

**PLACER COUNTY SUPERIOR COURT
CIVIL LAW AND MOTION TENTATIVE RULINGS
FRIDAY, SEPTEMBER 25, 2020, AT 8:30 A.M.**

These are the tentative rulings for civil law and motion matters set at **8:30 a.m., Friday, September 25, 2020**. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., Thursday, September 24, 2020**. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE MICHAEL W. JONES** and if oral argument is requested, it will be heard on **Friday, October 2, 2020** at 8:30 a.m. in Department 3, located at 101 Maple Street, Auburn California.

PLEASE NOTE: TELEPHONIC APPEARANCE IS REQUIRED FOR ALL CIVIL LAW AND MOTION MATTERS. (Emergency Local Rule 10.28; see also Local Rule 20.8.) More information is available at the court's website: www.placer.courts.ca.gov.

1. M-CV-0073177 LVNV Funding, LLC vs. Kocsis, Sandra

*Please note: If oral argument is requested, it will be heard on **Friday, October 2, 2020** at 8:30 a.m. in Department 3.*

Plaintiff's motion deeming requests for admissions admitted is granted. The matters set forth in plaintiff's request for admissions, set one, are deemed admitted by defendant Sandra Kocsis.

2. S-CV-0035805 Verdera Community Association vs. Kan, Johnny

*Please note: If oral argument is requested, it will be heard on **Friday, October 2, 2020** at 8:30 a.m. in Department 3.*

Plaintiff's motion to lower minim bid requirements for execution of sale of real property is denied.

Following plaintiff's application pursuant to Code of Civil Procedure sections 704.740 *et seq.*, an order to show cause was set for hearing on July 17, 2020. In plaintiff's application, and at the order to show cause hearing, plaintiff presented evidence

regarding an existing homestead exemption and the fair market value of the property. The court found that the property was subject to a homestead exemption in the amount of \$75,000, and that the fair market value of the property was \$1,100,000. The court also found that a successful bid for purchase of the property must exceed 90% of the fair market value, or the property could not be sold. The order for sale was entered by the court on August 7, 2020.

Plaintiff now asks the court to issue a new order for sale which finds that the homestead exemption does not apply to the property, and the home may be sold pursuant to Code of Civil Procedure section 701.510. However, plaintiff does not demonstrate compliance with any procedural requirements related to obtaining a new order for sale of real property, or the setting of an order to show cause at which determinations regarding the homestead exemption and the order for sale are made. See Code Civ. Proc. § 704.780. The request for a new order for sale is denied.

Plaintiff alternatively requests that the court lower the minimum bid requirement pursuant to Code of Civil Procedure section 704.800(b)(2), which states:

If no bid is received at the sale of a homestead pursuant to a court order for sale that is 90 percent or more of the fair market value determined pursuant to Section 704.780, the homestead shall not be sold unless the court, upon motion of the judgment creditor, does one of the following:

...

(2) Makes a new order for sale of the homestead.

Plaintiff submits no evidence showing that it failed to receive a bid at the sale of the homestead in an amount that was 90 percent or more of the fair market value for the property previously determined by the court. Absent such evidence, plaintiff fails to demonstrate that the bid requirement may be lowered pursuant to Section 704.800(b)(2).

3. S-CV-0039327 Andrichuk, Petr, et al vs. Clear Recon Corp, et al

The scheduled hearing is dropped as no moving papers were filed with the court.

4. S-CV-0040437 Deuschel, Laurie A. vs. Clear Point Financial Group, Inc., et al

*Please note: If oral argument is requested, it will be heard on **Friday, October 2, 2020** at 8:30 a.m. in Department 3.*

City of Rocklin's Demurrer to First Amended Complaint

Defendant City of Rocklin ("the City") demurs to the first amended complaint.

A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or the accuracy of

the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The court assumes the truth of all facts properly pleaded, and accepts as true all facts that may be implied or reasonably inferred from facts expressly alleged, unless they are contradicted by judicially noticed facts. *Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6. The court does not assume the truth of contentions, deductions, or conclusions of facts or law. *Id.*

The City's demurrer is sustained. Plaintiff fails to allege compliance with the claims presentation requirements of the Government Claims Act. Further, based on the allegations of the first amended complaint, the City is immune from liability under Government Code sections 818.4, 818.6 and 815. While plaintiff argues that a public entity may be liable for failure to discharge a mandatory duty notwithstanding statutory immunity, the first amended complaint does not allege the discharge of a mandatory duty.

Plaintiff is granted leave to amend. The second amended complaint shall be filed and served on or before October 16, 2020.

Pacific Gas and Electric Co.'s Demurrer to First Amended Complaint

Defendant Pacific Gas and Electric Co. ("PG&E") demurs to the first amended complaint.

A party may demur to a complaint where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or the accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The court assumes the truth of all facts properly pleaded, and accepts as true all facts that may be implied or reasonably inferred from facts expressly alleged, unless they are contradicted by judicially noticed facts. *Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6. The court does not assume the truth of contentions, deductions, or conclusions of facts or law. *Id.*

PG&E's demurrer is sustained. While the allegations of the first amended complaint are somewhat unclear and confusing, it appears that plaintiff seeks damages for trespass or nuisance based on the presence of an overhead electrical drop service line overhanging her property, the placement of an electrical service line on co-defendants' property, and the issuance of a permit to co-defendants to perform work on co-defendants' property. With respect to a claim arising from a service line which plaintiff admits existed on her property when she bought it in 1986, the applicable statute of limitations bars any claim for nuisance or trespass. *Spaulding v. Cameron* (1952) 38 Cal.2d 265, 267; Code Civ. Proc. § 338(b). As for allegations regarding a service line on adjacent property, or permits issued for work to be performed on adjacent property, plaintiff fails to allege trespass. As for her private nuisance claim, she fails to allege unreasonable interference with her use and enjoyment of her land, resulting in substantial actual damage. *Monks v. City of Rancho Palos Verdes* (2008) 167 Cal.App.4th 263, 302-303.

Plaintiff's cause of action for intentional infliction of emotional distress also fails to allege sufficient facts to constitute a valid cause of action. To allege this claim, plaintiff must allege "extreme and outrageous conduct," meaning conduct "so extreme as to exceed all bounds of that usually tolerated in a civilized community." *Schlauch v. Hartford Acc. & Indemnity Co.* (1983) 146 Cal.App.3d 926, 936. The allegations of the first amended complaint fail to describe conduct that is "so extreme as to exceed all bounds of that usually tolerated in a civilized community."

Plaintiff is granted leave to amend. The second amended complaint shall be filed and served on or before October 16, 2020.

5. S-CV-0041083 Alizadeh, Azita vs. Gill, John

*Please note: If oral argument is requested, it will be heard on **Friday, October 2, 2020** at 8:30 a.m. in Department 3.*

Defendants' motion to enforce settlement is granted.

The parties to this action executed a written settlement agreement on or about August 23, 2019. Pursuant to the terms of the settlement agreement, plaintiff agreed to execute and file a dismissal with prejudice of the action within five days. The parties also agreed that defendants would convey the subject property to plaintiff in exchange for payment of \$405,000 within 90 days. The agreement provided that the deadline for payment could be extended for an additional 120 days by plaintiff's payment of non-refundable extension fees by certain dates.

On or about February 20, 2020, the parties executed a formal, typewritten settlement agreement which confirmed the terms of the prior settlement agreement, with minor modifications. In the formal agreement, plaintiff agreed to request dismissal of the action on or before August 30, 2019.

Plaintiff has never taken steps to dismiss this action. Plaintiff made the extension payments as set forth in the settlement agreement, but failed to make payment of the purchase price by the extended deadline set forth in the agreement. Thus defendants' obligation to deliver the subject property to plaintiff never came due. In opposition, plaintiff claims that defendant breached the agreement by leaving a "for sale" sign on the property until some time in November 2019, that defendant John Gill otherwise suggested that he would be willing to work with plaintiff to allow her to obtain the property, and that plaintiff was prevented from obtaining funding to purchase the property due to circumstances beyond her control.

Even if plaintiff's assertions were supported by competent evidence, which they are not, they would not excuse her failure to perform her agreement to dismiss the action, which she confirmed twice in writing. This agreement was not dependent on plaintiff's ability to finance purchase of the property, and should have occurred long before the deadline to complete the purchase expired.

Based on the foregoing, defendants' motion to enforce is granted. Plaintiff's complaint is hereby dismissed with prejudice.

6. S-CV-0041537 Samborsky, Renee vs. First Technology Federal Credit Union

Motion to be Relieved as Counsel and to Discover Names and Contact Information

The motion to be relieved as counsel and to discover names and contact information of putative class members is continued to October 16, 2020, at 8:30 a.m. in Department 3.

Order to Show Cause

The order to show cause re dismissal is continued to October 16, 2020, at 8:30 a.m. in Department 3.

7. S-CV-0042357 King, Ted Arthur vs. Tarver, Russell Lee

The motion for trial preference is continued to October 2, 2020, at 8:30 a.m. in Department 3 to be heard with defendant's motion to compel.

8. S-CV-0042903 Boas, Greg A. vs. Ford Motor Company, et al

Please note: If oral argument is requested, it will be heard on Friday, October 2, 2020 at 8:30 a.m. in Department 3.

Plaintiff's motion to compel further responses to request for production of documents is denied.

Plaintiff does not make a sufficient showing that he informally attempted to resolve this matter with defendant prior to filing the motion. Code Civ. Proc. §§ 2030.300(b)(1), 2016.040. "A meet and confer declaration in support of a motion shall state facts showing a reasonable and good faith attempt at informal resolution of each issue presented in the motion." Code Civ. Proc. § 2016.040. This is not a pro forma requirement. The statute requires the parties to seriously engage in negotiations and informal resolution. *Townsend v. Superior Court* (1998) 61 Cal.App.4th 1431, 1438. The engagement involves communication between the parties to discuss the dispute; compare their views; consult; and deliberate. *Id.* at 1439.

In this case, plaintiff's counsel sent a single meet and confer letter regarding the subject responses on June 30, 2020. Defense counsel substantively responded on July 22, 2020, and also requested and offered available times for further telephonic meet and confer. Plaintiff's counsel did not respond to this letter before filing the instant motion to compel. Such actions do not demonstrate an effort to seriously engage in negotiations and informal resolution prior to filing the motion.

Additionally, plaintiff fails to demonstrate good cause for production. A motion to compel further responses to requests for production “shall set forth specific facts showing good cause justifying the discovery sought by the demand.” Code Civ. Proc. § 2031.310(b)(1); *Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98. This is a higher standard than relevance, as plaintiff must also set forth specific facts justifying discovery, for example, why such information is necessary for trial preparation or to prevent surprise at trial. *Glenfed Dev. Corp. v. Superior Court* (1997) 53 Cal.App.4th 1113, 1117.

The declaration of Amy Morse states generally that after plaintiff purchased his vehicle, he “began to experience issues with the vehicle’s engine.” Ms. Morse also contends that defendant was unable to conform the vehicle to its applicable warranties although the vehicle was delivered to a repair facility on numerous occasions. These facts, which are contradicted by evidence submitted by defendant, do not support the conclusion that the wide breadth of documents sought by the discovery requests at issue are necessary for trial preparation or to prevent unfair surprise at trial.

9. S-CV-0043237 Calder, Robin Elizabeth vs. Jarvis, Todd

The motion for leave to amend is continued to October 16, 2020, at 8:30 a.m. in Department 3.

10. S-CV-0043547 Wells Fargo Bank, N.A. vs. Sentient Law Group L.P., et al

The scheduled hearing is dropped as no moving papers were filed with the court.

11. S-CV-0044339 Cornacchioli, Rachael, et al vs. Ramsden, Susan, et al

Please note: If oral argument is requested, it will be heard on Friday, October 2, 2020 at 8:30 a.m. in Department 3.

Defendants Susan Ramsden and Comprehensive Medical, Inc. demur to plaintiffs’ complaint.

A party may demur where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the allegations or the accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The allegations in the pleadings are deemed true no matter how improbable they may seem. *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.

The demurrer is sustained as to the first cause of action for professional negligence alleged by plaintiff Linda Clayton (“Clayton”). Plaintiffs fail to allege facts which support the conclusion that it was foreseeable that Clayton would be harmed by defendants’ actions with respect to drug testing results for Clayton’s adult daughter,

plaintiff Rachael Cornacchioli (“Cornacchioli”), and thus fail to adequately allege a duty of care owed to Clayton.

The demurrer is sustained as to Clayton’s second cause of action for gross negligence. For the reasons set forth above, Clayton fails to allege a duty of care owed to her by defendants. The demurrer is overruled as to Cornacchioli’s second cause of action for gross negligence, as California law recognizes a distinction between ordinary negligence and gross negligence. *See Rosencrans v. Dover Images, Ltd.* (2011) 192 Cal.App.4th 1072, 1082.

The demurrer sustained as to plaintiffs’ third cause of action for negligent infliction of emotional distress, as plaintiffs indicate that they will withdraw this claim. The demurrer is sustained as to plaintiffs’ fourth cause of action for intentional infliction of emotional distress. Plaintiffs do not allege facts showing outrageous conduct and intention to cause, or reckless disregard of the probability of causing, emotional distress.

The demurrer is sustained as to plaintiffs’ fifth cause of action for breach of confidentiality. Plaintiffs do not allege facts showing that drug testing results were released to any unauthorized person.

Finally, the demurrer is sustained as to plaintiffs’ sixth cause of action for breach of fiduciary duty. A fiduciary relationship “ordinarily arises where a confidence is reposed by one person in the integrity of another, and in such a relation the party in whom the confidence is reposed, if he voluntarily accepts or assumes to accept the confidence, can take no advantage from his acts relating to the interest of the other party without the latter’s knowledge or consent....” *Hebert v. Lankdershim* (1937) 9 Cal.2d 409, 483. Inherent in fiduciary relationships “is the duty of undivided loyalty the fiduciary owes to its beneficiary, imposing on the fiduciary obligations far more stringent than those required of ordinary contractors.” *Wolf v. Superior Court* (2003) 130 Cal.App.4th 25, 30. Plaintiffs do not allege facts supporting the existence of a fiduciary relationship with defendants.

Plaintiffs are granted leave to amend. Any amended complaint shall be filed and served on or before October 16, 2020.

12. S-CV-0044477 Dokimos, Steven vs. PNC Bank, National Association

*Please note: If oral argument is requested, it will be heard on **Friday, October 2, 2020** at 8:30 a.m. in Department 3.*

Defendant’s request for judicial notice is granted.

Defendant PNC Bank, N.A. demurs to plaintiffs’ first amended complaint.

A party may demur where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of

the pleadings, not the truth of the allegations or the accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The allegations in the pleadings are deemed true no matter how improbable they may seem. *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.

The demurrer is sustained. Plaintiffs allege two causes of action under Civil Code section 2923.6(d) and (e). The statute states in relevant part:

(d) If the borrower's application for a first lien loan modification is denied, the borrower shall have at least 30 days from the date of the written denial to appeal the denial and to provide evidence that the mortgage servicer's determination was in error.

(e) If the borrower's application for a first lien loan modification is denied, the mortgage servicer, mortgagee, trustee, beneficiary, or authorized agent shall not record a notice of default or, if a notice of default has already been recorded, record a notice of sale or conduct a trustee's sale until the later of:

(1) Thirty-one days after the borrower is notified in writing of the denial.

(2) If the borrower appeals the denial pursuant to subdivision (d), the later of 15 days after the denial of the appeal or 14 days after a first lien loan modification is offered after appeal but declined by the borrower, or, if a first lien loan modification is offered and accepted after appeal, the date on which the borrower fails to timely submit the first payment or otherwise breaches the terms of the offer.

By its terms, Civil Code section 2923.6(d) and (e) apply where a borrower has submitted an application for a first lien loan modification. In this case, although plaintiffs allege submission of a first lien loan modification application, recorded documents demonstrate that plaintiffs were previously granted a loan modification, and have defaulted on the terms of the loan modification. (Def't. RJN, Exh. 6.) The statute applies only to first lien loan modifications, and permits the mortgage servicer, mortgagee, trustee, beneficiary or authorized agent to record a notice of default or notice of sale, or conduct a trustee's sale, where the borrower accepts a written first lien loan modification, but defaults thereon. Civ. Code § 2923.6(c)(3). As plaintiffs' claims do not arise from a first lien loan modification application, but rather a modification application following plaintiffs' default on a prior loan modification, Civil Code section 2923.6 does not provide a basis for the claims.

Plaintiffs bear the burden of demonstrating how the complaint may be amended to cure the defects therein. *Assoc. of Comm. Org. for Reform Now v. Dept. of Indus. Relations* (1995) 41 Cal.App.4th 298, 302. A demurrer shall be sustained without leave to amend absent a showing that a reasonable possibility exists that the defects can be cured by amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. Plaintiffs do not describe any manner in which the complaint could be amended to cure the identified defect. Accordingly, leave to amend is denied.

13. S-CV-0044747 Francis, Robert Duane Jr. vs. Yakovlev, Vlad, et al

Please note: If oral argument is requested, it will be heard on Friday, October 2, 2020 at 8:30 a.m. in Department 3.

Plaintiff's motion to transfer venue is granted. The action shall be transferred to Sacramento County Superior Court upon plaintiff's payment of the transfer fees under Code of Civil Procedure section 399.

14. S-CV-0044907 Ahlquist, Maxwell vs. Placer Union High School District, et al

Please note: If oral argument is requested, it will be heard on Friday, October 2, 2020 at 8:30 a.m. in Department 3.

Defendants' request for judicial notice is granted. Defendants' objections to evidence are sustained.

Defendants Placer Union High School District and Greg Kelderman (collectively "PUHSD") demur to plaintiff's complaint.

A party may demur where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the allegations or the accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The allegations in the pleadings are deemed true no matter how improbable they may seem. *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.

Plaintiff alleges that he was severely injured while participating in the "Southwest Summer Trip", a program run through the Placer Union High School District and Del Oro High School. The Southwest Summer Trip is a voluntary, extracurricular trip lasting approximately one month where students "study land and water issues of the Southwest United States, along with photography and outdoor education." (Complaint, ¶ 8.) The 2019 program for the trip included travel to Parker Lake, Mono Lake, Rock Creek, Death Valley, Las Vegas, the Valley of Fire, Bryce Canyon National Park, Moab, the Colorado River, Lake Powell, the Glenn Canyon Dam, the Grand Canyon, Havasu Falls, Zion National Park and Yosemite National Park, and participation in activities including camping, hiking, and rafting. (Id., ¶¶ 10, 12.) As part of the trip, plaintiff and the other students participated in a six-day rafting experience on the Green River in Utah, during which one of the tour guides set up an activity whereby a raft was flipped over on the edge of the river to act as a "slip and slide". Plaintiff, while sliding into the river on the make shift "slip and slide", struck his head on the river bottom, resulting in catastrophic injuries. (Id., ¶¶ 13-21.) Plaintiff alleges claims of negligence and failure to warn against PUHSD.

PUHSD asserts that plaintiff's claims are barred by Education Code section 35330. Pursuant to Education Code section 35330, all persons making a "field trip" or

“excursion” in connection with a course of instruction or school-related activities “shall be deemed to have waived all claims against the district”. “‘Field trip’ is defined as a visit made by students and usually a teacher for purposes of first hand observation (as to a factory, farm, clinic, museum). ‘Excursion’ means a journey chiefly for recreation, a usual brief pleasure trip, departure from a direct or proper course, or deviation from a definite path.” *Barnhart v. Cabrillo Community College* (1999) 76 Cal.App.4th 818, 828, quoting *Castro v. Los Angeles Board of Education* (1976) 54 Cal.App.3d 232, 236, fn. 1. Plaintiff disputes that the Southwest Trip can be characterized as a field trip, asserting that it was a summer education program akin to a summer camp.

The court finds that based on the allegations of the complaint, the Southwest Trip constituted a field trip pursuant to Education Code section 35330. As plaintiff alleges, the Southwest Trip was a voluntary school-sponsored extra-curricular activity whereby the students were to visit various locations for the purpose of first hand observation, thus falling within the definition of a field trip as described in *Castro* and *Barnhart, supra*. Accordingly, plaintiff is deemed to have waived all claims against PUHSD.

Plaintiff argues that Education Code section 44808 provides an exception to immunity. Under Education Code section 44808:

... no school district ... shall be responsible or in any way liable for the conduct or safety of any pupil of the public schools at any time when such pupil is not on school property, unless such district, board, or person has undertaken to provide transportation for such pupil to and from the school premises, has undertaken a school-sponsored activity off the premises of such school, has otherwise specifically assumed such responsibility or liability or has failed to exercise reasonable care under the circumstances.

As the court finds that the special “field trip” provisions of Education Code section 35330 apply, such provisions control over the more general provisions of Education Code section 44808. *Wolfe v. Dublin Unified School Dist.* (1997) 56 Cal.App.4th 126, 135. “[W]here two statutes treat of the same subject, one being special and the other general, unless they are irreconcilably inconsistent ... the special act will prevail in its applicable to the subject matter as far as coming within its particular provisions...” *Id.*, quoting *People v. Pacific Imp. Co.* (1900) 130 Cal. 442, 445-446. Thus it has been held that “[s]tudents who are off of the school’s property for required school purposes are entitled to the same safeguards as those who are on school property, within supervisory limits. Students who participate in non-required trips or excursions, though possibly in furtherance of their education but not as required attendance, are effectively on their own; the voluntary nature of the event absolves the district of liability.” *Castro v. Los Angeles Board of Education, supra*, 54 Cal.App.3d at 236.

Plaintiff further argues that Education Code section 35330 should not exculpate PUHSD from gross negligence, which has been defined as “the want of even scant care.” *Van Meter v. Bent Construction Co.* (1956) 46 Cal.2d 588, 594. Plaintiff cites to case law

holding that “an agreement purporting to release liability for future gross negligence ... violates public policy and is unenforceable.” *City of Santa Barbara v. Superior Court* (2007) 41 Cal.4th 747, 777. However, the instant case does not involve a release agreement signed by the parties, but rather a statute enacted by the Legislature. Plaintiff cites no case law holding that the Legislature would be prevented from enacting legislation which limited liability for future gross negligence. As noted in *City of Santa Barbara*, numerous California statutes confer limited immunity for negligence, while expressly exempting immunity for gross negligence. *Id.* at 766. If the Legislature intended to exempt a gross negligence claim from the immunity provided by Education Code section 35330, it easily could have included the same type of language found in other statutes where such a distinction is made. Instead, Education Code section 35330 bars “all claims” against the district “for injury, accident, illness, or death occurring during or by reason of the field trip or excursion”, without exceptions. “All claims” necessarily includes a claim for gross negligence.

Finally, plaintiff asserts that PUHSD is liable under Government Code sections 815.2 and 820. Government Code section 820 states, “[e]xcept as provided by statute (including Section 820.2), a public employee is liable for injury caused by his act or omission to the same extent as a private person. Government Code section 815.2(b) states that “[e]xcept as otherwise provided by statute, a public entity is not liable for an injury resulting from an act or omission of an employee of the public entity where the employee is immune from liability.” As the court finds that Education Code section 35330 provides immunity to PUHSD, the cited Government Code sections, by their express terms, do not provide for liability.

Based on the foregoing, PUHSD’s demurrer to complaint is sustained. The remaining issue is whether leave to amend should be granted. Plaintiff bears the burden of demonstrating how the complaint may be amended to cure the defects therein. *Assoc. of Comm. Org. for Reform Now v. Dept. of Indus. Relations* (1995) 41 Cal.App.4th 298, 302. A demurrer shall be sustained without leave to amend absent a showing that a reasonable possibility exists that the defects can be cured by amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. In this case, plaintiff does not demonstrate that the complaint could be amended to allege viable claims against PUHSD. Accordingly, the demurrer is sustained without leave to amend.

15. S-CV-0045037 Lucero, Jennifer, et al vs. Dudley, Matthew Thomas, et al

Defendants and cross-complainants’ motion to appoint referee and for entry of interlocutory judgment is dropped in light of the parties’ submission of a stipulation and proposed order seeking the same relief.

16. S-CV-0045069 LCR Asset Management, LLC vs. Dahl, John

Please note: If oral argument is requested, it will be heard on Friday, October 2, 2020 at 8:30 a.m. in Department 3.

Defendant's request for judicial notice is granted.

Defendant John Dahl demurs to plaintiff's complaint, which alleges a single cause of action for breach of contract.

A party may demur where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the allegations or the accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The allegations in the pleadings are deemed true no matter how improbable they may seem. *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.

Defendant argues that the statute of limitations bars plaintiff's claim. In order to sustain a demurrer based on the statute of limitations, the running of the statute must appear "clearly and affirmatively" from the face of the complaint. *Committee for Green Foothills v. Santa Clara County Board of Supervisors* (2010) 48 Cal.4th 32, 42. Defendant cites no authority for the proposition that the statute of limitations for breach of a secured instrument begins to run once the instrument is no longer secured. As noted by plaintiff, when an instrument is payable in installments, the cause of action on each installment accrues on the day each installment is payable. *Bank of America v. McLaughlin* (1957) 152 Cal.App.2d Supp. 911, 915. In this case, the allegations of the first amended complaint do not establish "clearly and affirmatively" that the statute of limitations bars plaintiff's claim for breach of contract.

Defendant's demurrer is overruled. Defendant shall file and serve his answer to the complaint on or before October 16, 2020.

17. S-PR-0010311 In re Huguette N. Burnett Revocable Trust

This tentative ruling is issued by Commissioner Glenn M. Holley. If oral argument is requested, it will be heard Friday, September 25, 2020, at 8:30 a.m. in Department 40 (together with the probate calendar). Department 40 is located in the Hon. Howard G. Gibson Courthouse at 10820 Justice Center Drive, Roseville.

Demurrer to petition to surcharge trustee and for other relief

Respondents Gregory Beyer, Esq. and Beyer, Pongratz and Rosen ("BPM") demur to the second, fourth, and fifth causes of action in the petition for negligence, intentional misrepresentation, and conversion.

A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. *Picton v. Anderson Union High School* (1996) 50 Cal.App.4th 726, 733. All properly pleaded facts are assumed to be true as well as those that are judicially noticeable. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1153.

The demurrer to the second cause of action for negligence is overruled. Respondents argue that the negligence claim fails as the allegations do not establish any duty to petitioner and that any alleged wrongdoing comprises only the provision of legal counsel to the trustee, which does not give rise to liability to petitioner. They argue that the allegations do not implicate an estate planning attorney's duties to a donor's intended beneficiaries because there is no allegation that settlor's intentions were frustrated or petitioner's legacy was lost by counsel's negligence. The petition alleges that Beyer inserted himself into trust administration through the restatement, which empowered him to name the successor trustee upon settlor's death, and that he abused this fiduciary power to name respondent Alex Beyer, his son, to a potentially lucrative trustee position with the immediate result that trustee retained Beyer and BPM as counsel—itself a potentially lucrative retention. The petition further alleges that, acting in concert from the time of trustee's appointment, respondents and the trustee continually engaged in unnecessary actions and / or overcharged the trust for services. These allegations sufficiently allege a duty on the part of Beyer and BPM at least with respect to appointment of the successor trustee, breach of that duty, and resulting harm.

Respondents allege the claims of intentional misrepresentation and conversion are each insufficiently pleaded in their own right and are subject to demurrer because of petitioner's failure to comply with the prefiling requirements of Civ.C. § 1714.10.

The fourth cause of action for intentional misrepresentation is insufficiently pleaded; however, the claim is not subject to the prefiling requirements of Civ.C. § 1714.10. A claim of intentional misrepresentation requires specific pleading as to the fraudulent statements made, when and by whom they were made, and other elements of the claim. The allegations at ¶¶ 40 and 41 of the petition are imprecise and allege only generally that respondents "represented to Petitioner that they and the Trust needed to borrow certain funds from Petitioner . . . to make certain repairs" to trust property, and that statements about "the conditions of the properties, the need for the funds, the need for repairs, and the intended use of the funds" were false. These broad allegations are too vague and imprecise to sufficiently allege intentional misrepresentation by Beyer or BPM. Further, fraud claims are not generally subject to Civ.C. § 1714.10. See *Klotz v. Milbank, Tweed, Hadley & McCloy* (2015) 238 Cal.App.4th 1339, 1349 (the Legislature did not intend the "gratuitously destructive result" that "otherwise exempt causes of action for actual fraud" be dismissed under § 1714.10 whenever conspiracy is alleged, citing *Alden v. Hindon* (2003) 110 Cal.App.4th 1502, 1508).

The demurrer to the fifth cause of action for conversion is sustained. Conversion of money is actionable where "a specific, identifiable sum [is] involved," as here. *PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP* (2007) 150

Cal.App.4th 384, 395. Actionable conversion of money "typically involve[s] those who have misappropriated, commingled, or misapplied specific funds held for the benefit of others." *PCO, Inc.*, at 396. The petition alleges that petitioner provided \$20,000 to the trust at respondents' urging, but respondents instead misapplied the funds to inappropriate purposes. However, the petition also alleges that the funds were a loan to the trust to be used for trust administration purposes. Petitioner complains that he was misled as to those purposes, but that is not sufficient to allege conversion, particularly where there are no allegations that the trust's obligation to repay the loan has been impaired.

The demurrer is overruled as to the second cause of action for negligence. The demurrer is sustained with leave to amend as to the fourth cause of action for intentional misrepresentation. The demurrer is sustained as to the fifth cause of action for conversion without leave to amend.

Motion to strike

The motion to strike is denied as to the fourth causes of action in light of the ruling on the demurrer. The motion to strike is denied as moot as to the fifth cause of action for conversion in light of the ruling on the demurrer.

Amended petition

Any amended petition shall be filed within 20 days of the court's ruling on the demurrer.
