

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, February 11, 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. 24CV05603, Sugarman v. Reynaud

Defendant CJ Fischer, LLC ("CJ Fischer, LLC") demurs to Plaintiff Randy Sugarman's ("Receiver") First Amended Complaint ("FAC") as to the Third, Fourth, and Fifth Causes of Action as applied to all Defendants. The demurrer is **OVERRULED**. The parties' requests for judicial notice are **GRANTED**.

I. PROCEDURAL HISTORY

Plaintiff Randy Sugarman ("Receiver"), as court-appointed receiver for the Fischers Enterprises, LLC (doing business as Fischers Auto Body), filed this action alleging that Craig Fischer orchestrated a fraudulent scheme to divert and usurp the property rights of Fischers Enterprises, LLC, a company he co-owned with his former spouse Cindy Fischer. (FAC, ¶¶ 1-41.) Through CJ Fischer, LLC, which Craig Fischer co-owned with his wife Janice Chaney Fischer, Receiver alleges that Craig Fischer transferred CJ Fischer Enterprises' valuable lease, option, and purchase agreement in 2021 for the real property located at 2475 and 2487 Bluebell Drive, Santa Rosa, California (the "Property"), without the knowledge or

consent of Cindy Fischer. (*Ibid.*) By way of this action, Receiver seeks to avoid the fraudulent transfer and enforce the previous Lease, Option, and Purchase Agreement from 2019. (FAC, ¶¶ 42-79.)

The FAC asserts the Third, Fourth, and Fifth Causes of Action against Defendant for the alleged voidable and fraudulent transfer of options, trade fixtures, deposits, and a motorhome to Defendant. (FAC, ¶¶ 51-79.) CJ Fischer, LLC demurs to these causes of action arguing that they fail to constitute any cause of action against Defendants because Receiver lacks standing to pursue the claim under the Uniform Voidable Transactions Act (“UVTA”) as neither Receiver nor Fischers Enterprises are creditors as to the property alleged in the causes of action. (Demurrer, pp. 1-3.)

Though CJ Fischer, LLC’s counsel met and conferred with Receiver’s counsel about the issues raised in the demurrer, the parties did not resolve the issues. (Christensen Decl., ¶¶ 307, Exhibits B, C, D.) Now, CJ Fischer, LLC demurs to the FAC, which Receiver opposes. CJ Fischer, LLC filed a Reply to the Opposition.

II. REQUEST FOR JUDICIAL NOTICE

The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under C.C.P. § 452. (C.C.P. § 453.) The Court may take judicial notice of “facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (C.C.P. § 452(h).) However, while courts may take notice of public records, they may not take notice of the truth of their contents. (*Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375.)

Subject to the above restrictions the Court **GRANTS** the parties’ requests for judicial notice of:

1. Fischers Enterprises, LLC’s (“Enterprises”) business records showing an email between Craig and Cindy Fischer on August 22, 2021, attached as Exhibit A to the Declaration of Christensen;
2. C.J. Fischer’s business records showing a deposited check for \$5,000 from C.J. Fischer to Enterprises to help Enterprises cover its payroll expenses, attached as Exhibit E to the Declaration of Christensen;
3. C.J. Fischer’s and Reynaud Defendants’ business records showing that C.J. Fischer’s deposit for the November 17, 2021, lease and option was made in cash by C.J. Fischer and via services that C.J. Fischer provided directly to the Reynauds to improve the premises, attached as Exhibit F to the Declaration of Christensen;
4. Enterprises and C.J. Fischer’s business records showing Craig Fischer (then 50% owner of Enterprises) giving C.J. Fischer permission to store its motorhome on Enterprises’ premises at no charge in order to allow C.J. Fischer to conduct its lien sale, attached as Exhibit G to the Declaration of Christensen;
5. Order Granting Motion of Plaintiff Cindy Fischer for Appointment of Receiver, filed on November 30, 2023, in *Fischer v. Fischer* (Case No. SCV-270409); and

6. Ex Parte Order Authorizing Counsel for Receiver to Defend Unlawful Detainer; Commence Litigation to Enforce Option; and Modifying Order Authorizing Employment of Counsel, filed April 12, 2024, in *Fischer v. Fischer* (Case No. SCV-270409).

III. DEMURRER

Legal Standard

I. 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. (*Coshow 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, 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.*)

II. Voidable Transfers & Transactions

A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or obligation was incurred if it was made under certain circumstances, including being made with actual intent to hinder, delay, or defraud any creditor of the debtor. (Civ. Code § 3439.04(a)(1).) The same is true with "a transfer made or obligation incurred by a debtor as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation." (Civ. Code, § 3439.05(a).) Under Civ. Code section 3439.01(c), a "creditor" under the UVTA is "a person that has a claim and includes an assignee of a general assignment for the benefit of creditors, as defined in Section 493.010 of the Code of Civil Procedure, of a debtor." As to standing, a plaintiff must make an affirmative showing that plaintiff was injured by the transfer. (*In re Blanchard* (Bankr. C.D. Cal. 2016) 547 B.R. 347, 353.)

CJ Fischer, LLC's Demurrer to the Third, Fourth, and Fifth Causes of Action

The demurrer takes issue with Receiver's Third, Fourth, and Fifth Causes of Action for a voidable transaction and voidable transfers arguing that Receiver lacks standing from the court in the related case

authorizing Receiver to “enforce the terms of the recorded Option, the Lease and Purchase Agreement dated June 1, 2019, an[d] the Lease, Purchase Agreement and Option dated September 17, 2021, executed November 17, 2021 *to the extent that* same is deemed necessary to preserve the property rights of the receivership estate.” (FAC, Exhibit D, ¶ 2.) Thus, CJ Fischer, LLC argues that last three causes of action in the FAC go beyond the authority given by the Court to the Receiver. (Demurrer, 4:5-20.) Furthermore, the 2019 contracts expired on June 1, 2024, so CJ Fischer, LLC claims that Receiver is attempting to enforce an expired contract. (*Id.* at 4:21-26.)

For all three causes, CJ Fischer, LLC argues that leave to amend should be denied.

Third Cause of Action

The Third Cause of Action for Voidable Transaction based on Actual Fraud under Civil Code section 3439.04(a)(1) alleges that the 2021 Option transferred to Defendant CJ Fischer by Enterprises of the 2019 Option was fraudulent because it was made without the signature of the transferor, was not ratified by the transferor, was made without lawful consideration, and was part of a scheme to deprive the transferor of assets and usurp the enterprise. (FAC, ¶¶ 51-59.) The FAC alleges that the transfer is avoidable per section 3439 *et seq.* because the avoided interests are subject to preservation by Receiver on behalf of the receivership estate as a constructive trust. (*Id.* at ¶ 59.)

CJ Fischer, LLC demurs to this for lack of Receiver’s standing to assert a fraud action and because neither Enterprises nor Receiver are “creditors” but were rather “debtors.” (Demurrer, pp. 6-7.) CJ Fischer, LLC also argues that the UVTA does not apply to the Third Cause of Action because it expressly excludes “termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law” from its scope under Civ. Code section 3439.08(e). (*Id.* at pp. 7-8.) Finally, CJ Fischer, LLC argues that the FAC’s allegations are unintelligible and lacking facts necessary to support the cause of action. (*Id.* at pp. 8-10.)

Fourth Cause of Action

The Fourth Cause of Action is for Voidable Transfers based on Constructive Fraud under Civ. Code section 3439.05 of the deposits, trade fixtures, and damages via the 2021 Option to the Reynaud Trusts. (FAC, ¶¶ 60-62.) These items were property of the Enterprises, the transfers of which left the Enterprises insolvent, so the FAC alleges that the transfer of these are voidable and that Receiver is entitled to recover payment of the value of these. (*Id.* at ¶¶ 63-70.)

For roughly the same reasons stated in the Demurrer’s argument against the Third Cause of Action, CJ Fischer, LLC argues that the Fourth Cause of Action fails as well due to lack of standing, inability to pursue the UVTA claim, and lack of sufficient facts to support the claim. (Demurrer, pp. 10-12.)

Fifth Cause of Action

The Fifth Cause of Action for Voidable Transaction for Actual Fraud as to the 1999 Monaco Motorhome is alleged on grounds that it was sold via storage lien sale conducted by CJ Fischer with

intent to hinder, delay, or defraud, one or more creditors of the Enterprises by concealing assets to make it more difficult for the creditors to collect payment. (FAC, ¶¶ 71-79.)

The Demurrer also argues that the Fifth Cause of Action exceeds the Receiver's authority, for similar reasons as stated above regarding standing, but also that the fraud claim is time-barred by the three-year statute of limitations set forth by Code of Civil Procedure section 338(d). (Demurrer, 12:14-28.) CJ Fischer, LLC argues that the UVTA cannot void this transfer because it was from a third-party lien sale in good faith and for a reasonably equivalent value, and in addition the FAC did not plead facts sufficient to support this cause of action. (*Id.* at pp. 13-14.)

Opposition

In the Opposition, Receiver argues that there is standing to assert all three claims with which the Demurrer takes issue because the Court's order expressly authorizes it by charging the Receiver with identifying and securing the assets of the Enterprises and with determining which assets belong to Enterprises and to sell those assets. (Opposition, pp. 2-4.) Furthermore, Receiver argues that there is standing to bring these claims on behalf of the receivership. (*Id.* at pp. 4-6.)

Receiver argues against the statute of limitations defense as to the Fifth Cause of Action because Civ. Code section 3439.09(a) specifically provides that the statute of limitations to bring an action under the UVTA is "not later than four years after the transfer was made or the obligation was incurred or, if later, not later than one year after the transfer or obligation was or could reasonably have been discovered by the claimant." (Opposition, 6:9-19.) Here, the motorhome lien sale occurred on August 17, 2021, so the initial Complaint filed on September 23, 2024, is well within the four-year statute of limitations for the Fifth Cause of Action. (*Ibid.*)

Finally, the Opposition argues that at the pleadings stage, sufficient facts have been alleged in the FAC to support the Third, Fourth, and Fifth Causes of Action, which each were pleaded with sufficient specificity as required for fraud. (Opposition, pp. 7-10.) Additionally, the Opposition states that the Demurrer's lease termination argument and good faith purchaser argument both raise factual disputes, which are at issue in the three claims demurred against by CJ Fischer, LLC. (Opposition, pp. 10-13.)

Reply

Generally, the Reply brief reaffirms the arguments raised in the Demurrer and argues that Receiver has not sufficiently established standing to bring the Third, Fourth, and Fifth Causes of Action in the FAC, or established that these claims were sufficiently pleaded per the standard required for a claim for fraud.

Application

The Court finds that Receiver's authority as given by the Court's Order places Receiver in the shoes of the entity for which receivership was granted and to determine the assets and property owned as a result, so Receiver has standing to bring claims on the entity's behalf regarding the 2019 Option. Furthermore, per the four-year statute of limitations described in the UVTA, Receiver's claims are timely.

Finally, the Court finds that at the pleadings stage, the FAC alleges sufficient facts to support its Third, Fourth, and Fifth Causes of Action in detail. As such, the Demurrer is **OVERRULED**.

III. CONCLUSION

The demurrer is **OVERRULED**. Receiver 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. 24CV06233, Umpqua Bank v. Kovacs

Plaintiff Umpqua Bank's unopposed motion to amend case caption on the Complaint pursuant to Code of Civil Procedure ("C.C.P.") section 473 is **GRANTED**. Plaintiff shall file the amendment to correct the case caption on the Complaint and all future documents in this matter shall reference the correct name of Plaintiff as Columbia Bank, formerly known as Umpqua Bank.

On July 1, 2025, Plaintiff changed its name from Umpqua Bank to Columbia Bank by filing Articles of Amendment with the applicable government entity in Oregon. (Motion, 2:5-12, Exhibit A.) Plaintiff seeks to amend the case caption in this matter to reflect this change. C.C.P. section 473 allows the amendment of any pleading, correcting a mistake in the name of a party, in furtherance of justice. Plaintiff has properly and timely served all remaining parties in this action with the moving papers, but no party has opposed or objected to the motion. Per section 473, the Court grants the unopposed motion.

Unless oral argument is requested, the Court will sign the proposed order lodged with Plaintiff's motion

3. 24CV06699, Doe v. Republic Services of Sonoma County, Inc.

Defendant Republic Services of Sonoma County, Inc. ("Defendant") moves for summary judgment, or in the alternative summary adjudication, ("MSJ-MSA") as to all causes of action in Plaintiffs Jane D.C. Doe, Jane G.D. Doe, Jane S.M. Doe, and John R.S. Doe's ("Plaintiffs") Complaint for Damages. Pursuant to Code of Civil Procedure ("C.C.P.") section 437cf, summary adjudication is **GRANTED in part** as to the Sixth, Eighth, and Ninth Causes of Action in the Complaint, and **DENIED in part** as to all other causes. Plaintiffs' requests for judicial notice are **GRANTED**. Defendant's objections are addressed below.

I. PROCEDURAL HISTORY

Plaintiffs commenced this action against Defendant alleging that Defendant is responsible, in whole or in part, for "the invasion and intrusion of Plaintiffs' right to privacy, negligent retention, administration, supervision and administration of its staff and personnel for allowing and/or permitting the opportunity for one to illegally invade and intrude upon Plaintiffs' right to privacy by intentionally and secretly placing a hidden video camera recorder inside restrooms that were situated within the premises" controlled by Defendant. (Complaint, ¶ 6; Undisputed Material Facts ["UMF"] Nos. 1-5, 41, 43, 47.) The allegation is based on Defendant's hiring of "Brandon Moore" also known as "Brandon

Michael Bayley” (“Bayley”), who worked as a gate attendant/scale operator for Defendant and who was arrested, convicted, and incarcerated for committing a crime relating to a domestic dispute, but was later also discovered installing and using a concealed camera to record persons using the restroom at his prior place of employment. (*Id.* at ¶ 12; UMF Nos. 1-5, 11, 19-20, 26, 29, 37, 41.) Plaintiffs allege that Bayley continued to work at Defendant’s facility, where it was discovered on or about June 27, 2025, that Bayley had installed hidden video cameras in restrooms and began recording persons that used the restrooms without their knowledge, including Plaintiffs. (*Id.* at ¶¶ 12-14; UMF Nos. 1-5, 11, 19-20, 26, 29, 37, 41, 47.)

Defendant argues that a pre-employment background check was conducted through First Advantage Consumer Center about Baylor prior to Defendant hiring Bayley, but there were no criminal records found. Plaintiffs disagree, claiming that Bayley had a serial criminal history and also a history of involvement in a civil lawsuit alleging the same misconduct of installing devices in restrooms at his prior employment at Perdue. (UMF No. 23.) Bayley’s job duties did not involve restroom surveillance or installation of devices and he was terminated before it was discovered that he had installed hidden devices in any restrooms because he stopped coming to work. (UMF Nos. 3, 18.) Defendant claims that they never placed any hidden camera in any restroom and did not check the hidden device footage, but rather just asked it be removed from the restrooms after the devices were discovered following multiple police investigations. (UMF Nos. 21-22, 28.)

Plaintiffs filed this action against Defendant alleging nine causes of action for: (1) Negligence; (2) Negligence Per Se; (3) Negligent Infliction of Emotional Distress (NIED); (4) Negligent Hiring, Supervision or Retention of Employee; (5) Premises Liability; (6) Intrusion Into Private Affairs; (7) Liability for Criminal Conduct of Others; and (8) Liability for Hostile Work Environment – Government Code sections 12923 and 12940; and (9) Hostile Work Environment – Government Code § 12940(k). (Complaint, ¶¶ 15-53.)

Defendant moves for summary judgment, or adjudication as to each cause of action above. (Notice of Motion for Summary Judgment [“MSJ-MSA”], 2:11-18.) Plaintiffs timely opposed the MSJ-MSA and Defendant submitted a reply brief and objections.

II. REQUESTS FOR JUDICIAL NOTICE

Judicial notice of State and Federal laws, regulations, legislative enactments, official acts and court records is statutorily appropriate. (Evid. Code §§ 451, 452.) The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under C.C.P. § 452. (C.C.P. § 453.)

Pursuant to the above, the Court **GRANTS** Defendant’s request for judicial notice of the Complaint for Damages in two cases titled *Doe v. Republic Services of Sonoma County, Inc.* (Case No. 24CV06699; Case No. 25CV00623) and a Notice of Order on Stipulation to Consolidate Cases in Case No. 24CV06699.

III. OBJECTIONS TO EVIDENCE

Defendant's objections to the newly pleaded facts and theories introduced for the first time in Plaintiff's Opposition are **SUSTAINED** as they would require Defendant to litigate a new case for the first time at the reply stage.

Defendants' sixty objections to the Declaration of Brian H. Kleiner are **OVERRULED**.

IV. ANALYSIS

Legal Standard

I. Motion for Summary Judgment

Per C.C.P. section 437c(a), any party may move for summary judgment in any action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding. Summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (C.C.P. § 437c(c).)

II. Summary Adjudication

Per C.C.P. section 437c(f), a party may move for summary adjudication "as to one or more causes of action within an action, one or more affirmative defenses... if the party contends that... that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs."

Defendant's MSJ-MSA; Plaintiffs Opposition; Reply

Defendant argues that it is entitled to summary judgment as a matter of law as to each cause of action in the Complaint. In Plaintiffs' opposition, Defendant argues that there are some newly pled theories and acts that were not alleged in the Complaint, which Defendant requests the Court to disregard.

Negligence (First Cause of Action)

Defendant moves for summary judgment as Plaintiffs' negligence claim because Defendant owed Plaintiffs no duty to protect them from Bayley's unforeseeable criminal acts and because Defendant exercised reasonable care by cooperating with law enforcement to promptly investigate the issue for multiple weeks until devices were eventually found that were installed without Defendant's knowledge or authority. (MSJ-MSA, pp. 7-10.)

Plaintiffs argue that there were foreseeable risks from which Defendant did not protect Plaintiffs because Defendant should have known that Bayley posed a particular risk of criminal behavior and voyeurism due to his significant criminal history and history of installing recording devices at his prior place of employment. (Opposition, pp. 14-16.)

The Reply affirms the arguments made in the MSJ-MSA.

The Court finds that Plaintiffs have established there remain triable issues of fact as to whether Defendant's pre-employment screening was sufficient and whether Defendant's retention of Bayley after his workplace misconduct constituted a breach of duty of reasonable care on Defendant's part. As such, the MSJ-MSA is **DENIED** as to this cause of action.

Negligence Per Se (Second Cause of Action)

Defendant seeks judgment as a matter of law against Plaintiffs' negligence per se claim because Defendant did not violate any statute and because Bayley's independent criminal acts cannot be imputed to Defendant. (MSJ-MSA, 10:13-28, 11:1-17.)

Plaintiffs argue that Defendant violated Labor Code section 6401 by failing to use reasonable practices in hiring and continued employment of Bayley. (Opposition, 17:2-28, 18:1-3.)

The Reply affirms the arguments made in the MSJ-MSA.

As mentioned above, the Court finds that Plaintiffs have established there remain triable issues of fact as to whether Defendant's pre-employment screening was sufficient and whether Defendant's retention of Bayley after his workplace misconduct constituted a breach of Defendant's statutory duty regarding reasonable practices in hiring and retaining employees. The MSJ-MSA is **DENIED** as to this cause of action.

Negligent Infliction of Emotional Distress (NIED) (Third Cause of Action)

Defendant argues that there was no duty to prevent Bayley's independent concealed criminal acts and that Defendant did not commit any other breach of its duty of care towards Plaintiffs to cause Plaintiffs' harm. (MSJ-MSA, 11:18-28, 12:1-20.) Plaintiffs also failed to adequately plead damages suffered as a result of Defendant's alleged breach of duty. (*Id.* at 12:20-27.)

For the same reasons stated in support of the negligence cause of action, Plaintiffs claim Defendant breached the duty of care it owed to protect them from foreseeable risks at their facility. (Opposition, 18:5-28, 19:1-22.)

The Reply affirms the arguments made in the MSJ-MSA. Defendant emphasizes that knowledge of one type of conduct does not make a different criminal act foreseeable.

For the same reasons stated above for the other negligence causes of action, the MSJ-MSA is **DENIED** as to this cause.

Negligent Hiring, Supervision, or Retention of Employee (Fourth Cause of Action)

Defendant claims that because a reasonable background check was conducted before hiring Bayley that did not show any unfitness or incompetence to work, because Bayley's prior employment demonstrated fitness rather than unfitness, and because Defendant had no knowledge of the 2022

Petaluma Police Report, that no negligence in hiring, supervising, or retaining Bayley can be established. (MSJ-MSA, pp. 12-14.) Finally, once there was suspicion that Bayley had engaged in unlawful conduct, Defendant argues that it acted promptly and lawfully to terminate Defendant even before any device was found. (*Id.* at 14:25-28, 15:1-21.)

Plaintiffs argue that Defendant should have known about Bayley's unfitness due to his prior criminal history and the civil lawsuit for installing recording devices in restrooms at Perdue at his prior workplace, but because Defendant did not perform an adequate pre-employment screening, these portions of Bayley's history were not known to Defendant before hiring. (Opposition, pp. 19-22.) Furthermore, Bayley engaged in workplace misconduct while he was employed with Defendant. (*Ibid.*)

The Reply affirms the arguments made in the MSJ-MSA.

For the same reasons stated above for the other negligence causes of action, the MSJ-MSA is **DENIED** as to this cause.

Premises Liability (Fifth Cause of Action)

Defendant claims that there is no basis for Plaintiffs' premises liability claim against Defendant because Defendant exercised reasonable care in maintaining its premises by allowing law enforcement to conduct sweeps of all of its restrooms on multiple dates, two of which did not produce any devices or evidence of Bayley's unlawful conduct. (MSJ-MSA, 15:22-28, 16:1-20.) Due to no devices being found initially, Defendant claims that it had no constructive or actual notice of the hazard existing until finally on June 30, 2024, some devices were found by law enforcement's final sweep of the restrooms. (*Id.* at 16:21-28, 17:1-3.) Finally, Defendant argues that whatever harm resulted in Plaintiffs injury was caused by Bayley's independent criminal conduct that was eventually discovered, not due to Defendant's conduct. (*Id.* at 17:4-13.)

Again, Plaintiffs claim that Defendant failed to reasonably care for its facility such that Defendant failed to discover the recording devices installed by Bayley before the police investigation. (Opposition, pp. 22-25.)

The Reply affirms the arguments made in the MSJ-MSA.

For the same reasons stated above for the other negligence causes of action, the MSJ-MSA is **DENIED** as to this cause.

Intrusion into Private Affairs (Sixth Cause of Action)

Defendant claims entitlement to judgment as a matter of law as to the cause of action for intrusion into private affairs because there was no intentional intrusion on Defendant's part into any private place, only Bayley's intrusion, and Defendant did not view the recordings that were captured by the hidden cameras. (MSJ-MSA, 17:14-28, 18:1-16.) Defendant only viewed law enforcement photos shown during the Sheriff's investigation, but otherwise Defendant claims it did not engage in any conduct that was highly offensive to a reasonable person. (*Ibid.*)

Plaintiffs' Opposition did not make argument as to this cause of action.

Summary adjudication is **GRANTED** as to this cause of action which Plaintiffs failed to oppose and have conceded.

Criminal Conduct of Others (Seventh Cause of Action)

Defendant argues that there can be no vicarious liability for Bayley's tortious conduct because it was outside the scope of his employment and because Defendant could not have any foreseeable duty to anticipate Bayley's conduct of installing the cameras in the restrooms. (MSJ-MSA, 18:16-28, 19:1-19.)

Plaintiffs argue that Defendant should have reasonably anticipated Bayley's criminal conduct because he was serial criminal, was involved in a lawsuit for allegedly installing recording devices at his immediate past employer, and engaged in workplace misconduct while working for Defendant. (Opposition, pp. 25-26.)

The Reply affirms the arguments made in the MSJ-MSA.

The Court finds that there is still a triable issue of fact as to whether Defendant could or should have reasonably anticipated Bayley's conduct of installing the cameras in the restrooms given at the time he was hired by Defendant, he was involved in the civil lawsuit regarding this same conduct at his prior immediate employment. As such, there is also a triable issue of fact as to whether the pre-employment screening was sufficient or reasonable since it appears that Bayley's criminal history and civil lawsuit regarding this same conduct was not inquired into by Defendant. Thus, the MSJ-MSA is **DENIED** as to this cause of action.

Liability for Hostile Work Environment – Govt. Code §§ 12923, 12940 (Eighth Cause of Action)

Plaintiffs' Complaint alleges harassment "based on gender" stemming from the restroom recordings, but both male and female Plaintiffs have claimed to be harmed by the recordings so Defendant argues there was no gender-based harassment here upon which hostile work environment may be claimed. (MSJ-MSA, 19:20-28, 20:1-13.)

Plaintiffs' Opposition did not make argument as to this cause of action.

Summary adjudication is **GRANTED** as to this cause of action which Plaintiffs failed to oppose and have conceded.

Hostile Work Environment – Govt. Code § 12940(k) (Ninth Cause of Action)

Defendant argues that Plaintiffs are not able to establish gender-based harassment under section 12940(j) so Defendant could not have prevented any harassment without the underlying statutory violation of gender-based harassment. (MSJ-MSA, 20:14-28.) Again, Plaintiffs' claim for failure to prevent harassment is also barred by Plaintiffs' failure to obtain a DFEH right-to-sue letter. Defendants therefore seek summary judgment or adjudication as to this cause of action. (*Ibid.*)

Plaintiffs' Opposition did not make argument as to this cause of action.

Summary adjudication is **GRANTED** as to this cause of action which Plaintiffs failed to oppose and have conceded.

III. CONCLUSION

Based on the foregoing, summary adjudication is **GRANTED in part** as to the Sixth, Eighth, and Ninth Causes of Action and **DENIED** as to all others. Defendant shall submit a written order on its motion to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

4. 25CV00992, Elizabeth Joan Ramsay Palmer, Trustee v. Fairweather & Associates, Inc.

APPEARANCES ARE REQUIRED.

5. 25CV04762, Studley v. Kneibler, MD

Defendants/Cross-Complainants Bonnie Kneibler, M.D. ("Kneibler"), and Hugh R. Downs ("Downs") ("Defendants") separately demur to Plaintiff Andersen Studley's Complaint.

Kneibler's demurrer to the Complaint is **SUSTAINED WITH LEAVE TO AMEND in part** as to the Twelfth and Thirteenth Causes of Action and **OVERRULED** as to all others.

Downs' demurrer to the Complaint is **SUSTAINED WITH LEAVE TO AMEND in part** as to the Sixth and Seventh Causes of Action and **OVERRULED** as to all others.

The First Amended Complaint shall be filed and served within 20 days of this Court's order.

I. PROCEDURAL HISTORY

The Complaint alleges a 17-year employment relationship between Plaintiff and Defendants, who Plaintiff claims employed him since 2007 as a live-in groundskeeper to work and reside on Defendants' property located at 5051 Lichau Road in Penngrove, California (the "Property"). (Complaint, 2:2-5.) Plaintiff alleges that 12 years into this employment relationship, he underwent spinal surgery to repair an on-the-job injury, after which he was unable to work and was pressured into a sexual relationship with Defendant Kneibler to avoid eviction and termination. (*Id.* at 2:5-7.) Plaintiff broke off this sexual relationship in 2023, so Plaintiff alleges Defendants withheld his pay, and threatened eviction and termination. (*Id.* at 2:8-11.) Plaintiff commenced this action to allege thirteen causes of action, including:

1. Failure to Pay Wages (Lab. Code §§ 200-204, 1194) (against both)
2. Failure to Provide Wage Statement – Lab. Code § 226 (against both)
3. Failure to Maintain Payroll Records – Lab. Code § 1174 (against both)

4. Nonpayment of Minimum Wage and Overtime Compensation (Lab. Code § 1194) (against both)
5. Negligence – Unsafe Working Conditions (Lab. Code §§ 6400, 6401, 6403) (against both)
6. Intentional Infliction of Emotional Distress (against both)
7. Sexual Battery (against both)
8. Unfair Business Practices – Bus. & Prof. Code § 17200 (against both)
9. Failure to Provide Workers’ Compensation Insurance – Lab. Code § 3700 (against both)
10. Sexual Harassment – Gov. Code § 12940(j) (against both)
11. Wrongful Termination (against both)
12. Failure to Maintain Medical Records – Bus. & Prof. Code § 2266 (against Kneibler only)
13. Failure to Disclose or Inform Lack of Malpractice Insurance – Bus. & Prof. Code § 2770.17 (against Kneibler only)

(Complaint, ¶¶ 22-112.) The parties’ counsels met and conferred to discuss the grounds for the two demurrers against various causes of actions as stated in the Complaint, but the parties did not resolve their issues. (Kneibler Demurrer, 3:12-20; Downs Demurrer, 3:12-20.) Defendants separately demur to different causes of action in Plaintiff’s Complaint for failure to state facts sufficient to state a cause of action under Code of Civil Procedure (“C.C.P.”) section 430.10(e). (Kneibler Demurrer, pp. 1-3; Downs Demurrer, pp. 1-3.) Plaintiff opposed both demurrers, and Defendants submitted a joint reply.

II. 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 judicially noticed facts are also disregarded. (*Coshow 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, 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.*)

III. KNEIBLER’S DEMURRER

Kneibler’s Demurrer to the Complaint

Kneibler demurs to the First, Second, Third, Fourth, Fifth, Eighth, Ninth, Eleventh, Twelfth, and Thirteenth Causes of Action in the Complaint for failure to state facts sufficient to constitute these causes. (Kneibler Demurrer, pp. 1-3.)

I. Employment Claims (First, Second, Third, Fourth, Ninth, and Eleventh Causes of Action)

Kneibler argues that the Complaint only contains conclusory allegations against Kneibler but does not provide any proof that the stipend allegedly paid by Kneibler to Studley was a wage and not merely a gift, even if they were paid at regular monthly intervals. (Kneibler Demurrer Memorandum of Points and Authorities [“Kneibler MPA”], pp. 4-6.) As such, Kneibler argues the demurrer to the six employment claims ought to be sustained. (*Ibid.*)

II. Negligence (Fifth Cause of Action)

Kneibler demurs to the Fifth Cause of Action for Negligence on the basis that Plaintiff was a boarder, not an employee, so no duty was owed for “safe working conditions” to Plaintiff. (Kneibler MPA, pp. 7-8.)

III. Violation of Bus. & Prof. Code § 17200 (Eighth Cause of Action)

Kneibler argues that the Eight Cause of Action for violation of the Business & Professions Code fails because Defendants are not a business and because Plaintiff failed to allege any employment relationship because he did not plead breach of contract or reference any contract in the Complaint. (Kneibler MPA, pp. 6-7.)

IV. Failure to Maintain Medical Records (Twelfth Cause of Action)

Kneibler’s demurrer states that the Twelfth Cause of Action for failure to maintain medical records is not actionable and must fail because the Court cannot offer any redress for this allegation and Plaintiff fails to cite any cognizable cause of action. (Kneibler MPA, 8:11-19.)

V. Failure to Disclose or Inform Lack of Malpractice Insurance (Thirteenth Cause of Action)

Kneibler argues that the demurrer must be sustained as to the Thirteenth Cause of Action for failure to disclose or inform Plaintiff of a lack of malpractice insurance because the code sections Plaintiff cites are uncertain, ambiguous, and unintelligible as the exact citation does not exist in the Business and Professions Code. (Kneibler MPA, 8:22-28, 9:1-2.)

Plaintiff’s Opposition to Kneibler

As to the six employment claims, Plaintiff argues that he adequately pleaded an employer-employee relationship between himself and Kneibler over several paragraphs in the Complaint describing the period of time, the responsibilities, and the change in nature of his work as a groundskeeper for Defendants. (Kneibler Opposition, pp. 3-6.)

Plaintiff also argues that he has sufficiently pleaded a violation of the UCL under the Business & Professions Code as an employee who has not been paid wages as required for the work done for Defendant. (*Id.* at 6:14-28.)

Finally, Plaintiff argues that the Negligence claim was adequately pleaded as well because he adequately pleaded an employment relationship and also the failure of Kneibler to provide safe working conditions for him. (*Id.* at 7:1-14.)

Plaintiff failed to address the Twelfth and Thirteenth Causes of Actions.

Reply to Both Demurrers

Kneibler and Downs' reply to both Oppositions argues that the Oppositions were untimely submitted a day late and otherwise reaffirms the arguments made in the demurrers.

Application

The Court finds that the Complaint adequately pleads ultimate facts to support the First, Second, Third, Fourth, Ninth, and Eleventh Causes of Action regarding Plaintiff's employment claims, and the Fifth and Eight Causes of Action for negligence and UCL violations. However, Plaintiff failed to plead the Twelfth and Thirteenth Causes of Actions adequately or address them in the Opposition. As such the demurrer is sustained with leave to amend only as to those causes of action and denied as to all others.

IV. DOWNS' DEMURRER

Downs' Demurrer to Complaint

Downs demurs to the First through Eleventh Causes of Action in the Complaint for failure to state facts sufficient to constitute these causes. (Kneibler Demurrer, pp. 1-3.)

Employment Claims (First, Second, Third, Fourth, Ninth, and Eleventh Causes of Action)

For the same reasons as Kneibler stated in her demurrer, Downs argues the demurrer to the six employment claims ought to be sustained because the conclusory allegations in the Complaint do not allege Plaintiff was an employee rather than a boarder who earned a monthly gift from Defendants (Downs Demurrer Memorandum of Points and Authorities ["Downs MPA"], pp. 4-6.)

I. Negligence (Fifth Cause of Action)

For the same reasons as Kneibler stated in her demurrer, Downs demurs to the Fifth Cause of Action for Negligence on the basis that Plaintiff was a boarder, not an employee, so no duty was owed for "safe working conditions" to Plaintiff. (Downs MPA, 8:5-16.)

II. Intentional Infliction of Emotional Distress or IIED (Sixth Cause of Action)

Downs demurs to the Sixth Cause of Action for IIED claiming that the Complaint fails to allege any of the elements of such a claim as to Downs against Plaintiff. (Downs MPA, pp. 8-10.)

III. Sexual Battery (Seventh Cause of Action)

The demurrer argues that Plaintiff's Seventh Cause of Action for sexual battery ought to be dismissed against Downs because Plaintiff failed to allege any facts sufficient to support the cause of action. (Downs MPA, 10:8-25.)

IV. Violation of Bus. & Prof. Code § 17200 (Eighth Cause of Action)

For the same reasons as Kneibler stated in her demurrer, Downs argues that the Eighth Cause of Action for violation of the Business & Professions Code fails because Defendants are not a business and because Plaintiff failed to allege any employment relationship because he did not plead breach of contract or reference any contract in the Complaint. (Downs MPA, pp. 6-8.)

V. Sexual Harassment (Tenth Cause of Action)

Although Downs' demurrer noted he was demurring to the Tenth Cause of Action, there was no independent analysis included in the Memorandum of Points and Authorities regarding this claim outside of how it related to Plaintiff's IIED, so the Court will not address this separately.

Plaintiff's Opposition to Downs

Plaintiff's Opposition to Downs makes the same arguments as stated above regarding the Opposition to Kneibler on the six employment causes of actions, violation of the UCL, and the negligence claims. (Downs Opposition, pp. 3-7.)

Additionally, Plaintiff argues that he adequately pleaded IIED and sexual battery against Downs because he alleged that Downs conspired with Kneibler to facilitate the wrongful conduct. (*Id.* at pp. 7-9.)

Reply to Both Demurrers

As mentioned above, the Reply argues that the Oppositions were untimely submitted a day late and otherwise reaffirms the arguments made in the demurrers.

Application

The Court finds that the Complaint adequately pleads ultimate facts to support the First, Second, Third, Fourth, Ninth, and Eleventh Causes of Action regarding Plaintiff's employment claims, and the Fifth and Eight Causes of Action for negligence and UCL violations. Though Plaintiff claims the sexual harassment and battery causes were meant to be conspiracy claims, Plaintiff did not adequately plead such in the Complaint, so the demurrer will be sustained with leave to amend as to these causes of action and overruled as to all else including the Tenth Cause of Action, which Downs failed to make any argument against in the Memorandum of Points and Authorities.

V. CONCLUSION

Kneibler's demurrer to the Complaint is **SUSTAINED WITH LEAVE TO AMEND in part** as to the Twelfth and Thirteenth Causes of Action and **OVERRULED** as to all others.

Downs' demurrer to the Complaint is **SUSTAINED WITH LEAVE TO AMEND in part** as to the Sixth and Seventh Causes of Action and **OVERRULED** as to all others.

The First Amended Complaint shall be filed and served within 20 days of this Court's order.

Defendants shall submit a written order for each demurrer to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).