

**TENTATIVE RULINGS  
LAW & MOTION CALENDAR  
Wednesday, May 8, 2024 3:00 p.m.  
Courtroom 17 – Hon. Bradford DeMeo  
3035 Cleveland Avenue, Santa Rosa**

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

**CourtCall is not permitted for this calendar.**

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

**TO JOIN ZOOM ONLINE:**

**D17 – Law & Motion**

Meeting ID: 161 126 4123

Passcode: 062178

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

**TO JOIN ZOOM BY PHONE:**

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

+1 669 254 5252

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, **YOU MUST NOTIFY** Judge DeMeo’s Judicial Assistant by telephone at **(707) 521-6725**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom, by 4:00 p.m. the court day immediately preceding the day of the hearing.**

**1. 23CV00658, County of Sonoma v. Alvarez**

Plaintiff County of Sonoma’s (the “County”) demurrer to Defendants Ignacio and Idolina Alvarez’s (together “Defendants”) amended answer to the complaint is **SUSTAINED with leave to amend.**

Accordingly, the County's motion to strike is **DENIED** as moot due to the sustaining of the demurrer in its entirety.

### **PROCEDURAL HISTORY**

The County commenced this action against Defendants to abate public nuisances and permanently enjoin Defendants' building, grading, and zoning code violations related to unpermitted greenhouses, solar arrays, and cannabis cultivation on their property. In the Defendants' amended answer, they pleaded various affirmative defenses and they denied or admitted each allegation in the complaint or otherwise stated they did not have enough information to admit or deny it, so denied it. Finding issue with the Amended Answer, the County met and conferred with Defendants by email and telephone to resolve the issues, but the parties have not resolved these issues. The Court continued the previous hearing on the demurrer and motion to strike to allow more time to resolve the issues and to allow Defendants to file an opposition. The issues have not been resolved, but Defendants have filed an opposition.

### **DEMURRER**

#### **Legal Standard**

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

Code of Civil Procedure ("C.C.P.") section 431.30(f) allows defendants to deny allegations based upon lack of information and belief in their responsive pleadings, but such a denial will be deemed sham and evasive and may be stricken out or disregarded if the matter is within defendant's actual knowledge or defendant has the means to ascertain the truth of the matter. (*Dobbins v. Hardister* (1966) 242 Cal.App.2d 787, 791.)

#### **The County's Demurrer**

The County demurs to Defendants amended answers because: (1) they do not separately and specifically admit or deny each allegation in the Complaint, as required by C.C.P. sections 446 and 431.30; (2) they do not state facts sufficient to constitute a defense per C.C.P. section

430.20(a); and (3) they are uncertain, ambiguous, and unintelligible. (Notice of Demurrer, 2:3-7.) The County argues Defendants have failed to respond in good faith to several paragraphs in the Complaint regarding information on which Defendants have presumptive knowledge or constructive knowledge through public records, e.g., whether the County is a political subdivision of the state of California or if venue is proper in this judicial district because Defendants' own property is located there. (Demurrer, 3:8-27.) The County also finds issue with Defendants' boilerplate or inapplicable affirmative defenses, regarding which the County argues Defendants have not plead sufficient facts to support. (*Id.* at 4:8-14.)

Defendants previously submitted a declaration by their counsel stating that they are willing to continue to meet and confer regarding the amended answers because their position is that there was nothing "evasive."

Later, Defendants filed an opposition arguing that the County's public nuisance action is an "overly aggressive enforcement of local building and zoning codes." Defendants note that the County's "tactics" are the subject of federal and state court lawsuits that have become a matter of intense public concern for Sonoma County residents. As support, Defendants attached images of the Calistoga Road property and explained that it is the subject of the Alvarez Trust set up by Defendants, who are a retired elderly couple that only speak Spanish and are managing the property on their own "modest income." Defendants argue that their answers are sufficient for the purposes of the demurrer or motion to strike, but request that if the Court should sustain the demurrer and grant the motion to strike, that Defendants be allowed leave to amend.

The County filed a reply to reassert arguments made in the motion and argue that Defendants' oppositions are untimely, as the Court had ordered that the opposition be filed by April 18, 2024, but Defendants filed it on April 25, 2024.

### Application

The Court finds the demurrer was warranted. Several of Defendants' denials to allegations in the complaint were supposedly due to Defendants' lack of information. These appeared to be evasive to the Court as they related to information the Defendants had actual knowledge of or could easily have ascertained the truth of them. However, Defendants can likely cure these defects through amendment.

### **MOTION TO STRIKE**

As the Court will sustain the Demurrer in its entirety with leave to amend, the County's motion to strike is **DENIED** as moot due to the sustaining of the demurrer.

### **CONCLUSION**

The County's demurrer is **SUSTAINED with leave to amend**, and the motion to strike is **DENIED** as moot due to the sustaining of the demurrer. Defendants shall file a second amended answer within 10 days of receiving notice of entry of the order on this these motions. The County

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. SCV-268019, Tonti v. Rania**

Defendant County of Sonoma and Defendant Rania (together “Defendants”) move for summary judgment, or in the alternative summary adjudication, as to all causes of action in Plaintiff Tonti’s first amended complaint (“FAC”). Defendants’ motion for summary adjudication in the alternative is **GRANTED** as to the request for punitive damages and the cause of action for elder abuse in Plaintiff’s FAC but **DENIED** as to her causes of action for wrongful death and negligence.

**PROCEDURAL HISTORY**

Plaintiff’s FAC alleges causes of action for negligence, elder abuse, and wrongful death. Plaintiff brings this action against Defendants in her individual capacity and in her capacity as successor in interest to her father Mr. Tonti’s (“Decedent”) estate. Per Defendants’ motion, Decedent was temporarily housed under their Home Safe grant program while he searched for long-term housing. Plaintiff complains that Decedent suffered from medical issues, was low income, and over the age of 65 when entering the program. Defendants notified Decedent he needed to leave to find new housing during the height of the COVID-19 pandemic. Plaintiff claims Decedent was not left with any choice but to leave and died of a heart attack shortly after leaving the housing while in route to another city where he told Plaintiff he had found a new place to live. Decedent’s vehicle was discovered in a dirt embankment on the side of the freeway by California Highway Patrol.

According to the FAC, the combined stress of being evicted and having to make a lengthy drive to a new city with no secure housing caused him to have a heart attack. Prior to commencing this action, Plaintiff had filed a government claim with the County in her individual capacity stating she was Decedent’s heir and asserting that Defendants’ eviction of Decedent from his temporary housing was the proximate cause of his wrongful death and seeking \$1,000,000.00 in damages.

Defendants move for summary judgment, or in the alternative, summary adjudication as to all causes of action alleged in the FAC. Plaintiff opposes.

**ANALYSIS**

**Legal Standard**

*Motion for Summary Judgment or Adjudication*

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).) A party moving for summary judgment must show that the action has no merit or triable issue of fact as to the causes of action alleged. (C.C.P. § 437c(a)(1).)

If the moving party meets this initial burden, the burden shifts to the opposing party to provide sufficient evidence to raise a triable issue of fact. (C.C.P. § 437c(p)(1).) An issue of fact exists if “the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.” (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 845.) A moving party does not meet the initial burden if some “reasonable inference” can be drawn from the moving party’s own evidence which creates a triable issue of material fact. (*Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 840.)

## Defendants’ Motion

### *Government Claim*

Under the Government Claims Act, a plaintiff may not bring a claim for money or damages against a California public entity without first submitting a timely written claim to the public entity that the public entity ultimately rejected. (Govt. Code §§ 905, 945.4.) Plaintiff did file a claim stating she was Decedent’s heir and asserting he was evicted from his temporary housing. She identified her injury as her father’s wrongful death, that the “proximate cause” was the eviction and sought \$1,000,000.00 in damages. Defendants argue that Plaintiff did not file an adequate government claim as successor in interest to Decedent or personal representative for survivorship causes of action for negligence, wrongful death, or elder abuse. Defendants cite to *Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1264, in which case the court ruled that a cause of action for elder abuse brought by decedent’s personal representative could not be related back to a claim for the heir’s wrongful death cause of action because the two were distinct claims. Defendants also cite to *Nelson v. County of Los Angeles* (2003) 113 Cal.App.4th 783, in which case summary adjudication was granted in favor of the County of Los Angeles on the parent of a decedent’s survivorship causes of action based on negligence, assault, and battery. The Court of Appeal ruled in *Nelson* that the survivorship causes of action did not relate back to the written claim because plaintiff’s government claim was made in her individual capacity and not as a successor in interest. Because she did not specifically state that she was Decedent’s successor interest or personal representative, Defendants argue her claims should be barred and dismissed.

Plaintiff argues that the claim was sufficient to support the survivorship causes of action because she made them in her capacity as Decedent’s “heir.” Plaintiff points out that Decedent’s estate was disposed of via succession to his only heir, Plaintiff, long before she filed the claim to Defendants and before commencing this action. Thus, Plaintiff argues she is his successor in interest and identified herself properly as such in the claim. Plaintiff also argues that Defendants waived this defense regarding the sufficiency of her written claim because they did not give notice under Government Code section 911 of perceived defects in the claim.

The Court finds that Plaintiff sufficiently identified herself as Decedent’s heir in her written claim to Defendants and stated that at the very least she was making a claim for wrongful death based on negligence because Defendants’ actions were the “proximate cause” of Decedent’s wrongful death. From this, it can be ascertained Plaintiff was asserting survivorship causes of

action for wrongful death based on negligence. Thus, Plaintiffs' survivorship causes of action for wrongful death and negligence do relate back to the written claim and are not barred. However, the claim did not mention anything regarding elder abuse, so the Court finds that the elder abuse claim is barred and will grant summary judgment as to that cause of action for the reasons stated below.

### *Elder Abuse*

The California Welfare & Institutions Code section 15600 et seq. allows a plaintiff 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. (*Winn, supra*, 63 Cal.4th at p. 152.)

Defendants argue Plaintiff cannot meet the requirements of an elder abuse cause of action here because her claim that Decedent was evicted from the temporary housing is inaccurate. Defendant claims that the housing was only temporary accommodation for Decedent until he was able to find his own permanent housing. Defendants state that he found a permanent residence closer to his daughter in Southern California, he moved out, and he decided to drive himself to that new location in the middle of the night. Defendants also note that they did not have any authority to make any medical decisions for Decedent because that was consistent with their policy, but rather they encouraged him to seek treatment for his medical issues and provided referrals, but he refused to do so, and Defendants did not have any legal authority over Decedent to force him. Defendants note that other than providing a temporary place for him to stay until he found alternative housing, they did not accept any responsibility for his housing, transportation, healthcare, or any other basic needs.

Plaintiff argues that she has alleged enough in the FAC to establish elder abuse, or at least show that there is a triable dispute as to liability for elder abuse that is to be resolved by the factfinder. Plaintiff claims that a reasonable jury could determine that Defendants deprived Decedent of transportation and goods and services necessary to avoid physical harm or mental suffering that resulted ultimately in Decedent's homelessness, per Welfare and Institutions Code section 15610.35(a), (d), (e), and (g). Furthermore, as alleged in the FAC, Plaintiff argues there remains a triable issue of fact as to whether Defendants did evict Plaintiff in violation of a moratorium on evictions during the COVID-19 pandemic. Finally, Plaintiff argues that a reasonable jury could determine that Defendants "abandoned" Decedent and failed to exercise ordinary care in providing services to him.

While there appears to be a triable issue of fact as to whether the temporary services provided by Defendants constituted the type of caretaking and custodial relationship required for an elder abuse claim, Plaintiff failed to include this cause of action in her written claim to the County when she was claiming wrongful death of her father. For that reason, the elder abuse claim is distinct and cannot relate back to Plaintiff's written claim, so is procedurally barred from bringing that claim.

### *Wrongful Death and Negligence*

A cause of action for wrongful death is purely statutory and requires a tortious act to be alleged that caused the resulting death and damages, which include pecuniary loss suffered by plaintiff's decedent heirs. (*Barret v. Superior Court* (1990) 222 Cal.App.3d 1176, 1184; *Lattimore v. Dickey* (2015) 239 Cal.App.4th 959, 968.) If a wrongful death claim is based on the tort of negligence, then the plaintiff must allege all the elements of a negligence claim in the complaint. (*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.)

Defendants argue that because Plaintiff cannot establish elements of her cause of action on the tort of negligence, both of these claims ought to be dismissed. Defendants argue that there was no duty or standard of care for Defendants to prevent the decedent from choosing alternate housing or to travel by car at the time he did. Defendants cite to *Hernandez v. KWPH Enterprises* (2004) 116 Cal.App.4th 170, where the Court of Appeal upheld the trial court's granted summary judgment on plaintiffs' causes of action for negligence against an ambulance crew. The Court of Appeal held that the ambulance crew had no legal duty to prevent their voluntary charge from leaving their ambulance and refusing treatment. Defendants argue that they also had no legal duty of care here, so there was no resulting breach.

Plaintiff opposes arguing that negligence and negligence per se have been established here because the alleged conduct that supports Plaintiff's elder abuse claims also constitute negligence.

The Court finds that the wrongful death and negligence claims do relate back to Plaintiff's written claim to the County. Also, there remains a triable issue of fact as to whether Defendants did owe a duty of care to Plaintiff based on the services they provided while he was at the temporary housing and the information that they obtained in detail regarding his health and ongoing medical issues. The Court will deny summary judgment or adjudication as to these causes of action.

### *Punitive Damages*

Punitive damages may only be awarded on clear and convincing evidence that defendant is guilty of oppression, fraud, or malice. (Civ. Code § 3294.) The type of conduct that must be alleged must be "conceived in a spirit of mischief or with criminal indifference towards the obligations

owed to others.” (*Ebaugh v. Rabkin* (1972) 22 Cal.App.3d 891, 895.) Defendants here argue that the Plaintiff has failed to allege facts that demonstrate oppression, fraud, or malice, regarding their actions towards Decedent. Plaintiff argues that Defendants’ conduct was actually malice, and at a minimum, reckless.

The Court finds that Plaintiff has not provided clear and convincing evidence that demonstrates Defendants are guilty of oppression, fraud, or malice such that their conduct was “conceived in a spirit of mischief or with criminal indifference towards the obligations owed to others.” Defendants have shown that they encouraged Decedent to seek medical attention and gave him referrals, but that he chose not to do that. Defendants did not have legal authority to control his medical treatment. Thus, there is not enough support established to award punitive damages.

### CONCLUSION

Based on the foregoing, Defendants’ motion for summary adjudication in the alternative is **GRANTED** as to Plaintiff’s request for punitive damages and cause of action for elder abuse but **DENIED** as to Plaintiff’s causes of action for wrongful death and negligence. Defendants shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

### **3. SCV-273798, Bareilles v. North Coast Regional Water Quality Control Board**

Petitioner Bareilles’ motion for reconsideration is **DENIED**, for failure to comply with Civil Procedure (“C.C.P.”) section 1008(a) and California Rules of Court, rule 3.1308(a)(1).

Petitioner requests reconsideration of the Court’s ruling on Respondents’ demurrer by arguing that he was unaware of the Court’s tentative ruling and for that reason did not timely request oral argument. Rule 3.1308(a)(1) requires parties to notify all other parties and the Court by 4:00 p.m. on the court day before the hearing of their intention to appear and present oral argument. Petitioner failed to comply with this rule, so the Court did not hear his oral argument.

Motions for reconsideration per section 1008(a) must be based upon “new or different facts, circumstances, or law” regarding the underlying motion that moving party failed to previously offer. (*New York Times Co. v. Superior Court* (2005) 135 Cal.App.4th 206, 212.) Failure to show new facts or law is jurisdictional; a motion for reconsideration that does not offer any new fact as to the merits of the underlying motion must be denied. (*Kerns v. CSE Ins. Group* (2003) 106 Cal.App.4th 368, 380; *Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, 1500.)

As Petitioner has failed to state any new or different facts that warrant reconsideration, the Court does not have jurisdiction to grant reconsideration. Petitioner’s motion is therefore **DENIED**. Respondents 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).