1. 23CV2246 BANK OF AMERICA, N.A. v. SETELE

Motion to Deem Requests for Admissions Admitted

On January 19, 2024, Plaintiff served a Request for Admissions (RFA") on Defendant as part of discovery in this lawsuit. Responses to the RFA were due on February 23, 2024.[1] Defendant has not yet responded to this discovery. Plaintiff has filed this motion seeking to have the matters specified in the RFA deemed admitted, and served notice of the motion on Defendant by mail on May 9, 2024. Defendant has not responded to the motion.

Code of Civil Procedure § 2033.280 addresses the failure to respond to requests for admissions:

> If a party to whom requests for admission are directed fails to serve a timely response, the following rules apply:
>
> (a) The party to whom the requests for admission are directed waives any objection to the requests, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:
>
> (1) The party has subsequently served a response that is in substantial compliance with Sections 2033.210, 2033.220, and 2033.230.
>
> (2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.
>
> (b) The requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for a monetary sanction under Chapter 7 (commencing with Section 2023.010).
>
> (c) The court shall make this order, unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220. It is mandatory that the court impose a

[1] With the exception of unlawful detainer actions, "[w]ithin 30 days after service of requests for admission, the party to whom the requests are directed shall serve the original of the response to them on the requesting party, and a copy of the response on all other parties who have appeared, unless on motion of the requesting party the court has shortened the time for response, or unless on motion of the responding party the court has extended the time for response." Code of Civil Procedure § 2033.250(a).

> monetary sanction under Chapter 7 (commencing with Section 2023.010) on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion.

The court finds good cause to grant the motion. The court notes that Plaintiff has not included a request for a specific amount of sanctions. As such, the court reserves over the amount of sanctions to the time of trial.

TENTATIVE RULING #1:

PLAINTIFF'S MOTION TO DEEM ADMITTED THE MATTERS SPECIFIED IN THE REQUESTS FOR ADMISSION IS GRANTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

2. PC20210186 KLINGER v. COLOMA COTTAGES, ET AL

Good Faith Settlement

Defendants Anupam Chandola and American Whitewater Expeditions, Inc. dba American River Rafting (collectively referred to as "ARR") reached a proposed settlement with Plaintiff, The settlement includes the following terms: ARR's insurance company will pay Plaintiff $600,000.00; Plaintiff will release and discharge ARR pursuant to the terms of the Settlement Agreement, including, but not limited to, release of any liens (including Medicare); and Plaintiff to provide a Civil Code section 1542 waiver of all claims.

ARR requests the court to take judicial notice of Plaintiff's Complaint, Defendant and Cross-Complainant Coloma Cottages' Cross-Complaint, Cross-Complainant Danika McLean's Cross-Complaint and Plaintiff's First Amended Complaint. Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. While Section 451 provides a comprehensive list of matters that must be judicially noticed, Section 452 sets forth matters which *may* be judicially noticed. A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453. <u>ARR's Request for Judicial Notice is granted.</u>

ARR and Plaintiff request approval of that settlement by the court pursuant to Code of Civil Procedure § 877.6, the pertinent provisions of which are reproduced below:

> (a)(1) Any party to an action in which it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, ...
>
> * * *
>
> (b) The issue of the good faith of a settlement may be determined by the court on the basis of affidavits served with the notice of hearing, and any counter affidavits filed in response, or the court may, in its discretion, receive other evidence at the hearing.
>
> (c) A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault.
>
> (d) The party asserting the lack of good faith shall have the burden of proof on that issue.

<u>Standard of Review</u>

The California Supreme Court defined the analysis required in applying Code of Civil Procedure § 877.6 in the case of *Tech-Bilt, Inc. v. Woodward-Clyde & Assocs*., 38 Cal. 3d 488 (1985). The Court established the following factors to be considered by a trial court in determining whether to approve a proposed settlement meets the "good faith" standard, which is to be made on the basis of information available at the time of settlement:

(1) The amount paid in settlement;
(2) The allocation of settlement proceeds among plaintiffs;
(3) Whether the amount of the settlement is within the reasonable range of the settling tortfeasor's proportional share of comparative liability for the plaintiff's injuries, which requires "a rough approximation of plaintiffs' total recovery and the settlor's proportionate liability"; this settlement amount must not be "grossly disproportionate to what a reasonable person, at the time of settlement, would estimate the defendant's liability to be." [1] *Tech-Bilt* at 499.
(4) A recognition that a settlor should pay less in settlement than he would if he were found liable after a trial.
(5) The financial conditions and insurance policy limits of settling defendants,
(6) The existence of collusion, fraud, or tortious conduct aimed to injure the interests of nonsettling defendants.

The determination as to whether a settlement is in good faith is a matter left to the discretion of the trial court. *Tech-Bilt, at* 502. This evaluation requires a sufficient evidentiary basis, through affidavits, declarations and other evidence to allow the court to make findings to support the exercise of its discretion in approving or disapproving the proposed settlement. These findings must be supported by substantial evidence. *Toyota Motor Sales U.S.A., Inc. v. Superior Ct.,* 220 Cal. App. 3d 864, 871 (1990). It is an abuse of discretion for the trial court to find a good faith settlement where there is insufficient evidence presented on the issues to be considered, and a continuance may be required for the purpose of gathering further evidence if there is not sufficient information already in the record before the court*. City of Grand Terrace v. Superior Ct.*, 192 Cal. App. 3d 1251, 1264-1265 (1987).

In determining "a rough approximation" of the total amount of Plaintiff's damages, it is not sufficient to reply on the amount stated in the Complaint. *West v. Superior Ct.,* 27 Cal. App. 4th 1625, 1636 (1994), citing *Horton v. Superior Ct.,* 194 Cal. App. 3d 727, 735, (1987).

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[1] "The party asserting the lack of good faith, who has the burden of proof on that issue . . . , should be permitted to demonstrate, if he can, that the settlement is so far "out of the ballpark" in relation to these factors as to be inconsistent with the equitable objectives of the statute. Such a demonstration would establish that the proposed settlement was not a "settlement made in good faith" within the terms of section 877.6." Tech-Bilt at 499-500.

Plaintiff suffered significant injuries, including a traumatic brain injury, spleen injury, skull fracture, facial fractures, nerve damage, numbness and pressure in her head, face, teeth, and mouth, fractured teeth, broken ribs, cartilage tears, scarring on her face and knee, migraines, memory loss, difficulties with motor functions including speech, memory, spelling, word recall, high blood pressure, weight gain, and extreme sensitivity to light and sound. (Memo P&A ¶G) Plaintiff claims medical expenses in excess of $1.6 million of which $956,762 has been paid by Plaintiff, her insurance and CAP plan, approximately $50,000 per year for lost wages, and unspecified damages for loss of earning capacity and future medical costs. (Memo P&A ¶G)

Following evaluation by multiple consultants and experts, and pursuant to settlement discussions, Plaintiff issued a 998 Offer in the amount of $600,000, which ARR agreed to. (Memo P&A ¶I) If required by the Court, the settling parties propose an allocation of $450,000 for non-economic damages and $150,000 for economic damages. (Lampe Decl. ¶8)

Defendants Coloma Cottages and Twenty10Limited, LLC (collectively referred to as "Cottages") oppose the motion for good faith settlement arguing that the settlement in question does not meet the reasonable range test. Cottages focuses on the shared fault amongst defendants and the fact the ARR had exercised control over the road previously. Cottages argue the current value of Plaintiff's claim is between $3.3 and $4.4 million, at a minimum, and that the settlement represents 13% of the value. (Opp., p. 7)

ARR replies, pointing out that Cottages' Opposition ignores Plaintiff's comparative fault (by not wearing a helmet) and that ARR accepted Plaintiff's valuation based on Plaintiff's 998. (Reply, p.2) The parties do not dispute that Cottages drove the construction of the subject berm, and that the subject berm only benefited Cottages. Plaintiff issued a 988 to Twenty10Limited, LLC in the amount of $1.5 million, the same day she issued the 988 to ARR for $600,000, which shows that Plaintiff was willing to resolve her claims against the parties for $2.1 million. (Reply, p. 4) Using this value, ARR is contributing 28.5% of the value, as opposed to 13%. (Reply, p. 4)

Plaintiff also filed a Memorandum of Points and Authorities in support of the settlement with ARR. Plaintiff responds to Cottage's argument that they will be left with damages exposure in excess of their policy limits by noting that Cottages were also provided a 998 within their policy limits. (Memo, p. 2) Plaintiff provided both parties an opportunity to settle, based on an estimation of liability.

TENTATIVE RULING #2:

1. **THE REQUEST FOR JUDICIAL NOTICE IS GRANTED.**
2. **THE GOOD FAITH SETTLEMENT IS APPROVED.**

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL.

RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

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3. 23CV1387 DEITZ TRUST v. CURTIS, ET AL

Motion to Set Aside/Vacate Default Judgment

Defendants move to set aside a default that was entered on April 29, 2024. They claim that they were never served and only received the Summons and Complaint on May 1, 2024, when it was too late to file an Answer.

The proof of service filed by Plaintiff indicates that substituted was made on Defendant's son at Defendants residential address, and by mail. The proof of service includes a declaration of diligence listing two attempts at personal service on two successive days at Defendants' home and that on the third day substituted service was made on the Defendants' son on September 2, 2023. However, Defendants assert that their son is six years old.

Plaintiff cites the requirements of Code of Civil Procedure § 473.5 in arguing that the motion should be denied. That section provides:

> (a) When service of a summons has not resulted in actual notice to a party in time to defend the action and a default or default judgment has been entered against him or her in the action, he or she may serve and file a notice of motion to set aside the default or default judgment and for leave to defend the action. The notice of motion shall be served and filed within a reasonable time, but in no event exceeding the earlier of: (i) two years after entry of a default judgment against him or her; or (ii) 180 days after service on him or her of a written notice that the default or default judgment has been entered.
>
> (b) A notice of motion to set aside a default or default judgment and for leave to defend the action shall designate as the time for making the motion a date prescribed by subdivision (b) of Section 1005, and it shall be accompanied by an affidavit showing under oath that the party's lack of actual notice in time to defend the action was not caused by his or her avoidance of service or inexcusable neglect. The party shall serve and file with the notice a copy of the answer, motion, or other pleading proposed to be filed in the action.
>
> (c) Upon a finding by the court that the motion was made within the period permitted by subdivision (a) and that his or her lack of actual notice in time to defend the action was not caused by his or her avoidance of service or inexcusable neglect, it may set aside the default or default judgment on whatever terms as may be just and allow the party to defend the action.

Plaintiff argues that Defendants did have actual notice both through the substituted service and by mail. Plaintiff declares that although the motion was brought within the deadlines imposed by statute, did not provide notice of the motion to Plaintiffs, who only became aware of it during the case management conference. Plaintiffs further argue that Defendants failed to accompany the motion with a proposed Answer as required by the statute.

At the hearing on May 31, 2024, the court adopted the tentative ruling but continued the matter to June 14, 2024, in order to give defendants an opportunity to lodge a proposed Answer with the Court. No answer has been filed.

Given no answer has been filed, the court finds that the motion is procedurally defective and the motion is denied.

TENTATIVE RULING #3: MOTION TO SET ASIDE THE DEFAULT IS DENIED. THE COURT ORDERS PLAINTIFF TO APPEAR IN PERSON OR REMOTELY TO SET A DATE FOR THE PROOF UP HEARING.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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4. PC20210396 ESTATE OF SHANNON v. APPLE MOUNTAIN, L.P.

Demurrer to Second Amended Complaint
Motion to Strike
Demurrer to Demurrer
Motion for Leave to Exceed Page Limits

This action arose when a golf cart went off the path and though a guardrail on Defendant's property, killing one of the occupants of the cart and seriously injuring the other.

The Second Amended Complaint includes five causes of action: (1) premises liability (wrongful death, negligence), (2) premises liability (survivorship action including punitive damages, negligence), (3) premises liability (bodily injury including punitive damages, negligence), (4) product liability (negligence) and (5) product liability (breach of warranty).

Defendant demurs to the First, Second and Third Causes of Action in the SAC on the following grounds:

1. The Complaint fails to establish a legally recognized duty to attempt affirmative lifesaving efforts to Decedent that was allegedly breached by Apple Mountain;
2. The Complaint fails to sufficiently allege that Apple Mountain breached its duty by unreasonably increasing the risks inherent in the sport of golf; and
3. The Complaint fails to sufficiently allege that Decedent's death was not instantaneous or that the alleged damages are sufficient to enable pursuit of Plaintiff Estate of Shannon's Survival Action.

Requests for Judicial Notice

Plaintiffs request the court to take judicial notice of various excerpts of depositions, Declarations and other documents that support the allegation that the decedent did not die instantaneously, as well as the 'fact" that "Blood stains and the cutting of Shannon's clothing to render medical intervention are permanent forms of property damage in this case."

Defendant seeks judicial notice of a Declaration, as well as of its Reply and Sur-Reply filed in response to Plaintiff's Motion for Leave to File a Second Amended Complaint, in order to establish that Decedent did die instantaneously, and of "[t]he fact that blood stains are not permanent damage and is removable from clothing."

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. While Section 451 provides a comprehensive list of matters that must be judicially noticed, Section 452 sets forth matters which *may* be judicially noticed. A trial court is required to take

judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453.

Evidence Code § 452(d) permits judicial notice of "records of (1) any court in this state or (2) any court of record of the United States." However, "[w]hile the *existence* of a document . . . may be judicially noticeable, the truth of statements contained in the document and *their proper interpretation* are not subject to judicial notice. [Citation]." Tenet Healthsystem Desert, Inc. v. Blue Cross of California, 245 Cal. App. 4th 821 (2016) (emphasis original). Accordingly, while the court grants judicial notice of the existence of those documents on file with the court, this does not include acceptance as true of any asserted fact contained in those documents.

As to whether or not blood-stained clothing can or cannot be cleaned, does not appear to fall within the category of "[f]acts 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," Evidence Code § 452(h), particularly given the parties' direct dispute on this factual issue.

Standard of Review - Demurrer

> A demurrer tests the sufficiency of a complaint by raising questions of law. (*Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 20, 223 Cal.Rptr. 806.) In determining the merits of a demurrer, all material facts pleaded in the complaint and those that arise by reasonable implication, but not conclusions of fact or law, are deemed admitted by the demurring party. (*Moore v. Conliffe, supra,* 7 Cal.4th at p. 638, 29 Cal.Rptr.2d 152, 871 P.2d 204; *Interinsurance Exchange v. Narula, supra,* 33 Cal.App.4th at p. 1143, 39 Cal.Rptr.2d 752.) The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded. (*Flynn v. Higham* (1983) 149 Cal.App.3d 677, 679, 197 Cal.Rptr. 145.)

Rodas v. Spiegel, 87 Cal. App. 4th 513, 517 (2001).

In addition to the facts actually pleaded, the court considers facts of which it may or must take judicial notice. Cantu v. Resolution Trust Corp., 4 Cal.App.4th 857, 877 (1992).

Second Cause of Action (Premises Liability-Survivorship Action/Punitive Damages)

As to the Second Cause of Action specifically, Defendant argues that under Code of Civil Procedure § 377.30[1] a survivorship action cannot be maintained where the decedent died instantly. Defendant cites Code of Civil Procedure § 377.34(a), which limits damages

[1] "A cause of action that survives the death of the person entitled to commence an action or proceeding passes to the decedent's successor in interest, subject to Chapter 1 (commencing with Section 7000) of Part 1 of Division 7 of the Probate Code, and an action may be commenced by the decedent's personal representative or, if none, by the decedent's successor in interest." Code of Civil Procedure § 377.30.

recoverable in a survivorship action to "the loss or damage that the decedent sustained or incurred before death, including any penalties or punitive or exemplary damages that the decedent would have been entitled to recover had the decedent lived, and do not include damages for pain, suffering, or disfigurement."

Defendant cites the holding in the case of Grimshaw v. Ford Motor Co., 119 Cal. App. 3d 757 (1981) that "[p]unitive damages are . . . recoverable in an action under Probate Code section 573[1] by the personal representative of the decedent's estate if the decedent survived the accident, however briefly, or if the property of the decedent was damaged or lost before death." Grimshaw v. Ford Motor Co., at 829. Conversely, "a claim for punitive damages will not lie if death occurs simultaneously with the infliction of the injury." Id. at 833.

Defendant argues that its demurrer to the Second Cause of Action should be granted because the Plaintiff cannot possibly prove that the decedent survived long enough to have provided the basis for Plaintiffs' standing to bring a survivorship action.

Plaintiffs allege that Decedent did not die instantly when he was ejected from the golf cart, but survived for a period of time before being declared deceased at 5:00 PM. *See* SAC, at p. 16, ¶ 70. Plaintiffs further allege that Decedent sustained property damages prior to his death, including, but not limited to, blood-stain damaged clothing and medical expenses for treatment provided by medical technicians before being declared deceased. *See* SAC, at p. 16, ¶ 72.

> Punitive damages are awardable to the decedent's estate in an action by the estate representative based on the cause of action the decedent would have had if he or she had survived. (Code Civ. Proc., § 377.34.) Relatively minor compensatory damages, such as here the decedents' clothing and personal property damaged during the homicides, can be the springboard for substantial punitive damages. (*Garcia v. Superior Court* (1996) 42 Cal.App.4th 177, 186 [49 Cal.Rptr.2d 580].)

Rufo v. Simpson, 86 Cal. App. 4th 573, 616 (2001).

The parties have exchanged extensive arguments and competing declarations to establish to an evidentiary certainty that either the decedent died instantaneously or lived long enough to provide the basis for punitive damages claim. The contradictory declarations, depositions and other documents cited, and the contradictory conclusions drawn by the parties through their filings in this case indicates that on this issue there are "conclusions of fact or law" in dispute that are beyond the scope of this demurrer, which is to "liberally construe" the

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[1] Later codified as Code of Civil Procedure § 377.20.

allegations of the SAC and any reasonable inferences they may give rise to, all of which are deemed admitted. Rodas v. Spiegel, 87 Cal. App. 4th 513, 517.

On this issue there is no basis for sustaining Defendant's demurrer on the pleadings, as the SAC does allege that the decedent lived for "some period of time" following the injury, and that he sustained property damage prior to his death. SAC ¶¶70, 72. This is a factual issue not well-suited for resolution at the pleading stage.

First, Second and Third Causes of Action (Premises Liability – Negligence)

As to the First, Second and Third Causes of Action, Defendant argues that the SAC does not establish any duty on the part of Defendant and the demurrer should be sustained for failure to allege the elements of negligence.

Defendant argues that these cause of actions for negligence cannot be supported because the Plaintiffs have not alleged facts sufficient to establish that Defendant breached any duty to the Decedent. For this argument Defendant relies on several arguments.

First, Defendant relies on the assumption of risk defense, which generally "absolves the defendant of a duty of care toward the plaintiff with regard to injury incurred in the course of a sporting or other recreational activity." Defendant's Memorandum of Points and Authorities in Support of Demurrer, at 9:4-6. "Plaintiffs are required to establish an exception to the defense of primary assumption of the risk by Decedent and Plaintiff Rogers and must demonstrate that Apple Mountain 'unreasonably increased the risks to [Plaintiff Rogers and Decedent] over and above those inherent in [golf].'" Id., citing Avila v. Citrus Community (2006) 38 Cal.4th 148, 160 [holding that host school and its agents for interscholastic/intercollegiate competition owes a duty to all players, at a minimum, to not increase the risks inherent in the sport].

Defendant argues that the allegations of the SAC point to topographical features of the golf course, and that topography has been held to be a risk inherent in the activity of playing golf. Wellsfry v. Ocean Colony Partners, LLC., 90 Cal.App.5th 1075, 1087. In that case, the trial court's grant of a motion for summary judgment was affirmed by the appellate court because the action was barred by the primary assumption of risk doctrine. However, assumption of risk is an affirmative defense, and was pled as such in the Wellsfree case. This motion by contrast, is a motion on the pleadings and Defendant has not yet asserted any affirmative defenses. In Wellsfry the court examined the facts of the case as developed through discovery in the context of a summary judgment motion; in this case, the court is limited to taking as true the allegations of the SAC on a demurrer.

Wellsfry is also distinguishable because in that case, the Plaintiff tripped over a tree root and the court held that the possibility of unseen, naturally occurring tripping hazards in the grass

was inherent to the game of golf. In this case, Plaintiff alleges injuries caused by structures designed and constructed by Defendant, including the bridges along the path and the rails on those bridges.

Second, Defendant argues that the decedent was responsible for his injuries because he had consumed alcohol prior to operating the golf cart and struck a curb while negotiating a turn.

Finally, Defendant argues that Plaintiffs' allegations that Defendant breached a duty of care by failing to make employees available to assist first responders reach the Decedent, which resulted in a delay in medical personnel arriving on the scene. Defendant responds that Plaintiffs have cited no authority establishing that it has a duty act as a Good Samaritan and take affirmative steps, or assign employees to take affirmative steps, to provide care to decedent. Plaintiff counters that Defendant had applicable worksite safety rules that it did not follow. SAC at ¶¶60, 75.

The issue of whether Defendant owed a duty to the Plaintiffs is sufficiently alleged in the SAC to support a cause of action for negligence, and whether there are facts that eliminate the existence of a duty is a determination that cannot be made upon the pleadings in the context of a demurrer. Whether the allegation of a duty would be defeated by an assumption of risk or contributory negligence affirmative defense is a factual determination that is premature at this stage.

<u>Plaintiffs' Demurrer to Defendant's Demurrer</u>

Code of Civil Procedure §435 (motion to strike any part of a pleading), 436, 452, California Rules of Court, Rule 3.1320(j) in support of its authority to file a demurrer to a demurrer; however, Code of Civil Procedure §§ 435-436 relate to motions to strike, section 452 requires a pleading to be liberally construed with a view to substantial justice between the parties, and California Rules of Court, Rule 3.1320(j) defines the time for filing an Answer following a ruling on the demurrer. Under these statutes Plaintiff might have filed a motion to strike the demurrer, or simply oppose it, but there is no authority to demur to a demurrer.

Taking it as a motion to strike the demurrer the court finds the matter moot, as the demurrer is overruled by this decision.

<u>Defendant's Motion to Strike</u>

Defendant moves to strike the following Paragraphs of the SAC:

> 1. Paragraph 70, stating "BRETT SHANNON did not die instantly when he was ejected from the golf cart into boulders at approximately 4:20 PM on 10/07/2019 but survived for a period of time before being declared deceased at 5:00 PM."

2. Paragraph 72, stating "Prior to his death at defendant's APPLE MOUNTAIN GOLF RESORT, BRETT SHANNON sustained property damages, including but not limited to blood-stain damaged clothing, and incurred medical expenses of $2,005.67 for treatment provided by the El Dorado County Emergency Medical Services before being declared deceased at 5:00 PM."

3. Paragraphs 77, 78, 86, 87, 91, 92, 100, and 101, relating to punitive damages and supporting allegations.

4. Plaintiffs' Prayer for Relief, at 32:27-33:1, including item 8 seeking "…Punitive Damages for PAT RUFFET as Personal Representative of THE ESTATE OF BRETT SHANNON, and CLAYTON ROGERS, according to proof."

5. Paragraphs 60 and 75, relating to improper statutes cited regarding employee safety and not safety requirements for members of the public (Code of Regulations, Title 8, sections 3203 and 3220).

The basis for this motion, made pursuant to Code of Civil Procedure §§ 435-436,[1] is that:

1. The Complaint fails to allege sufficient facts to support the pursuit of punitive damages as part of Plaintiff Estate of Shannon's Second Cause of Action for the Survival Action; and

2. The Complaint fails to set forth specific facts that, if proven, would support a finding of oppression, fraud, or malice with regard to Plaintiff Estate of Shannon's Second Cause of Action for the Survival Action and Plaintiff Rogers' Third Cause of Action for Negligence, seeking punitive damages.

3. All references in the Complaint to Code of Regulations, Title 8, sections 3203 and 3220 are improper as these statutes plainly address employee safety and are not intended for the benefit of Plaintiffs as members of the public.

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[1] Code of Civil Procedure § 435(b)(1):

> "Any party, within the time allowed to respond to a pleading may serve and file a notice of motion to strike the whole or any part thereof, . . ."

Code of Civil Procedure § 436:

> The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper:
> (a) Strikeout any irrelevant, false, or improper matter inserted in any pleading.
> (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court.

As to the punitive damages requested in the Second and Third Causes of Action, Defendant argues that decedent died instantaneously, which would prevent the accrual of a survival cause of action, along with any punitive damages claim based on that cause of action.[1] Further, Defendant argues, to the extent Plaintiffs assert that Decedent lived long enough to support a survival cause of action, the burden of proof is on the Plaintiffs. In support of the motion, Defendant requests the court to find that as a matter of law, decedent died instantaneously before a cause of action could accrue. For the same reasons discussed above with respect to the demurrer, the court is not prepared to make these determinative factual findings at this pleading stage of the proceedings, when the Plaintiffs' allegations are to be liberally construed. The court has declined both parties' requests to take judicial notice of ultimate facts in the case based on conflicting and competing declarations and deposition excerpts filed with the parties' motions. Similarly, whether Defendant acted with malice sufficient to meet the punitive damages standard is a matter to be determined based on a factual record, and not in this motion on the pleadings.

Defendant additionally requests that references to California Code of Regulations, Title 8, sections 3203 and 3220 made in Paragraphs 60 and 75 of the SAC. The court agrees that the statutory references appear to be irrelevant to Plaintiffs' claims. The basis for alleged liability is set forth in SAC ¶¶61-62, namely, failure to maintain the premises in a safe condition and failure to warn of dangerous conditions. Plaintiff does not appear to allege that any departure from the regulations that require the preparation of workplace emergency plans was the proximate cause of the Plaintiffs' injuries. Accordingly, the phrase "California Code of Regulations, Title 8, Sections 3203 and 3220" shall be stricken from the SAC Paragraphs 60 and 75.

Motion for Leave to Exceed Page Limits

Both parties have requested leave to file additional pages with their pleadings on these motions. The court grants both requests.

TENTATIVE RULING #4:

(1) BOTH PARTIES' REQUESTS FOR JUDICIAL NOTICE ARE GRANTED AS TO ANY DOCUMENT ON FILE WITH THE COURT PURSUANT TO EVIDENCE CODE § 452(D), WHICH DOES NOT INCLUDE JUDICIAL NOTICE OF ANY FACT ASSERTED IN THOSE DOCUMENTS. THE COURT

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[1] Civil Code § 3294(a) authorizes claims for punitive damages, as follows:

> In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

DENIES JUDICIAL NOTICE AS TO ANY FACT OR PROPOSITION PURSUANT TO EVIDENCE CODE § 452(H).

(2) DEFENDANT'S DEMURRER IS OVERRULED.

(3) DEFENDANT'S MOTION TO STRIKE IS DENIED AS TO PARAGRAPHS 70, 72, 77, 78, 86, 87, 91, 92, 100, and 101, AND IS GRANTED AS TO PARAGRAPHS 60 AND 75. FROM WHICH THE WORDS "CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTIONS 3203 AND 3220" SHALL BE STRICKEN.

(4) THE MOTIONS TO EXCEED PAGE NUMBER LIMITS ARE GRANTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

5. 24CV0603 NAME CHANGE OF GRECO

Petition for Name Change

Petitioner filed a Petition for Change of Name on March 25, 2024.

Proof of publication was filed on May 10, 2024**,** as required by Code of Civil Procedure § 1277(a).

Upon review of the file, the court has yet to receive the background check for Petitioner, which is required under the law. Code of Civil Procedure §1279.5(f).

The May 24, 2024, hearing on this matter was continued to June 14, 2024, to allow Petitioner time to file a background check with the court. To date, there still has been no background check filed.

TENTATIVE RULING #5:

THIS MATTER IS CONTINUED TO 8:30 A.M. ON JULY 12, 2024 AT 8:30 A.M. IN DEPARTMENT NINE TO ALLOW PETITIONER TIME TO FILE A BACKGROUND CHECK WITH THE COURT.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

6. 24CV0809 NAME CHANGE OF CANDELAS

Petition for Name Change

Petitioner filed a Petition for Change of Name on April 18, 2024.

Proof of publication was filed on May 17, 2024**,** as required by Code of Civil Procedure § 1277(a).

A background check has been filed with the court as required by Code of Civil Procedure § 1279.5(f).

Absent objection, the Petition is granted as requested.

TENTATIVE RULING #6: PETITION IS GRANTED AS REQUESTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

7. 24CV0540 NAME CHANGE OF LEE

Petition for Name Change

Petitioner filed a Petition for Change of Name on March 19, 2024. Petition paragraph 7 is incomplete – missing present name, proposed name, date of birth, place of birth, sex, and reason for name change.

OSC states publication is to be in the Daily Recorder. Proof of publication filed May 2, 2024, shows publication in the Georgetown Gazette.

A background check has been filed with the court as required by Code of Civil Procedure § 1279.5(f).

TENTATIVE RULING #7:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JUNE 14, 2024, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

8. 23CV1459 NAME CHANGE OF WEATHERSPOON

Petition for Name Change

Petitioner filed a Petition for Change of Name on August 25, 2023.

There is nothing in the court's records indicating that the OSC has been published in a newspaper of general circulation for four consecutive weeks as required by Code of Civil Procedure § 1277(a). Petitioner must file the OSC in a newspaper of general circulation in El Dorado County for four consecutive weeks. Proof of publication is to be filed with the court prior to the next hearing date.

A background check has been filed with the court as required by Code of Civil Procedure § 1279.5(f).

The hearing on this matter is continued to allow Petitioner time to file proof of publication with the court.

TENTATIVE RULING #8:

THIS MATTER IS CONTINUED TO 8:30 A.M. ON JULY 12, 2024, AT 8:30 A.M. IN DEPARTMENT NINE TO ALLOW PETITIONER TIME TO FILE PROOF OF PUBLICATION WITH THE COURT.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

9. 23CV1220 ORION 50 OUTDOOR, LLC ET AL v. SUREWAY PAVING, INC.

Order for Examination

At the hearing held on April 5, 2024, the Defendant did not appear, and the court issued a bench warrant in the amount of $500, with the bench warrant to be held for one week. The court then continued the matter to April 12, 2024. At that hearing, the parties requested a continuance.

TENTATIVE RULING #9:

APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, JUNE 14, 2024, IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.