

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, April 29, 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.**

1-2. 23CV00658, County of Sonoma v. Alvarez

APPEARANCES REQUIRED. The Court will allow Defendants Freddie, Idolina, and Ignacio Alvarez an opportunity to be heard regarding the County of Sonoma's motions for terminating sanctions prior to issuing a final ruling on the motions for monetary, issue, evidentiary, and terminating sanctions against Defendants.

3. 24CV04812, Debra Helmey v. Sonoma Specialty Hospital, LLC

Defendant Sonoma Specialty Hospital, LLC ("SSH") moves for summary judgment, or in the alternative summary adjudication, ("MSJ-MSA") as to the First, Second, and Third Causes of Action and the request for punitive damages in Plaintiffs Amanda, Cheyanne, Debra, and Jerney Helmey's ("Plaintiffs") First Amended Complaint ("FAC").

Pursuant to Code of Civil Procedure ("C.C.P.") section 437c OR 437cf, summary judgment OR adjudication is **DENIED**. SSH's objections to evidence submitted in support of Plaintiffs' Opposition are **OVERRULED**.

I. PROCEDURAL HISTORY

Plaintiffs are heirs and successors in interest of Decedent Christopher Helmey (“Decedent”). (FAC, ¶¶ 1-4.) Decedent was a dependent adult with multiple amputations, multiple medical issues, unable to care for his own basic needs, and unable to walk or reposition his own body, so he needed assistance caring for his basic needs and changing positions to avoid developing pressure ulcers. (FAC, ¶¶ 12-14.) Decedent had a specific care plan with orders to reposition him at least every two hours, otherwise he had a high risk of developing such pressure ulcers, and to use pressure reducing devices. (FAC, ¶¶ 19-21.)

SSH is a skilled nursing facility located in Sonoma County which treated Decedent from May 25, 2023, to June 14, 2023. (FAC, ¶¶ 17-18; Undisputed Material Fact [“UMF”] Nos. 1-2.) Plaintiffs allege that SSH knew that Decedent could not provide for his own basic needs, needed assistance changing positions, and had a special care plan, but failed to follow the care plan while Decedent was admitted causing Decedent to develop multiple pressure ulcers. (FAC, ¶¶ 13-15.) SSH states that Decedent had 5 documented wounds on 5 different locations of his body when he arrived at their facility. (UMF Nos. 2-6.) Hospital staff documented their medical observations of the wounds and noted that they were complicated with Moisture Associated Skin Damage (“MASD”) at high risk for skin breakdown. (UMF No. 7-8.) SSH performed blood tests on Decedent, checked his wounds for inflammation, and reviewed his prior medical history while treating him. (UMF Nos. 9-23.)

SSH claims that Decedent’s medical records reveal that appropriate preventive interventions, such as turning and repositioning, pressure relieving devices, adequate nutrition, and frequent rounding were performed by their staff, but Plaintiffs allege that after Decedent was transferred to SSH, his pressure ulcers continued to worsen and to tunnel to his bone. (FAC, ¶ 17; UMF Nos. 24-25.) On June 14, 2023, Decedent was transferred again to Santa Rosa Memorial Hospital, at which point his pressure ulcers were crater-like and reached stage 4, extending across his entire lower back and buttocks. (FAC, ¶ 18; UMF No. 25.) Ultimately, Decedent died on July 2, 2023, from infected stage 4 pressure ulcers. (FAC, ¶ 23; UMF No. 26.)

Plaintiffs’ FAC alleges three causes of action for: (1) Wrongful Death/Negligence; (2) Willful Misconduct; and (3) Elder Abuse. (FAC, ¶¶ 29-45.) SSH states that Decedent’s death was a result of chronic vascular compromise, recurrent infection, and systemic deterioration that progressed after his discharge from SSH, and that to a reasonable degree of medical certainty, nothing the SSH staff did caused or contributed to Decedent’s death. (UMF Nos. 27-28.) SSH moves for summary judgment, or adjudication, as to each cause of action as well as the request for punitive damages arguing that they fail as a matter of law as to SSH because SSH met the applicable standard of care at all times when treating Decedent. (Motion for Summary Judgment or Adjudication [“MSJ-MSA”], 5:17-25.) Plaintiffs oppose the MSJ-MSA and SSH submitted a Reply to the opposition along with objections to evidence addressed below.

II. OBJECTIONS TO EVIDENCE

SSH’s objections to the Declarations of Steven Fugaro and Lisa Moore as lacking foundation, speculative, conclusory, improper legal conclusions are **OVERRULED**. SSH’s general objections to

Plaintiffs' evidence as hearsay and lacking authentication are also **OVERRULED**.

III. SSH'S MOTION FOR SUMMARY JUDGMENT OR ADJUDICATION

Legal Standard

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).)

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."

Analysis

SSH argues that it is entitled to summary judgment or adjudication as to each cause of action in the FAC and as to the punitive damages requested.

First Cause of Action for Medical Negligence/Wrongful Death

A cause of action for wrongful death is purely statutory. (*Barret v. Superior Court* (1990) 222 Cal.App.3d 1176, 1184.) The cause of action requires a tortious act to be alleged that caused the resulting death and damages, which include pecuniary loss suffered by plaintiff's decedent heirs. (*Lattimore v. Dickey* (2015) 239 Cal.App.4th 959, 968.) In actions for wrongful death resulting from negligence, the complaint must allege all the elements of actionable negligence. (*Novak v. Continental Tire North America* (2018) 22 Cal.App.5th 189, 195.) The essential elements a plaintiff must allege to state a cause of action for negligence are that: (1) there was a duty to use due care; (2) defendant breached that duty or standard of care; (3) plaintiff was injured; and (4) defendant's breach was the proximate or legal cause of plaintiff's injury. (*Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917.)

Plaintiffs allege that SSH owed a duty to exercise ordinary care in the care, treatment, and protection of Decedent. (FAC, ¶¶ 29-30.) Plaintiffs further allege that SSH breached this duty by failing to monitor and record Decedent's condition and report meaningful changes to the attending physician, by failing to note and properly react to emergent conditions and timely transfer Decedent to an acute care facility, by failing to establish and implement a patient care plan for Decedent based on and including an ongoing process of identifying Decedent's care needs, by failing to maintain accurate records of Decedent's condition and activity, by failing to treat Decedent as an individual with respect and without

abuse, and by failing to maintain nursing and other staffing at levels adequate to meet Decedent's needs. (FAC, ¶¶ 31-32.) Plaintiffs claim that due to SSH's recklessness and negligence, Decedent suffered fatal injuries and Plaintiffs are entitled to wrongful death damages. (*Id.* at ¶ 33.)

SSH argues that the standard of care was not breached because SSH complied with it by acting appropriately in its preventative measures including turning and repositioning Plaintiff, using pressure relieving devices, and giving attention to Plaintiff's nutrition. (MSJ-MSA, 10:23-28, 11:1-12.) SSH also argues that no act or omission by SSH was a cause or proximate cause of Plaintiffs' alleged injuries or harm. SSH's medical records confirmed that SSH staff immediately assessed Decedent's wounds; ordered a consultation with and notified the wound team; created a treatment plan which was placed into the Medication Administration Record; repositioned Decedent every two hours and followed its own Wound Care Program Policy; and administered appropriate medical tests that revealed a relentless infection affecting Plaintiff's wound healing. (*Id.* at 11:15-28, 12:1-12.)

Plaintiffs argue that there are still triable issues of material fact as to whether SSH met the applicable standard of care and whether acts or omissions of hospital staff were the cause of Decedent's fatal injuries. (Opposition, 11:17-24.) Plaintiffs' declaration submitted as evidence of Plaintiffs' expert wound care nurse, Lisa Moore, stated that SSH's treatment of Decedent fell below the applicable standard of care for nursing. (*Id.* at 12:3-14; Additional Material Facts ["AMF"] Nos. 17-20.) Furthermore, Plaintiffs' retained expert, Steven Fugaro, stated in his declaration that SSH repeatedly failed to turn and reposition Decedent which caused his sacral pressure ulcers to severely worsen. (*Ibid.*; Additional Material Facts ["AMF"] Nos. 1-4, 20-27.)

In the Reply, SSH reaffirms the arguments made in the motion. (Reply, 2:6-28, 3:1-7.)

Second Cause of Action for Willful Misconduct

Generally, in California Law the established meaning of "willful misconduct" is "intentional wrongful conduct, done either with a knowledge that serious injury to another will probably result, or with a wanton and reckless disregard of the possible results." (*New v. Consolidated Rock Products Co.* (1985) 171 Cal.App.3d 681, 689.) In terms of negligence, "willful misconduct" is interchangeable with "wanton misconduct", "reckless disregard", "recklessness" or some combination of these; they all identify an aggravated form of negligence. (*Ibid.*)

Plaintiffs allege SSH had a duty under federal and state regulations to provide Decedent care, comfort, and safety. (FAC, ¶¶ 34-35.) Specifically, Plaintiffs allege SSH had a duty to monitor and record Decedent's condition and report changes to the attending physician, to note and properly react to emergent conditions and timely transfer Decedent to an acute care facility, to establish and implement a patient care plan for Decedent based on and including an ongoing process of identifying Decedent's care needs, to maintain accurate records of Decedent's condition and activity, to treat Decedent as an individual with respect and without abuse, and to maintain nursing and other staffing at levels adequate to meet Decedent's needs. (*Id.* at ¶ 35.) They claim that SSH breached these duties intentionally and in reckless disregard for the probability that severe injuries would result. (*Id.* at ¶ 36-37.)

For the same reasons argued against the First Cause of Action for Medical Negligence/Wrongful Death, SSH argues that its medical records reflect the opposite of willful misconduct. (MSJ-MSA, 12:15-28, 13:1-8.)

The Opposition claims that there is sufficient evidence to create a triable issue of fact as to whether SSH had actual or constructive knowledge that an injury was probable by their conscious failure to turn and reposition Decedent. (Opposition, 14:7-25.)

SSH's states in the Reply that there is no evidence of SSH intending to harm or acting with conscious disregard for Decedent's safety. (Reply, 3:8-13.)

Third Cause of Action for Elder Abuse

The California Welfare & Institutions Code section 15600 et seq. allows a plaintiff a remedy for elder abuse. A claim for elder abuse based on neglect can include "negligent failure of an elder custodian 'to provide medical care for [the elder's] physical and mental health needs...'" (*Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 783; Welf. & Inst. Code § 15610.57.) Plaintiff must allege that there is a caretaking or custodial relationship between defendant and the elder who suffered harm such that defendant assumed significant responsibility for attending to one or more of the elder's basic needs that an able-bodied and fully competent adult would otherwise be capable of managing without any assistance. (*Winn v. Pioneer Medical Group, Inc.* (2016) 63 Cal.4th 148, 155.) If defendant did not have a substantial caretaking or custodial relationship that involved ongoing responsibility for one or more basic needs with the elder, then the Elder Abuse act does not apply. (*Id.* at p. 152.)

Plaintiffs allege that SSH committed acts and omissions that constitute "neglect" pursuant to Welfare & Institution Code section 15610.57, and were thereby guilty of "recklessness," "malice," "fraud," and "oppression." (FAC, ¶¶ 40-41.)

SSH argues that Plaintiffs cannot meet their burden of proving by clear and convincing evidence that SSH harmed Decedent because nothing was revealed during discovery that SSH acted or failed to act with either knowledge that injury was substantially certain to befall Decedent or that SSH acted or failed to act with conscious disregard. (MSJ-MSA, 14:5-24.)

Plaintiffs claim that the failures to follow care plans caused or worsened the pressure ulcers on Decedent which constitutes recklessness and neglect under the Welfare & Institutions Code section 15610.57, subsection (2) that includes "failure to provide medical care for the physical and mental health needs" of a patient. (Opposition, pp. 15-16.) Plaintiffs argue that there is clear and convincing evidence via the pictures of Decedent's pressure ulcers which progressed while under SSH's care due to a failure to turn and reposition Decedent in a timely manner under his care plan. (*Id.* at 17:5-15.)

The Reply draws a distinction between professional negligence and elder abuse and argues that there is no evidence of recklessness, malice, oppression, or fraud on the part of SSH in its treatment of Decedent. (Reply, 3:16-28, 4:1-25.)

Plaintiffs' Claim for Punitive Damages

For an employer to be liable for punitive damages for the actions of an employee, it must be shown that “the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice.” (Civ. Code § 3294(b).) “With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation.” (*Ibid.*) Where punitive damages are alleged against an employer under Civil Code section 3294(b), the knowledge on the part of the employer stands as their equivalent of oppression, fraud or malice otherwise required under Civ. Code section 3294 (a); no oppression, fraud or malice on the part of the employer need be shown. (*Weeks v. Baker & McKenzie* (1998) 63 Cal.App.4th 1128, 1154.) Plaintiff must plead facts sufficient to show either knowledge or ratification by an officer, otherwise claims for punitive damages are inadequately pled. (*Hart v. National Mortgage & Land Co.* (1987) 189 Cal.App.3d 1420, 1433.)

Based on Plaintiff’s claim for elder abuse, Plaintiff seeks punitive damages pursuant to Civil Code section 3294 for “malice,” “oppression,” and “fraud.” (FAC, ¶¶ 44-45.)

SSH argues that Plaintiffs cannot prove by clear and convincing evidence that SSH acted with despicable conduct that is vile or contemptible in order to find malice, oppression, or fraud because SSH complied with the applicable standard of care. (MSJ-MSA, 14:26-28, 15:1-6.)

Plaintiffs rely once more on the Declarations of Moore and Fugaro that state that a review of SSH’s medical records show a repeated failure to turn and reposition Decedent causing or worsening the pressure ulcers, which is sufficient to show the conscious disregard element required for a punitive damages claim. (Opposition, 17:16-27.)

SSH’s Reply reaffirms the arguments made as to punitive damages in the motion. (Reply, 4:27-28, 5:1-10.)

Application

The Court finds that there remain triable issues of material fact relating to each cause of action and the claim for punitive damages in the FAC. These include:

1. Whether SSH adhered to the care plan required for Decedent to treat his existing ulcers and prevent them from worsening. (UMF Nos. 25-28; AMF Nos. 17-27.)
2. Whether SSH’s own wound care policy was sufficient for treating Decedent’s wounds instead of Decedent’s personal care plan and whether SSH’s hospital staff adhered to SSH’s own wound care policy. (UMF Nos. 25-28; AMF Nos. 17-27.)
3. Whether SSH’s potential failure to turn or reposition Decedent in a timely manner as prescribed in his personal wound care plan contributed to or caused Decedent’s ulcer wounds to worsen and become infected. (UMF No. 24-28; AMF Nos. 1-12, 17-27.)

4. Whether SSH's staff had the actual or constructive knowledge that there was a high probability of Decedent's wound worsening and becoming infected from their failure to adhere to Decedent's established wound care plan or SSH's wound care policy. (UMF No. 24-28; AMF Nos. 1-12, 17-27.)

Based on the above triable issues remaining as to several material facts, the Court finds that neither summary judgment nor adjudication are appropriate as to Plaintiffs' three claims or request for punitive damages.

IV. CONCLUSION

Based on the foregoing, the Court **DENIES** SSH's MSJ-MSA in its entirety. SSH's objections are also **OVERRULED** as Plaintiffs' evidence submitted in support of the Opposition. Plaintiffs 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. 25CV02060, Looney v. BA & RK, Inc

Plaintiff Gary Looney moves unopposed against Defendants BA & RK, INC. doing business as Ben's Liquor ("Ben's") and Basil Alseryani, individually and as a personal guarantor of Ben's, to appoint Landon McPherson as receiver to seize and sell Defendant's California Liquor License number 617968 to satisfy the \$7,997.59 judgment (erroneously stated as \$7,208.78 in the notice of motion) entered June 27, 2025 (the "Judgment"). The unopposed motion is **GRANTED**, per California Code of Civil Procedure ("C.C.P.") section 564(b)(3).

Per C.C.P. section 564(b)(3), a court may appoint a receiver to carry out a judgment entered into effect. The receiver may enforce the judgment where the judgment creditor has shown that, considering the interests of both the judgment creditor and debtor, the appointment of a receiver will reasonably allow the fair and orderly satisfaction of the judgment. (C.C.P. § 708.620.) Specifically, a court can appoint a receiver to transfer the judgment debtor's interest in an alcoholic beverage license for the purpose of satisfying a judgment. (C.C.P. § 708.630.)

Plaintiff was unable to enforce this Court's Judgment, so moves to appoint Mr. McPherson as receiver to take possession of and, if necessary, sell Defendant's California Liquor License number 617968 to satisfy the outstanding Judgment. (Motion, 1:22-28, 2:1-17.) The license is not subject to any security interests except for obligations under California law. (*Id.* at 2:25-28.) Plaintiff provided sufficient notice of the motion's hearing. (See Proof of Service dated January 29, 2026.) Defendant has not opposed the motion.

Plaintiff has sufficiently shown that the appointment of Mr. McPherson as receiver is warranted because Defendant has never responded to the complaint, to any post-judgment discovery requests even after this Court's order compelling responses, or to any of Plaintiff's efforts to enforce the judgment entered. (Motion, pp. 3-5.) Mr. McPherson is a consultant broker for CAL ABC License Services and

specializes in the acquisition and sale of liquor licenses in California with over 15 years of experience in the field. (McPherson Declaration, ¶¶ 1-4.)

As Plaintiff has satisfied the minimum requirements for the appointment of a receiver, Plaintiff's motion is **GRANTED**. The Court appoints Mr. McPherson as receiver to take possession of and, if necessary, sell Defendant's California Liquor License number 617968 to satisfy the \$7,997.59 judgment entered June 27, 2025. Unless oral argument is requested, the Court will sign the proposed order lodged with the motion.

5. 25CV04460, Rivas v. General Motors, LLC

Defendant General Motors, LLC's ("GM" or "Defendant") demurrer to the Fourth and Fifth Causes of Action in Plaintiffs Gabriel Rivas and Rivas Mowing Service's ("Plaintiffs") Complaint is **SUSTAINED with leave to amend**. Plaintiffs shall file and serve the First Amended Complaint within 20 days of this Court's order.

PROCEDURAL HISTORY

Plaintiffs' claims against GM arise from their purchase of a 2019 GMC Sierra 3500, on or about July 30, 2019, which was manufactured and distributed by GM and covered by warranty. (Complaint, ¶¶ 7-8.) Plaintiffs experienced defects and nonconformities in the vehicle including engine defects, transmission defects, and electrical defects. (*Id.* at ¶¶ 12-14.) Plaintiffs' Complaint alleges several Song-Beverly Consumer Warranty Act claims against GM, a Fourth Cause of Action for Breach of Implied Warranty of Merchantability, and a Fifth Cause of Action for Fraudulent Inducement-Concealment. (*Id.* at ¶¶ 27-75.)

GM's counsel met and conferred with Plaintiffs' counsel telephonically to raise issues with the Complaint, specifically with the Fourth and Fifth Causes of Action, but the parties did not resolve their issues. (Haro Declaration, ¶ 2.)

GM now demurs as to the Fourth and Fifth Causes of Action in the Complaint. Despite proper and timely service of the moving papers and hearing date, Plaintiffs served no opposition.

ANALYSIS

Legal Standard

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. (C.C.P. § 430.30(a).) At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. (*Coshov v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.) Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. (*C.A. v. William S. Hart Union High*

School Dist. (2012) 53 Cal.4th 861, 872.) Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.)

Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. (*The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.)

GM's Demurrer

GM Demurs to the Fourth and Fifth Causes of Action to the Complaint. As mentioned above, despite proper notice of the motion, Plaintiffs did not oppose.

Statute of Limitations

GM argues that the four-year statute of limitations under Comm. Code § 2725 bars Plaintiff's claim for breach of implied warranty. (Demurrer, 9:12-28, 10:1-6.) GM argues the same for three-year statute of limitations for the Fifth Cause of Action for fraudulent inducement-concealment per Code of Civil Procedure section 338. (*Id.* at 10:7-28, 11:1-3.)

Requisite Specificity of Fraud

GM argues that the Complaint failed to plead a claim for fraud with the requisite specificity, because for example, the Complaint did not specifically allege: "(1) the content of the omitted facts, (2) defendant's awareness of the materiality of those facts, (3) the inaccessibility of the facts to plaintiff [or active concealment], (4) the general point at which the omitted facts should or could have been revealed, and (5) justifiable and actual reliance, either through action or forbearance, based on the defendant's omission." (Demurrer, 11:6-28, 12:1-17.) GM also argues that the Complaint failed to allege GM had exclusive knowledge that it actively concealed. (*Id.* at 15:2-28, 16:1-8.) Furthermore, GM claims the Complaint fails to allege Plaintiffs' justifiable and actual reliance on GM. (*Id.* at 16:9-28, 17:1-9.)

Duty to Disclose and Transactional Relationship

GM argues that Plaintiffs' Complaint does not allege any kind of fiduciary relationship with GM or direct transactional relationship that triggers a duty to disclose for a fraudulent concealment claim. (Demurrer, pp. 12-15.)

Economic Loss Rule

GM argues that the Economic Loss Rule bars Plaintiffs' claim for fraud because it is based on the warranty contract and not on any independent duty outside of it. (Demurrer, pp. 17-19.)

Application

Plaintiffs failed to oppose the Demurrer to respond to any of the above arguments made by GM or to state that additional factual allegations may be included in the Complaint that defeat the issues regarding the statute of limitations barring the Complaint. Plaintiffs filed the Complaint on June 25, 2025,

which was almost 6 years after Plaintiffs purchased the vehicle. The defects allegedly were discovered during the warranty period. It is unclear based on the Complaint how long the warranty period was and at what point during the warranty period the alleged defects were discovered. The Court will allow Plaintiffs an opportunity amend the Complaint to cure these issues by clarifying when the defects were discovered and if the Complaint was timely brought.

CONCLUSION

Based on the foregoing, GM's demurrer is **SUSTAINED with leave to amend**. The First Amended Complaint shall be filed within 20 days of this Court's order. GM shall submit a written order on their motions to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

6. 25CV06418, Mendoza III v. Mendoza

The Court notes that Defendants filed their demurrer and motion to strike together as one motion. Doing so is improper as a demurrer and a motion to strike are two distinct motions under different sections of the Code of Civil Procedure. "Motions to strike and demurrers should be filed as separate documents." (Weil & Brown, Cal. Prac. Guide Civ. Pro. Before Trial § 7:162.1.) The Court will consider the motions on their merit in this instance, but cautions counsel against continuing this practice.

Defendants Protein Products Management LLC, Protein Products LP, and Genaro Mendoza's combined demurrer and motion to strike Plaintiff Maximo Mendoza III's Complaint is **OVERRULED** and **DENIED**. Defendants' requests for judicial notice are **GRANTED**.

I. PROCEDURAL HISTORY

Plaintiff's Complaint alleges 23 causes of action arising from a venture involving insect protein products marketed through, managed by, and overseen by Defendants. (Complaint, 3:12-15.) Plaintiff claims that he held a 33% limited partnership interest in Defendant Entities and worked full-time as an employee operating the business. (*Id.* at 3:15-17.)

Defendants filed a combined demurrer and motion to strike primarily on the basis that Plaintiff should not be considered an "employee" when the Complaint admits he was a limited partner. (Demurrer, pp. 1-3.) Prior to filing the combined motion, the parties' counsels met and conferred telephonically regarding the issues raised, but did not reach a resolution. (Judd Decl., ¶¶ 2-3.) Plaintiff filed two oppositions to the combined motion and Defendants filed replies.

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 limitations, the Court **GRANTS** judicial notice of the following:

1. The Secretary of State Certificate of Cancellation for Protein Products LP, a California limited partnership dated October 15, 2024; and
2. The Secretary of State Certificate of Cancellation for Protein Products Management, LLC, a California limited liability company dated September 9, 2024.

III. ANALYSIS

Legal Standard

Demurrer

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. (C.C.P. § 430.30(a).) At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) Similarly, opinions, speculation, or allegations contrary to law or judicially noticed facts are also disregarded. (*Coshov v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.) Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal. 4th 861, 872.) Conclusory pleadings are permissible and appropriate 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.*)

Motion to Strike

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

Combined Demurrer and Motion to Strike

Defendants demur to the entire Complaint and move to strike all references to Labor Code penalties, wage violations, and attorney's fees, because Plaintiff was not an employee so those remedies are inapplicable, to strike the requests for punitive damages and injunctive and declaratory relief, and any reference to “unpaid wages.” (Combined Motion, pp. 1-4.)

Defendants argue that Plaintiff cannot be considered an employee under the Labor Code because in the Complaint he admits he was a limited partner and LLC member-owner. (*Id.* at 5:7-11.) As the Defendant Entities were dissolved prior to the filing of the action, Defendants argue that the dissolution bars all of Plaintiff's employment-based claims because dissolved entities cannot engage in new business or employment relationships. (*Id.* at 5:11-14.) Defendants also argue that Defendant Mendoza is immune from individual liability as a manager/member. (*Id.* at 5:15-17.) Finally, Defendants argue that the punitive damages allegations are not sufficient in the Complaint because they are only conclusory. (*Id.* at 5:18-28.)

Plaintiff's Oppositions

Plaintiff argues that the demurrer should be overruled because it requests the Court to decide disputed factual and legal classification issues at the pleading stage. Plaintiff argues that California has a liberal doctrine of alternative pleading by which a plaintiff can plead inconsistent legal and factual theories where the precise nature of the facts or legal rights is uncertain. (Opposition to Demurrer, pp. 4-5.) Plaintiff also argues that California law does not treat ownership and employee status as mutually exclusive automatically citing Corporations Code section 15901.13, which recognizes that a person who holds more than one partnership capacity has the rights, powers, duties, and obligations of each capacity. (*Id.* at pp. 5-6.)

As to Defendant Mendoza's personal liability, Plaintiff argues that he can be held personally liable for the allegations of harassment, tortious conduct, and willful statutory violations stated in the Complaint. (Opposition to Demurrer, pp. 7-8.) Furthermore, Plaintiff argues that the Defendants Entities' pre-dissolution liabilities survive after winding up, and even so, the Request for Judicial notice of the cancellation of the entities does not establish completion of winding up. (*Id.* at pp. 8-9.)

As for the motion to strike, Plaintiff argues that it is procedurally defective and violations due process and fair notice. (Opposition to Motion to Strike, pp. 4-5.) Furthermore, Plaintiff argues that the motion to strike is another disguised demurrer challenging Plaintiff's wage, penalty, and restitution allegations expressly pleaded as an alternative employment theory. (*Id.* at pp. 5-6.) Finally, Plaintiff argues that the requests for punitive damages and injunctive, declaratory, accounting, and other equitable relief should be upheld at the pleading stage because on the face of the Complaint, Plaintiff has alleged sufficient facts to support these requests. (*Id.* at pp. 6-8.)

At the minimum, if the demurrer is sustained or motion to strike granted, Plaintiff requests leave to amend.

Defendants' Replies

Defendants generally reaffirm arguments made in the combined motion and argue that the alternative pleading theory does not save the Complaint which has legally defective claims.

Application

As to the demurrer in the combined motion, the Court finds that Plaintiff's alternative pleading of legal theories is allowable at the pleading stage and that Plaintiff has otherwise alleged sufficient ultimate facts for the relief requested in the Complaint.

For the same reasons, the Court does not find a sufficient basis to strike out the general categories mentioned in the motion to strike. The Court also finds that the notice of motion in the combined motion for the motion to strike is procedurally defective for the reasons argued in Plaintiff's Opposition.

IV. CONCLUSION

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