care does arise when an officer engages in '*an affirmative act which places the person in peril or increases the risk of harm.*'" *Lugtu v. California Highway Patrol* (2001) 26 Cal.4th 703, 717 (emphasis original). A "good Samaritan" "is under a duty to exercise due care in performance and is liable if (a) his failure to exercise such care increases the risk of such harm, or (b) the harm is suffered because of the other's reliance upon the undertaking." *Williams v. State of California* (1983) 34 Cal.3d 18, 23; see also *Mann v. State of California* (1977) 70 Cal.App.3d 773, 774. "[R]eliance must have exposed the victim to a risk of harm which was greater than the harm to which the victim was already exposed." *City of Santee v. County of San Diego* (1989) 211 Cal.App.3d 1006, 1016. "Failing to eliminate a pre-existing risk of harm does not satisfy the element of increased risk required to establish a negligent undertaking." *Golick v. State of California* (2022) 82 Cal.App.5th 1127, 1148; see also *Lehto v. City of Oxnard* (1985) 171 Cal.App.3d 285, 291 (decision to not arrest drunk driver, after which he caused an accident, did not increase the risk of harm sufficient to state a duty).

D. Government Claims Act

"Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused." Gov. Code, § 820.2. "[A] 'workable definition' of immune discretionary acts draws the line between 'planning' and 'operational' functions of government. (*Citation.*) Immunity is reserved for those '*basic policy decisions*

[which have] ... been [expressly] committed to coordinate branches of government,' and as to which judicial interference would thus be 'unseemly.'" *Caldwell v. Montoya* (1995) 10 Cal.4th 972, 981 (emphasis original). "On the other hand, there is no basis for immunizing lower level decisions that merely implement a basic policy already formulated." *Barner v. Leeds* (2000) 24 Cal.4th 676, 685.

"Neither a public entity nor a public employee is liable for injury caused by the failure to make an arrest or by the failure to retain an arrested person in custody." Gov. Code, § 846.

"Neither a public entity nor a public employee acting within the scope of his employment is liable for any injury resulting from determining …Whether to confine a person for mental illness or addiction." Gov. Code, § 856 (a). "Nothing in this section exonerates a public employee from liability for injury proximately caused by his negligent or wrongful act or omission in carrying out or failing to carry out … A determination to confine or not to confine a person for mental illness or addiction." Gov. Code, § 856 (c). Determinations that go not to confinement, but referral to other non-confinement psychiatric services is not within the ambit of Gov. Code § 856. *Regents of University of California v. Superior Court* (2018) 29 Cal.App.5th 890, 914.

"Neither a public entity nor a public employee acting within the scope of his employment is liable for injury resulting from diagnosing or failing to diagnose that a person is afflicted with mental illness or addiction or from failing to prescribe for mental illness or addiction." Gov. Code, § 855.8.

F. Superseding Criminal Acts

"The common law rule that an intervening criminal act is, by its very nature, a superseding cause has lost its universal application and its dogmatic rigidity. Like the doctrine of contributory negligence, intervening criminal action is no longer a total bar to recovery. Rather it is one consideration among many." *Kane v. Hartford Accident & Indemnity Co.* (1979) 98 Cal.App.3d 350, 360. "(A) criminal act will be deemed a superseding cause unless it involves a particular and foreseeable hazard inflicted upon a member of a foreseeable class." *Ibid*.

"Although normally the issue of causation is a question of fact and therefore not within the scope of a demurrer, the court may properly examine the proximate cause of the alleged injury at the demurrer stage." *Alejo v. City of Alhambra* (1999) 75 Cal.App.4th 1180, 1190 disapproved of on other grounds by *B.H. v. County of San Bernardino* (2015) 62 Cal.4th 168.

II. Judgment on the Pleadings

Defendants move for judgment on the pleadings to both causes of action based on three distinct theories, attacking duty, causation, and any possible liability based on immunities. Plaintiff opposes the motion.

A. Whether Defendants Owed a Duty

Defendants move for judgment on the pleadings, arguing that Plaintiff has not pled facts sufficient to show that they owed Plaintiff and Decedent a duty. The burden on Plaintiff is to plead each element of her causes of action. Both wrongful death and negligent infliction of emotional distress require Plaintiff to plead a duty. Here, Plaintiff has pled no conduct by Defendants directed at either herself or Decedent. Instead, Plaintiff avers that Defendants owed her and decedent a duty of care based on their conduct directed to Yanez. Plaintiff argues that Defendants owed a duty because their conduct increased the risk that resulted in Decedent's death, and because they had a special relationship with Yanez, Plaintiff, and Decedent.

1. Increased Risk

Plaintiff contends that the conduct of the deputies at the hotel increased the risk of Yanez's later violent conduct. To plead an increased risk, Plaintiff must plead an "act or omission on the part of the defendant that either created a risk or increased an existing risk to a ***known*** person." *Lehto v. City of Oxnard* (1985) 171 Cal.App.3d 285, 290; emphasis added. Defendants contend that Plaintiff has not pled facts sufficient to state an increased risk as a matter of law.

The most applicable case appears to be *Golick v. State of California* (2022) 82 Cal.App.5th 1127. There, an armed gunman took three people hostage, and sheriffs responded. *Id*. at 1134. A deputy shot through the closed door to the room where the shooter had barricaded himself. *Id*. at 1135. The gunman returned fire, then executed the hostages. *Ibid*. Before this exchange, no gun had been discharged by the sheriffs or the gunman in the incident. The estates of the hostages sued the deputy, the sheriff's department, the county, and other involved entities. *Ibid*. The deputy, the sheriff's department, and the county demurred. The trial court sustained demurrers without leave to amend, and the court of appeal affirmed. *Id.* at 1152. In so doing, the *Golick* court found that the plaintiffs failed to either plead increased risk or a special relationship sufficient to state a duty owed by the deputy, the sheriff's department, and the county. *Id.* at 1143-1153. The plaintiffs had not pled facts indicating that the deputy "assumed a duty toward the hostages that was distinct from or greater than his duty to other members of the public." *Id*. at 1146. Nor had the deputy "exposed the victim to a risk of harm which was greater than the harm to which the victim was already exposed." *Id*. at 1149.

This case does have differences from *Golick* worthy of mention. There, the sheriffs did not engage until after the suspect was already engaged in the crime. In contrast, there was a far less tenuous connection between the conduct of the deputy and the harm in *Golick*, resulting in the murder of the hostages within minutes. Here, Yanez's alleged aggravation by deputies was followed by a gap of 90 minutes, during which Yanez traveled around twenty miles before breaking into Plaintiff and Decedent's home. These distinctions do not prescribe a different result. Generally, Plaintiff fails to materially distinguish from the analysis provided in *Golick*. While the moving papers cite to *Golick* for strong statements of law, it is notably absent in Plaintiff's Opposition.

In terms of increased risk, the parallels to *Golick* mandate a similar result. Just like in that case, Plaintiff portrays Yanez in a contradictory manner. *Golick, supra,* 82 Cal.App.5th at 1148. Yanez is alleged to be both foreseeably dangerous, having assaulted an employee of the hotel (FAC, ¶ 42), and only made dangerous by the Defendants' actions in being "agitated beyond a

sense of reason" (FAC, ¶ 24). Generally, Plaintiff's allegations are forced into two conflicting narratives, attempting to show both that the danger was created in part by Defendants and foreseeable because Yanez was already dangerous. Plaintiff pleads Yanez as more a force of nature than a person, removing his anima and agency, and rendering his conduct not just foreseeable but predictable. This is to say, Plaintiff alleges Yanez was prone to inflicting physical harm to a person prior to their incident and maintained that he held the same level of dangerous propensity during their encounter with him.

No case cited by Plaintiff shows that Yanez's conduct could be foreseen based on Plaintiff's conclusory and speculative facts. Plaintiff's averment that Defendants agitated Yanez is contradicted by their own pleading, noting that Defendants were contacted because he had "physically assaulted an employee". FAC ¶ 42. He had also "physically acted aggressively toward his father". Any contention that Yanez was spurred to violence only because of Defendants' conduct is "mere conjecture" (*Golick, supra,* 82 Cal.App.5th at 1148), "undermined by other pleaded facts." *Ibid.* "[T]his sort of speculative, after-action critique falls short." *Ibid*.

Plaintiff has failed to plead an increased risk based on Defendants' actions.

2. Special Relationship

Plaintiff also alleges that there was a special relationship with Yanez sufficient to plead a duty under *Brown v. USA Taekwondo* (2021) 11 Cal.5th 204, 209. However, the FAC does not allege that Plaintiffs had any contact with Defendants before the fatal incident, that Defendants made any representations to them, or that they specifically relied on Defendants based on a representation. Moreover, Plaintiff misapprehends the nature of special relationships, and the distinction between a relationship directly to Plaintiff and Decedent, and a relationship to Yanez. Plaintiff conflates the two, and as such the expressed theory is flawed.

In arguing that the County formed a special relationship with Yanez, Plaintiff cites to multiple cases related to detained individuals, and resulting special relationships. However, several of Plaintiff's cases rely on harm suffered by the detainee, and not by third parties. *Frausto v. Department of California Highway Patrol* (2020) 53 Cal.App.5th 973, 993 (detainee no longer could tend to his own medical needs, and therefore officers had a duty to summon medical aid); *Collins v. County of San Diego* (2021) 60 Cal.App.5th 1035, 1053, fn. 10 (in appeal of jury verdict for failure to summon prisoner medical aid case, court of appeal expressly does not address the contentions of duty). The duties are distinguishable. "A special relationship between the defendant and the victim is one that 'gives the victim a right to expect' protection from the defendant, while a special relationship between the defendant and the dangerous third party is one that 'entails an ability to control [the third party's] conduct.'" *Brown v. USA Taekwondo* (2021) 11 Cal.5th 204, 216. Plaintiff must either plead a *direct* duty which would give her and Decedent the right to expect protection, or show that there was an "ability to control" Yanez's conduct. The FAC alleges a temporary detention followed by a release. It does not allege an ongoing custodial relationship or continuing ability to control Yanez after he drove away. The authorities which Plaintiffs cite, and analyzed in more detail below, concern duties owed to the person in custody, not to members of the public later harmed by that person. A duty framed as owed to the public is a general police duty, which does not by itself support tort liability. *Id*. at

245-247. Cases where a detainee suffered harm in custody provides no applicable authority. Any duty to summon medical care was to Yanez, and Plaintiff has pled no facts supporting standing to assert claims thereon. No authority provided by Plaintiff supports her standing to do so.

Plaintiff also cites to multiple cases related to an officer's duty to perform duties in a non-negligent manner. Plaintiff's application of *Lugtu* and *Mann* fails because again Plaintiff conflates the two types of special duties. In *Mann*, the law enforcement officer undertook direct action with the plaintiff, and plaintiff's reliance on that action resulted in their injury. *Mann, supra,* 70 Cal.App.3d at 780. *Lugtu* provides similar facts to *Mann*, where the officer pulled over a speeding car in the center median, exposing them to danger and eventual injury resulting from the traffic stop. *Lugtu v. California Highway Patrol* (2001) 26 Cal.4th 703, 709. Both rely not on control over the third party who caused the actual harm, but the *direct* effect of the officer's conduct on plaintiffs' conduct. They bear no analogy to the instant facts. In *Morgan v. Yuba County* (1964) 230 Cal.App.2d 938, 943, the officers made a direct promise to the decedent to warn if the detainee was released, and their failure to do so allegedly resulted in her death.

Here, there are no facts relating Plaintiff and Decedent to the officers in the incident. *Golick* remains instructive. "Cases finding a special relationship based on the performance of police duties are rare and involve situations in which the victim detrimentally relied on some conduct or representation by the officer." *Golick v. State of California* (2022) 82 Cal.App.5th 1127, 1149. Again, this is a direct duty undertaken by the officer to the victim, and there are no facts pled to support a direct duty to Plaintiff or Decedent in this case. No facts support the argument that a special relationship was formed between Plaintiff and Defendants.

Plaintiff also argues that the Defendants voluntarily assumed a duty toward Yanez when they "volunteered to assist him and his family rather than simply releasing him." Opposition, pg. 9:1-2. They provide no authority distinguishing this argument from the above analysis. Even if the officers owed a voluntarily assumed duty to Yanez, that does not equate to control over Yanez, and Plaintiff has no standing to assert any duty "assumed" toward Yanez himself.

Plaintiff has not pled a basis for a special relationship.

3. *Rowland* factors

While the parties argue the *Rowland* factors, they have no application where the Plaintiff cannot plead a duty, as *Rowland* only provides an exception to duties supported by a special relationship, not the basis for a duty. *Brown v. USA Taekwondo* (2021) 11 Cal.5th 204, 217. Were they at all relevant, *Rowland* factors are rarely appropriate for disposition at the pleading stage. This is not reached because Plaintiff has failed to plead a duty under which the *Rowland* factors may apply.

B. Causation – Intervening Criminal Conduct

It is uncontested here that Yanez's alleged conduct was criminal in nature. Defendants contend that the intervening criminal act is too remote from their alleged conduct to state causation. At this juncture, the Court disagrees. While Plaintiff's averment of causation is remote, it is

typically an issue of fact. Plaintiff has failed to express a viable duty, means that there are facts not pled here which might impact such a determination. Because the motion is already granted, we do not reach this determination.

C. Governmental Immunities

Defendants contend that the alleged failure to arrest Yanez, commit him under Welf. and Inst. Code § 5150, or refer him to additional mental health resources is nonetheless subject to governmental immunities under the Government Claims Act, and accordingly even if Defendants owed a duty, any action would be precluded. For this proposition, they cite to Gov. Code §§ 820.2 (immunity for discretionary policy decisions), 846 (immunity for decisions to arrest or not arrest), 855.8 (immunity for mental health diagnosis), and 856 (immunity for decisions to confine or not confine based on mental health). Plaintiff argues that application of these immunities is not absolute, as the FAC relies not on whether or not Yanez was confined, but rather the failure to refer to additional resources or "carrying out" their interaction with Yanez. This is an incomplete representation of Plaintiff's pled facts, which remain self-contradicting in various manners. Judgment on the pleadings will be granted only if the FAC fails to plead a complete cause of action, it does not lie where only part of a cause of action is unviable. *Fire Ins. Exchange v. Superior Court* (2004) 116 Cal.App.4th 446, 452.

At least some of the FAC relies on immunized conduct. Plaintiff pleads that Defendants "failed to control Yanez' post release behavior, failed to deliver him to his family and failed to deliver him to crisis mental health care." FAC ¶ 26. These are allegations which at their core go to the Defendants' failure to detain Yanez against his will, either under the auspices of arrest or mental health treatment. In either event, these are theories broadly immune from liability under the Government Claims Act. *McDowell v. County of Alameda* (1979) 88 Cal.App.3d 321, 327 (determination to send mentally ill person to hospital in a taxi was a "confinement decision" immunized by Gov. Code § 856). To the degree that Plaintiff's theories of liability turn on the failure to take custody of Yanez, they fall under Government Code immunities.

In contrast, Plaintiff also pleads that Defendants "negligently failed to utilize community resources available to assist in dealing with his mental health issues; negligently failed to refer Yanez to crisis counseling; negligently failed to direct Yanez to a mental health facility, negligently failed to provide transport to a mental health facility; **negligently failed to contact the Sonoma Mobile Mental Health Support team** – all negligent ministerial failure to implement controlling policies." FAC ¶ 36. Plaintiff, despite not citing it in this section of their argument, reference *Regents of University of California v. Superior Court* (2018) 29 Cal.App.5th 890, which is illuminative on the issue. That case makes clear that reference to additional resources is not covered by Gov. Code §§ 820.2 or 856. Defendants are not persuasive that the failure to refer for additional resources is a "diagnosis" as would be covered by Gov. Code § 855.8. However, this theory does not lend itself to the expression of a duty as analyzed above. While the Government Claims Act does not formulate a complete defense to the FAC, it narrows Plaintiff's actionable theories substantially.

IV. Leave to Amend

Defendants contend that the pleaded facts preclude possible amendment. The possibility of amending to plead around the issues of duty and governmental immunities appears narrow. Plaintiff proposes various amendments which do nothing to address the failure to plead a duty. Further specification of Yanez's condition at the time of the hotel confrontation does not display either control over Yanez, or establish a duty owed directly to Plaintiff or Decedent. Nor does Plaintiff's contention of apparent "false exculpatory statements" or the absence of Braswell articulate facts to establish such a duty. Plaintiff's argued "consciousness of liability" does not change the purely legal nature of a duty. Deviation from training does not establish a duty, nor does Plaintiff provide any authority to support such a contention. See, e.g., *Golick v. State of California* (2022) 82 Cal.App.5th 1127, 1152-1153. These appear to be irrelevant contentions to any theory of liability.

Nonetheless, generally, leave to amend is liberally granted, especially in cases such as this where the Plaintiff has not yet been subject to a challenge to the pleading. There are no facts in the FAC which appear to fully preclude viable amendment. The motion here was not granted on the principles of governmental immunities. At an initial challenge to the pleading, the Court declines to speculate what Plaintiff's amendment may entail. The Court notes that in *Golick*, the demurrer was sustained without leave to the *fourth* iteration of the complaint. *Golick v. State of California* (2022) 82 Cal.App.5th 1127, 1152. There does not appear to be cause here, based on the proposed amendment provided by Plaintiff, to allow a similar number of futile iterations. However, some opportunity should be given for Plaintiff to assess the viability of her facts in accord with the Court's ruling above.

The motion for judgment on the pleadings is GRANTED with leave to amend as to the First and Second causes of action.

V. Conclusion

Like many of the progeny before it, this is a regrettable and tragic circumstance which evokes empathy to Decedent's loved ones. However, the principles of legal duty operate on strict decisional grounds, from which the Court cannot deviate.

Based on the foregoing, the motion for judgment on the pleadings is **GRANTED with leave to amend as to the First and Second causes of action.**

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).

2. 25CV04778, Katzman v. Gerrans

The **unopposed** motion is **GRANTED WITH MODIFICATION**. Fees are awarded in the amount of $11,115.00. Costs are awarded in the amount of $732.50. The total, $11,847.50, is awarded jointly and severally against Retinalgenix, Inc., Sanovas, Inc., and Jerry Katzman. Respondent's counsel is directed to submit an amended order consistent with this ruling and compliant with Cal. Rules of Court, rule 3.1312.

I. Background

Christopher Gerrans ("Respondent") filed a wage claim with the Department of Industrial Relations ("DIR") against his employer Retinalgenix ("Retinal") and two other defendants: Sanovas, Inc. and Retinal's CEO Jerry Katzman. DIR issued an Order, Decision, or Award ("ODA") in Respondent's favor, awarding him $128,991.78 (the "ODA Award").

On July 7, 2025, all three defendants initiated the instant case appealing the ODA. Respondent moved to dismiss the appeal on the basis that although the appellants had posted an undertaking in the amount of the ODA Award as required by Lab. Code § 92(b), the undertaking was not posted within the statutorily mandated timeframe, and the Court therefore had no jurisdiction to hear the appeal. On April 20, 2026, the Court dismissed the appeal as to Retinal only.

On July 27, 2026, Respondent filed case no. 26CV05475, requesting the Court to enter judgment against Retinal in the full amount of the ODA Award plus post-hearing interest and the filing fee. On the same day, the Court entered judgment against Retinal in the amount of $132,876.66.

On November 6, 2026, the Court granted Respondent's motion to dismiss the Katzman and Sanovas appeals and disburse the undertaking to him.

This matter comes on calendar for hearing on Respondent's motion for fees and costs.

II. Discussion

A. Apportionment of liability

This appeal was filed by three different parties: Retinal, its CEO Jerry Katzman, and Sanovas, Inc. The Court's April 20 order dismissed the appeal only as to Retinal and gave Respondent "leave to file the request for attorneys' fees and costs *against Retinal* any time . . . ." (Emphasis supplied.) The Court specified "against Retinal" because Retinal was the only unsuccessful appellant at that time. However, the Katzman and Sanovas appeals were dismissed after the instant motion was filed, so all three appellants are now unsuccessful.

The instant motion seeks fees and costs pursuant to Lab. Code § 98.2(c), which provides that "[i]f the party seeking review by filing an appeal to the superior court is unsuccessful in the appeal, the court shall determine the costs and reasonable attorney's fees incurred by the other parties to the appeal and assess that amount as a cost upon the party filing the appeal." The statute is silent regarding how costs and fees are to be allocated among multiple unsuccessful appellants.

Counsel's declaration accompanying this motion does not break down the time for which fees are claimed by which respondent the work applied to, but two entries clearly apply to the Katzman and Sanovas appeals and not to the Retinal one: the entry dated July 13, 2026, for 2.4 hours to "begin drafting Mtn to Dismiss Katzman appeals and disburse undertaking," and the following one dated August 3, 2026, for 2.9 hours for "continued drafting of motion; draft Decl

Ryan and RJN plus exhibits." (Ryan Dec Exh. 7.) All of the other entries might refer to any or all of the appeals.

In light of the unclarity regarding the allocation of attorney fees among the unsuccessful appellants, the Court will order the fees and costs awarded herein to be paid jointly and severally by all three of them.

B. Time claimed

Respondent's counsel declares that she spent 20.7 hours working on this case and documents this figure with a list of individual time entries. (Ryan Dec ¶ 9 and Exh. 7.) The 20.7-hour figure "includes an anticipated 3 hours to draft a Reply and 1 hour to appear and argue at the hearing." (*Ibid.*) The instant motion is unopposed, so counsel has not had occasion to draft a reply, and it is highly unlikely that any appellant will request oral argument. Therefore, the Court will not award fees for this anticipated work. If oral argument takes place, the Court will be open to revisiting the award.

The remaining figures add up to 17.1 hours, not to 16.7. (Ryan Dec Exh. 7.) The Court assumes that this is due to a clerical error in adding up the time entries, likely consisting of overlooking the 0.4-hour entry for November 14, 2025. The Court will base the fee on award for 17.1 hours' work.

C. Billing rate

Respondent's counsel declares that her billing rate is $650/hour. (Ryan Dec ¶ 6.) She has supplied extensive documentation showing that she and her colleagues with comparable levels of experience have been awarded fees based on hourly rates ranging from $450/hour to $650/hour in cases in various Bay Area courts over the last eight years. (Ryan Dec ¶¶ 6-7 and Exhs. 1-6.)

"The reasonable hourly rate is that prevailing *in the community* for similar work." (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095, emphasis supplied.) The community in question is the one where the court is located. (*Marshall v. Webster* (2020) 54 Cal.App.5th 275, 285-286; *Altavion, Inc. v. Konica Minolta Systems Laboratory, Inc.* (2014) 226 Cal.App.4th 26, 72.) Here, the court is located in Sonoma County. Notably, the only court in counsel's list that has awarded fees at the $650/hour rate is San Francisco Superior Court, and the only one that has awarded them in excess of $600/hour is the Northern District of California, in a case litigated in the San Francisco branch. There is no question that prevailing attorney rates are higher in San Francisco than they are in Sonoma County.

However, an exception applies when the party seeking fees demonstrates an inability to hire local counsel. (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 398-399; *Marshall, supra,* 54 Cal.App.5th at p. 286 ["unless the party claiming fees demonstrates that hiring local counsel was impracticable or local counsel was not available"].) Respondent was represented in the instant appeal by DIR counsel because DIR had represented him in the underlying action. That was a clearly appropriate choice; it would have

been impracticable to hire local counsel for the appeal given DIR counsel's familiarity with the case.

Therefore, although $650/hour is slightly higher than the rate Court typically awards to attorneys with counsel's level of experience, it will use that figure here.

D. Costs

Respondent's counsel correctly notes that although the Labor Commissioner is not charged filing fees, "[t]he amount ordinarily charged for such filing or recording shall be made part of any judgment recovered by the Labor Commissioner . . . ." (Lab. Code § 101.5; Ryan Dec ¶ 11.) Accordingly, Respondent seeks $982.50 in fees, consisting of $550.00 in filing fees, $182.50 for court reporter fees for reporting the May 7, 2026, Case Management Conference (Ryan Dec Exh. 8), and an anticipated $250.00 for reporting the hearing on the instant motion. Again, the Court will not award the anticipated fees for the hearing but will revisit that decision if the hearing takes place.

III. Conclusion

The motion is **GRANTED WITH MODIFICATION.** Fees are awarded jointly and severally against the three appellants in the amount of $11,115.00, calculated as 17.1 hours' work at $650/hour. Costs are awarded in the amount of $732.50. The total award is $11,847.50.

3. 25CV07656, The Huntington National Bank v. Musgrove

Defendant's **unopposed** motion to disqualify Plaintiff's counsel is **DENIED**. Plaintiff's counsel is instructed to submit a written order consistent with this ruling and compliant with Cal. Rules of Court, rule 3.1312.

I. Background

This is an unlawful detainer action following a foreclosure. Huntington National Bank, NA ("Plaintiff") initiated the action with a complaint ("Complaint") filed on November 6, 2026, against Sean Musgrove. The Complaint alleges that Plaintiff purchased the subject property at a trustee's sale on February 14, 2025 (Complaint ¶ 4 and Exh. 1), and that Plaintiff had served Musgrove with all appropriate notices to vacate. (Complaint ¶¶ 6, 7 and Exhs. 2, 3.) On November 21, 2025, Elias Stavrinides ("Defendant") filed a Prejudgment Claim of Right to Possession, effectively intervening in the action as a defendant. (CCP § 1174.25(b).)

This matter comes on calendar for hearing on Defendant's motion to disqualify Plaintiff's counsel Stephanie Smallwood ("Counsel").

II. Service

A notice of motion that fails to specify the date, time, and location of the hearing on its first page is "fatally defective." (*Galleria Plus, Inc. v. Hanmi Bank* (2009) 179 Cal.App.4th 535, 537-538; see also CCP § 1010 and Cal. Rules of Court, rule 3.1110(b)(1).) However, the hearing date is

not set until some time after the initial moving papers are filed. The usual practice is that the moving party files a Proof of Service with the initial moving papers and then, after the hearing date and time are set, serves an amended notice of motion containing that information and files a second Proof of Service indicating having done so. (See *Holtkamp v. States Marine Corp.* (1958) 165 Cal.App.2d 131, 135.)

Defendant did not attach a Proof of Service to his moving papers in the instant motion. On November 12, he filed a separate Proof of Service declaring that he had served the motion on Plaintiff by email to Counsel on October 25. That Proof of Service does not specify whether the version of the motion Defendant served indicated the hearing date and time. It may have: Defendant filed the motion on October 6, so the date and time would have been set by October 25. It is also possible that what Defendant served was an unamended copy of the exact document he filed with the Court, which would not have indicated the date and time of the hearing.

In this instance the Court will assume that the motion was properly noticed. The Court urges Defendant to follow the procedure outlined above in the future.

III. Analysis

Because Plaintiff is incorporated in Ohio, it is a "foreign corporation." (10 Cal. Code Regs. § 80.164(a).) Defendant's argument rests on the premise that Plaintiff must therefore comply with Corp. Code § 2203, which requires a "foreign corporation which transacts intrastate business [to] hold a valid certificate from the Secretary of State . . . ." (Corp. Code § 2203(a).) In particular, Defendant relies on subdivision (c) of the statute, which provides that a foreign corporation "shall not maintain any action or proceeding . . . in any court of this state" until it has received a certificate of qualification from the Secretary of State in compliance with Corp. Code § 2105, paid a fee, and filed documentation of its financial status in the court where the action is pending. Defendant argues that because "plaintiff . . . was not in compliance with the mandatory requirements of California Corporations Code §2105 and California Corporations Code §2203(c)," it "cannot maintain this unlawful detainer action pursuant to California Corporations Code § 2203(c) . . . ." (See, e.g., MPA at p. 8.) Defendant also observes that Corp. Code § 2258 makes a foreign corporation's failure to comply with those statues a misdemeanor. (MPA at pp. 2, 3.)

Defendant's rationale for disqualifying Counsel is that by filing the instant lawsuit, Counsel "continued to assist and to facilitate [Plaintiff's] violations" of the aforementioned statutes. (MPA at p. 8.) Defendant argues that Plaintiff "has operated at all times in this unlawful detainer action in criminal misdemeanor violation of California Corporations Code §2258" (MPA at p. 2), and that Counsel, by representing Plaintiff in so doing, has "criminally violat[ed] California Business and Professions Code § 6128(a) by assisting plaintiff . . . to commit criminal violations of California Corporations Code § 2258." (MPA at p. 3; see also pp. 7, 16.)

Whether or not this argument would be meritorious with respect to other foreign corporations, it is not in this case because Plaintiff is a national bank, chartered under the federal National Bank Act (12 USC § 21 et seq.). On its own motion, the Court takes judicial notice of the alphabetical list of "National Banks Active as of 9/30/2026" maintained by the Office of the Comptroller of the Currency, a federal agency. (<https://www.occ.gov/topics/charters-and-licensing/financial-

institution-lists/national-by-name.pdf>; Evid. Code § 452(c)). "The Huntington National Bank," headquartered in Columbus, Ohio, appears on the tenth page of the list. National banks chartered under federal law are not required to comply with the statutes Defendant cites because the National Bank Act preempts state laws that interfere with a national bank's exercise of its powers under that law. The U.S. Supreme Court has held that subjecting national banks "to the State's investigative and enforcement machinery would surely interfere with the banks' federally authorized business: National banks would be subject to registration, inspection, and enforcement regimes imposed . . . by all States in which the banks operate. Diverse and duplicative superintendence of national banks' engagement in the business of banking, we observed over a century ago, is precisely what the [National Bank Act] was designed to prevent." (*Watters v. Wachovia Bank, N.A.* (2006) 550 U.S. 1, 13-14.)

That principle applies specifically to the issue presented here. In *Wells Fargo Bank, N.A. v. Baker* (2012) 204 Cal.App.4th 1063, the reviewing court observed that the question of whether a national bank must hold a certificate of authority in order to maintain a lawsuit was one of first impression in California, but that courts in other states have held that a state cannot impose such a requirement. (*Id.* at p. 1070.) The court noted with approval a federal court's holding that "[e]ven the most limited aspects of state licensing requirements have been preempted because they created impermissible conditions upon the authority of a national bank to do business." (*Id.* at p. 1071, quoting *Wachovia Bank, N.A. v. Watters* (W.D. Mich. 2004) 334 F.Supp.2d 957, 965.) In particular, requiring a national bank to comply with a state registration requirement in order to maintain a court action would infringe on its right under the federal statute "[t]o sue and be sued, complain and defend, in any court of law and equity, as fully as natural persons." (12 USC § 24 (Fourth); *Wells Fargo, supra,* 204 Cal.App.4th at p. 1072.)

In summary, the National Bank Act excuses Plaintiff from compliance with the Corporations Code statutes upon which Defendant relies. Therefore, Counsel violated no law or ethical stricture by filing the instant action on Plaintiff's behalf, and therefore the Court has no basis for disqualifying her.

IV. Conclusion

The motion is **DENIED.**

****This is the end of the Tentative Rulings.*****