

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 04/21/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0001742

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: C. IBARRA

PLAINTIFF: STEVE DOUGHTY, ET AL.

vs.

DEFENDANT: MARIN HEALTH
DISTRICT ET AL.

NATURE OF PROCEEDINGS: MOTION – SUMMARY JUDGMENT

RULING

In light of the Notice of Death of Plaintiff Steve Doughty filed March 25, 2026, this matter is ordered **OFF-CALENDAR** and the action is ordered **STAYED** pending further order of the Court.

The parties shall appear for a case management and scheduling conference on **May 12, 2026, at 9am in Department A.**

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for April, 2026 is as follows:

<https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyailnzo6lyz2dKaw.1>

Meeting ID: 160 526 7272

Passcode: 026935

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 04/21/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0004594

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: C. IBARRA

PLAINTIFF: ALLISON FAUST

vs.

DEFENDANT: TEOBALDO SCHUJMAN,
ET AL

NATURE OF PROCEEDINGS: MOTION – QUASH – DISCOVERY FACILITATOR PROGRAM

RULING

Appearances required. The parties should be prepared to address scheduling the depositions of the three witnesses within the next thirty (30) days.

Defendants’ motion to quash and request for sanctions is **DENIED**. Plaintiff’s request for sanctions is also **DENIED**.

Background

On August 27, 2025, Plaintiff served by email a notice of deposition for Dr. Pearlyn Goodman-Herrick, David White, and Jessica Iris Meinholz (the “Witnesses”), for depositions to occur on September 29 and 30, 2025. (Declaration of Lawrence D. Murray (“Murray Decl.”), ¶10 and Exh. 2.) As these dates apparently did not work for some reason, Plaintiff’s counsel attempted to get available deposition dates from Defendants’ counsel.

On December 16, 2025, Defendants’ counsel proposed January 6, 8, 14 and 14, 2026. (*Id.*, ¶¶15-18 and Exh. 3.) Two weeks later, on December 30, 2025, Defendants’ counsel served a Notice of Unavailability of Counsel stating that Defendants’ counsel were unavailable from January 6, 2026 through January 16, 2026. (*Id.*, ¶19 and Exh. 4.) On or about January 2, 2026, Plaintiff’s counsel sent a meet and confer letter to Defendants’ counsel regarding this notice. (*Id.*, Exh. 5.) On January 5, 2026, Defendants’ counsel emailed Plaintiff’s counsel stating that after she provided the dates, her office “never received subpoenas and notices of depositions thereafter. Since we did not receive notice, we are not holding those dates (and we are not waiving notice). Since all those dates passed, we can circulate new dates but I should note that we do require

proper notice.” The email then stated that there was availability for depositions on January 19, 20, 26 and 27. (*Id.*, Exh. 6.)

On January 15, 2026, Plaintiff served by email the First Amended Notice for depositions to take place on January 26, 2026. (*Id.*, Exh. 7.) On January 20, 2026, Defendants served by e-mail objections to the notices on several grounds, including that service of the notices was not timely. (Murray Decl., Exh. 8; Declaration of Elizabeth Brekhus (“Brekhus Decl.”), ¶3.)

Defendants move to quash Plaintiff’s First Amended Notice on the ground that service of the notice was untimely and request an award of attorneys’ fees and costs. In her Opposition, Plaintiff also requests an award of attorneys’ fees and costs.

Standard

“An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice.” (Code Civ. Proc. § 2025.270(a).)

“Any period of notice, or any right or duty to do any act or make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended after service by electronic means by two court days” (Code Civ. Proc. § 1010.6(a)(3)(B).)

In addition to serving written objections, a party may move to quash a notice of deposition and to stay the taking of the deposition. (Code Civ. Proc. § 2025.410(c).) “The court shall impose a monetary sanction . . . against any party, person, or attorney who unsuccessfully makes or opposes a motion to quash a deposition notice, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.” (Code Civ. Proc. § 2025.410(d).)

Discussion

Timeliness of service

Defendants argue that the notice emailed on January 15, 2026 was defective because it was not timely served under Sections 2025.270(a) and 1010.6(a)(3)(B). Defendants contend that for a deposition to take place on January 26, a notice served by email would have to be served by no later than January 14, 2026. Plaintiff argues that there is no dispute that her December 2025 notice of the depositions of the same Witnesses was timely served and the amended notice simply provides new dates the parties agreed to after the original dates were vacated upon request of Defendants’ counsel. Plaintiff also argues that the additional two days under Section

1010.6(a)(3)(B) does not apply to notices of deposition because there is no act or response contemplated to a notice of deposition.

Defendants' motion, to the extent it is based on timeliness of service of the notice, is moot. The date set forth in the notice has passed (indeed, it had passed before Defendants even filed this motion), and quashing the notice at this point would serve no purpose. The parties should meet and confer to find mutually agreeable dates for these Witnesses' depositions.

Other objections

Defendants also object to the notices on the ground that they would subject the deponents to multiple depositions and hardship, as well as undue expense to the parties. Defendants provide no evidence to support these objections, nor do they provide any discussion as to what this alleged hardship and expense entails. Defendants' objections on these grounds are therefore overruled. (See *Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255 [burden is on objecting party to justify objections].)

Request for sanctions

The parties' requests for sanctions are denied. Defendants are not entitled to an award of sanctions because their motion is moot and unnecessary as it pertains to timeliness of service and is completely unsupported as it pertains to their other objections to the notice. Plaintiff is not entitled to an award of sanctions because technically, service of her amended notice was untimely by one day. The additional two days under Section 1010.6(a)(3)(B) would apply because it applies to "any period of notice".

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 04/21/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0005128

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: C. IBARRA

PLAINTIFF: WELLS FARGO BANK, NA

vs.

DEFENDANT: ALIYAH A. ROSARIO

NATURE OF PROCEEDINGS: MOTION – JUDGMENT ON THE PLEADINGS

RULING

The unopposed motion of Plaintiff Wells Fargo Bank, NA for judgment on the pleadings is **GRANTED**. (Code Civ. Proc., § 438.) The complaint states sufficient facts to constitute causes of action against the Defendant and the answer does not state facts sufficient to constitute a defense to the complaint.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 04/21/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0005564

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: C. IBARRA

PLAINTIFF: VLADIMIR
MYASNYANKIN

vs.

DEFENDANT: NATIONWIDE MUTUAL
INSURANCE COMPANY, AN OHIO
CORPORATION, ET AL

NATURE OF PROCEEDINGS: MOTION – JUDGMENT ON THE PLEADINGS

RULING

Defendants Joseph Austin (“Austin”) and Lindsay Lathrum’s (“Lathrum”; with Austin, “Movants”) motion for judgment on the pleadings is **GRANTED with leave to amend**.

Background

This is an insurance coverage dispute. Plaintiffs Vladimir and Lana Myasnyankin (“Plaintiffs”) allege that Defendant Nationwide Mutual Insurance Company (“Nationwide”) issued a homeowner’s insurance policy covering Plaintiffs’ upscale home in San Rafael in or around 2014. (Complaint, ¶¶ 7-8.) In October 2020, a catastrophic plumbing malfunction damaged the property enough to render it uninhabitable. (*Id.* at ¶ 12.) Nationwide assigned Movants to Plaintiffs’ claim under the insurance policy, with Austin serving as the lead adjuster and Lathrum as the lead manager and supervisor. (*Id.* at ¶¶ 16, 75-76.)

The complaint generally alleges that Nationwide and Movants misrepresented the terms of the insurance policy and deliberately manipulated the claims process to deprive Plaintiffs of their rightful benefits. The complaint asserts two causes of action, breach of the implied covenant of good faith and fair dealing and intentional infliction of emotional distress (“IIED”). Only the latter is asserted against Movants. The IIED claim is brought solely by Vladimir Myasnyankin. (Complaint, ¶ 74.)

The Court now considers Movants’ motion for judgment on the pleadings.

Legal Standard

A defendant may bring a statutory motion for judgment on the pleadings as to the entire complaint or any cause of action stated therein. (Code Civ. Proc., § 438, subd. (c)(2)(A).) The motion may be brought only after the defendant has filed an answer to the complaint and the time to demur to the complaint has expired. (Code Civ. Proc., § 438, subd. (f)(2).) The grounds for the motion are that the court lacks jurisdiction or that the complaint does not state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 438, subd. (c)(1)(B); see also *Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1216 [“The standard for granting a motion for judgment on the pleadings is essentially the same as that applicable to a general demurrer, that is, under the state of the pleadings, together with matters that may be judicially noticed, it appears that a party is entitled to judgment as a matter of law.”].)

Grounds for a motion for judgment on the pleadings must appear on the face of the challenged pleading or from matters properly subject to judicial notice. (See Code Civ. Proc., § 438, subd. (d).) As on a demurrer, the pleading includes matters shown in exhibits attached to it or incorporated by reference. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94; *Alameda County Waste Management Authority v. Waste Connections US, Inc.* (2021) 67 Cal.App.5th 1162, 1173-74 [rules governing demurrers apply to motions for judgment on the pleadings except to the extent provided by statute].) A motion for judgment on the pleadings may be granted with or without leave to amend. (Code Civ. Proc., § 438, subd. (h).)

Discussion

To plead IIED, a plaintiff must plead (1) extreme and outrageous conduct by the defendant, (2) intent to cause emotional distress or reckless disregard of the risk of causing the same, (3) severe emotional distress, and (4) causation. (See *Cochran v. Cochran* (1998) 65 Cal.App.4th 488, 494.)

Extreme and Outrageous Conduct

To qualify as “extreme and outrageous,” the conduct must be “ ‘so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.’ ” (*Cochran, supra*, 65 Cal.App.4th 488, 496 [quoting Rest.2d Torts, § 46, com. d, p. 73].) Factors that may support finding this standard satisfied include the defendant’s “ ‘(1) abuse[] [of] a relation or position which gives him power to damage the plaintiff’s interest; (2) know[ledge] [that] the plaintiff is susceptible to injuries through mental distress; or (3) act[ion] [taken] intentionally or unreasonably with the recognition that the acts are likely to result in illness through mental distress[.]’ ” (*Molko v. Holy Spirit Assn.* (1988) 46 Cal.3d 1092, 1122 [overruled on another ground by *Aguilar v. Atlantic Richfield Co.*, 25 Cal.4th 826, 853, fn. 19] [quoting *Cole v. Fair Oaks Fire Protection Dist.* (1987) 43 Cal.3d 148, 155].)

“Liability for intentional infliction of emotional distress ‘does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities.’” (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1051 [quoting *Molko, supra*, 46 Cal.3d 1092, 1122.]) That allegations are insufficiently extreme and outrageous as a matter of law is a proper ground on which to sustain a demurrer and thus to grant a motion for judgment on the pleadings. (*Cochran, supra*, 65 Cal.App.4th 488, 494; see *Schabarum, supra*, 60 Cal.App.4th 1205, 1216.)

In *Bock v. Hansen* (2014) 225 Cal.App.4th 215, the First District considered whether a couple had stated a claim for IIED against their homeowner’s insurance company’s claims adjuster. A massive tree limb had crashed through their living room window, damaging their chimney. (225 Cal.App.4th 215, 220.) The couple claimed that the adjuster had altered the scene of the incident before taking any photos; made derogatory and demeaning comments to them; misrepresented the relief available to them under the policy; created an estimate of the amount payable that was based on falsehoods and ignored basic facts surrounding the damage; and sent an unlicensed contractor to create a plainly false report regarding the extent of the damage, which the insurance company later cited to justify denying coverage for repairing the chimney. (*Id.* at pp. 221-222.) The couple further alleged that the adjuster had acted this way to justify a predetermined decision to deny coverage without regard the merits of the claim. (*Id.* at p. 224.)

The First District held that the trial court had properly sustained the adjuster’s demurrer to the IIED claim for failure to state a cause of action, as the adjuster’s conduct was insufficiently outrageous as a matter of law. (*Bock, supra*, 225 Cal.App.4th 215, 232.) This holding was based on comparing the couple’s allegations to other cases where IIED claims against insurers were deemed viable. (*Id.* at pp. 234-235.) In those cases, “the insureds were particularly susceptible to distress” due to severe disabilities and poverty, and the defendants’ handling of their insurance claims left them unable to pay for their daily living expenses. (*Ibid.* [discussing *Younan v. Equifax Inc.* (1980) 111 Cal.App.3d 498 and *Little v. Stuyvesant Life Ins. Co.* (1977) 67 Cal.App.3d 451].) By contrast, “[t]he Bocks were not disabled and were not facing a denial of benefits necessary to pay for their daily living expenses.” (*Bock, supra*, 225 Cal.App.4th 215, 235.) The Bocks alleged that the adjuster’s conduct rendered them particularly vulnerable because, as the adjuster knew, “the chimney was their primary source of heating[.]” (*Ibid.*) The appellate court noted that they did not allege that they were in fact left without heat as a result of the insurer’s refusal to cover repairs to the chimney, or that the adjuster knew that this would be the result of his conduct. (*Ibid.*)

The allegations in the instant case are very similar to those at issue in *Bock*, which suggests that the same result should obtain in both cases. Both cases involve misrepresentations as to the terms of the policy; use of unlicensed and biased professionals to produce evidence designed to favor the insurer; outright fabrication of evidence; lies about the nature or extent of the damage; and

action consistent with an attempt to justify a bad faith denial of benefits. (Complaint, ¶¶ 32-33, 37-39, 47, 49-51, 55-57, 65; *Bock, supra*, 225 Cal.App.4th 215, 221-222, 224.)

Mr. Myasnyankin alleges that Movants knew he “was highly susceptible to severe emotional distress” (Complaint, ¶ 79), which appears to be an attempt to plead “particular vulnerability” and thereby plead around *Bock*. (See *Bock, supra*, 225 Cal.App.4th 215; *Hailey v. California Physicians’ Service* (2007) 158 Cal.App.4th 452, 474 [similarly stressing the plaintiff’s “ ‘peculiar[] susceptib[ility] to emotional distress’ ”] [quoting *McDaniel v. Gile* (1991) 230 Cal.App.3d 363, 372].) The Complaint’s only explanation regarding Mr. Myasnyankin’s alleged particular vulnerability to emotional distress is that it was, in an unspecified way, connected to the COVID-19 pandemic. (Complaint, ¶ 79.) The Court is not persuaded that a bare reference to an event the entire world experienced pleads the particular vulnerability the First District discussed in *Bock*. Such vulnerability is, by definition, the exact opposite of *particular* to the plaintiff. As in *Bock*, the complaint does not allege that the Myaskyankins were ever faced with an actual or threatened loss of ability to provide for their basic needs as a result of Movants’ conduct.

Mr. Myasnyankin points out that this case involves certain alleged conduct that was not at issue in *Bock*. (Opposition, p. 14.) The Court is not persuaded that those allegations are sufficient to distinguish this case. Specifically, Mr. Myasnyankin argues that Movants “coerce[d]” him and his family into “surrender[ing] their constitutional privacy rights under threat of total loss of all benefits[.]” (Opposition, p. 14.) This refers to allegations that Austin falsely told Mr. Myasnyankin that he would forfeit all of the family’s policy benefits if he refused to execute a release permitting Nationwide to obtain any and all of the family’s financial information. (Complaint, ¶ 24.) The complaint does not allege that Mr. Myasnyankin actually executed the release. More critically, it does not allege any facts that would transform this incident into something that would cause severe emotional distress to a reasonable person. (See *Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 1004 [to support IIED, the “ ‘distress must be reasonable and justified under the circumstances’ ”] [quoting Rest.2d Torts, § 46]; see also *Hughes, supra*, 4 Cal.4th 1035, 1051 [reasonable person standard].) For example, Mr. Myasnyankin does not allege that highly personal and humiliating expenditures were exposed to Nationwide, or that there was cause for concern that Nationwide would mishandle his family’s financial information in a way that increased the risk of theft or financial fraud.

Mr. Myasnyankin claims Movants “attempt[ed] to render [his] family homeless” by “forc[ing] [them] out of safe housing during the deadliest months of the COVID-19 pandemic[.]” placing the couple and their young children at risk of contracting COVID-19 before vaccines and other treatment options existed. (Opposition, pp. 6-7, 14.) This, apparently, was what the complaint was getting at when it described Mr. Myasnyankin as being particularly vulnerable due to the

pandemic. These allegations do not appear in the complaint¹ and so do not exist for purposes of this motion. (Code. Civ. Proc., § 438, subd. (d).)

Plaintiffs allege that Movants referred them to Nationwide's Special Investigation Unit ("SIU") to be investigated for suspected insurance fraud. (Complaint, ¶ 26.) Interpreting the allegations liberally, Plaintiffs are alleging that Movants did this for personal gain and without a good faith basis to suspect Plaintiffs of insurance fraud. (*Id.* at ¶¶ 28-30.) The Court does not doubt that an insurer's knowingly accusing an insured of insurance fraud without any basis could support IIED liability under appropriate circumstances. However, it does not believe those circumstances are present here. The complaint does not allege that Movants ever did anything that could be understood as implicating Plaintiffs in an insurance fraud scheme beyond submitting their names to Nationwide's internal department for investigation. It does not allege that Movants did anything to bring about a conclusion by Nationwide's SIU that Plaintiffs were guilty of insurance fraud; that Movants ever took any steps to cause Plaintiffs to be either investigated by government authorities or criminally charged; or that Plaintiffs were ever questioned, by anyone, regarding suspected criminal activity. Plaintiffs also do not allege that Movants referred them to SIU in retaliation for Plaintiffs' refusal to roll over in the policy benefits dispute. (Mr. Myasnyankin does levy this accusation in his opposition (page 7), but it does not appear in the complaint.) The bare fact that an insurer causes an insured to be investigated by the insurance company for fraud, absent *any* of those allegations, is an "indignit[y]," "threat[.]" or "petty oppression[.]" that cannot support IIED liability. (*Molko, supra*, 46 Cal.3d 1092, 1122.) The Court is also not persuaded that the reasonable person would experience the degree of emotional distress required for IIED simply from having their name referred to an insurance company's internal department for fraud investigation. (See *Potter, supra*, 6 Cal.4th 965, 1004.)

Mr. Myasnyankin mentions two other wrongs supposedly distinguishing this case from *Bock*. (Opposition, p. 14.) One of them is concededly not pleaded in the complaint. (See Opposition, p. 9 at fn. 2.) This leaves only the allegation that Movants' conduct was part of a deliberate pattern and practice designed to enrich themselves personally. (See Complaint, ¶ 65.) The Court is not persuaded that the intent behind conduct can render the conduct "extreme and outrageous." The conduct *itself* must be "extreme and outrageous." (See *Cochran, supra*, 65 Cal.App.4th 488, 496.)

¹ To be clear, the complaint does allege that Austin demanded that Plaintiffs leave the "three room suite" they rented at a "local hotel[.]" threatening them with termination of their Loss of Use benefits if they did not move "to two hotel rooms at a less expensive hotel[.]" (Complaint, ¶¶ 17-21.) Plaintiffs allege that they refused "because of the location, lack of amenities, and inappropriateness of putting [their] two children and their adult au pair in a single hotel room," at which point Movants "retaliated" by withholding "prompt[] reimburs[ment]" of Plaintiffs' astronomical hotel expenses. (*Id.* at ¶ 22.) These allegations are categorically different than those appearing in Mr. Myasnyankin's opposition. There, he claims Movants demanded that the family leave accommodations that enabled social distancing and move into a cramped hotel Movants knew threatened the Myasnyankin children's health. (Opposition, pp. 6-7.) He claims that when he resisted, Movants outright refused to reimburse the family's hotel expenses. (*Ibid.*) That the opposition's allegations have an entirely different emotional valence is a concession that the allegations in the complaint do not support a cause of action for IIED.

In addition to *Little, supra*, 199 Cal.App.3d 999, which the Court has already distinguished, Mr. Myasnyankin relies on three other cases.

In *Hernandez v. General Adjustment Bureau* (1988) 199 Cal.App.3d 999, 1007, an insured stated an IIED claim against an insurance company and an individual adjuster. The insured, a cashier at a grocery store, was the victim of two separate violent crimes in the workplace within a two-week period and then became a victim of witness intimidation when she was required to testify against one of the perpetrators. (*Id.* at p. 1002.) When the psychological symptoms associated with these events rendered her unable to work, she filed for worker's compensation benefits, providing documentation of serious medical and psychiatric problems, including multiple suicide attempts. (*Id.* at ¶¶ 1001-1002.) The insured alleged that "knowing her susceptibility to profound mental distress, and of her repeated attempts at suicide, as a result of the incidents which caused her disability, [the defendants] intentionally delayed payments of approved benefits vital to the support of appellant and her three children." (*Id.* at ¶ 1007.) Mr. Myasnyankin has not alleged a remotely comparable particular susceptibility to mental distress or that Movants' conduct placed his ability to provide for himself and his family at risk.

In *Hailey, supra*, 158 Cal.App.4th 452, the complaint alleged that the defendant health insurer obtained information entitling it to rescind plaintiffs' health insurance coverage, but deliberately waited to rescind it until after one of the plaintiff insureds had suffered a serious injury requiring substantial medical care. (158 Cal.App.4th 452, 476.) *Hailey* is simply irrelevant to this case. The "wait and see" approach condemned in *Hailey* (158 Cal.App.4th 452, 476; see also *Mintz v. Blue Cross of California* (2009) 172 Cal.App.4th 1593, 1609 [discussing *Hailey*]) is not present here.

Fletcher v. Western National Life Ins. Co. (1970) 10 Cal.App.3d 376 was an appeal of a final judgment in favor of the plaintiff insured on an IIED claim and a denial of a motion for judgment notwithstanding the verdict. Whether the defendants' conduct was sufficiently outrageous to support IIED liability was not at issue on appeal. (See 10 Cal.App.3d 376, 394 ["Defendants concede that their conduct was outrageous[.]"]; see *McConnell v. Advantest America, Inc.* (2023) 92 Cal.App.5th 596, 537 ["A case is not authority for a proposition not considered therein or an issue not presented by its own particular facts."].)

The Court concludes that Mr. Myasnyankin has not sufficiently alleged the element of extreme and outrageous conduct. The motion is GRANTED with leave to amend on this basis.

Severe Emotional Distress

In the interest of avoiding a duplicative argument directed at an amended pleading, the Court will reach this argument even though it has already concluded the motion should be granted.

The “severe emotional distress” element of an IIED claim requires “ ‘ “emotional distress of such substantial quality or enduring quality that no reasonable [person] in civilized society should be expected to endure it.” ’ ” (*Potter, supra*, 6 Cal.4th 965, 1004 [quoting *Girard v. Ball* (1981) 125 Cal.App.3d 772, 787-788]; CACI No. 1604.) This is a “high bar.” (*Hughes, supra*, 46 Cal.4th 1035, 1051.) Where a plaintiff alleges that he suffered severe emotional distress without “set[ting] forth any facts which indicate the nature or extent of any mental suffering incurred[,]” he has not sufficiently pleaded the element of severe emotional distress. (*Bogard v. Employers Casualty Co.* (1985) 164 Cal.App.3d 602, 617.)

Mr. Myasnyankin alleges that “from approximately March 2021 to the present[,]” he has suffered “from grief, shame, humiliation, embarrassment, anger, chagrin, disappointment or worry, all so consistently and to such an extreme degree that apart and taken together they amount to severe emotional distress of the sort that no reasonable person in a civilized society should be expected to endure such distress.” (Complaint, ¶ 82.) Movants argue that these allegations merely set forth legal conclusions. The Court disagrees. If the complaint stated, “Mr. Myasnyankin has experienced emotional distress to a degree that is legally actionable as IIED,” *that* would be a legal conclusion. But Paragraph 82 sets forth allegations of fact about the nature, duration, and degree of Mr. Myasnyankin’s alleged emotional distress. That his factual allegations regarding the degree of his emotional distress are designed to track the relevant legal standard does not render them legal conclusions instead of factual allegations. Mr. Myasnyankin has sufficiently alleged the “severe emotional distress” element of his IIED claim.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 04/21/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0006118

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: C. IBARRA

PETITIONER: PAUL CADIEUX

vs.

DEFENDANT: STEWART F. MUSIAL

NATURE OF PROCEEDINGS: MOTION - RECONSIDERATION

RULING

Defendant Stewart Musial's ("Defendant") Motion to for Reconsideration is **DENIED**.

Background

This dispute arises out of a real property development investment project gone wrong. On April 29, 2025, Plaintiff Paul Cadieux ("Plaintiff") filed a complaint against Defendant for Breach of Contract, Unjust Enrichment, Quantum Meruit, and Promissory Estoppel. On May 30, 2025, Plaintiff filed a proof of service showing Defendant was personally served with the summons and complaint on May 18, 2025, by a registered process server. On July 9, 2025, Plaintiff requested the entry of default against Defendant and on that same day, a clerk's entry of default was entered.

On September 17, 2025, Defendant filed a motion to set aside that entry of default pursuant to Code of Civil Procedure section 473.5 on the grounds that service of the summons and complaint did not result in actual notice. The motion was initially set to be heard on December 9, 2025. However, on December 5, 2025, Defendant filed a request to have the December 9, 2025, hearing date continued. Attached to that request he provided a doctor's note from Dr. Wang (dated November 20, 2025), indicating current health conditions precluded him from him attending. The Court continued the hearing first to December 16, 2025, and again to January 13, 2026. Days before the hearing, on January 8, 2026, attorney Thomas J. Meagher substituted in to represent Defendant. Attorney Meagher appeared at the January 13, 2026, hearing and argued in favor of the motion to set aside the default.

The motion was denied and a final order entered on January 16, 2026. On January 26, 2026, attorney Meagher filed this motion on behalf of Defendant seeking reconsideration of the Court's order denying the motion to set aside the default.

Legal Standard

Motions for reconsideration are governed by Code of Civil Procedure section 1008, subdivision (a), which provides:

“When an application for an order has been made to a judge, or to a court, and refused in whole or in part, or granted, or granted conditionally, or on terms, any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law, make application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order. The party making the application shall state by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown.”

As stated by the court in *Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, Code of Civil Procedure section 1008 governs reconsideration of court orders whether initiated by a party or the court itself. “It is the exclusive means for modifying, amending or revoking an order. That limitation is expressly jurisdictional.” (*Id.*, at 1499.) A court acts in excess of jurisdiction when it grants a motion to reconsider that is not based upon “new or different facts, circumstances, or law.” (*Ibid.*)

Motions for reconsideration are restricted to circumstances where a party offers the court some fact or circumstance not previously considered, and some valid reason for not offering it earlier. (*Id.*, at 1500.) There is a strict requirement of diligence--i.e., the moving party must present a satisfactory explanation for failing to provide the evidence or different facts earlier. (*Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 690.)

Discussion

Defendant relies on two areas of new facts or law in support of his motion: (1) Defendant suffered a medical issue which required hospitalization in October/November of 2025 and “was likely impaired prior to his hospitalization” (Oppo., p. 2:17); and (2) legal arguments based on caselaw and statute asserting the underlying contract is void (*Id.*, p. 3:1-12, 19-23).

The fact that Defendant suffered a medical issue in late 2025 which prevented him from attending certain Court dates was known to both Defendant and the Court prior to the January 13, 2026, hearing date. Indeed, one of the doctor’s letters attached to the present motion was previously submitted to the Court in support of a request to continue the hearing date on the motion to set aside the default because of these health issues. The hearing date was continued

twice to accommodate Defendant. Neither Defendant, nor his attorney, requested an additional continuance at the January 13, 2026, hearing.

Further, it is unclear exactly what the fact of the medical issue would demonstrate. At times the motion argues that Defendant would have retained an attorney had he not had the medical issue. But Defendant *did* have attorney Meagher representing him at the January 13, 2026 hearing date, so it appears that any issue with representation was rectified prior to the hearing on the motion to set aside the default.

Moreover, the only evidence properly before this Court is that Defendant suffered a medical event in October/November 2025 and that for a time, this medical issue prevented him from attending certain Court dates. As stated above, the hearing was continued and Defendant had representation at the ultimate hearing date. To the extent Defendant's attorney argues Defendant "was likely impaired prior to the hospitalization," this is an argument that lack evidentiary support. Nothing submitted with this motion would permit the Court to make such a factual finding. Even if such an evidentiary showing had been made, it has not been established why this information was not presented to the Court at the January 13, 2026, hearing date.

Finally, to the extent the motion relies on "new law," all of the law cited by Defendant predates the January 13, 2026, hearing date. There has been no adequate offer of diligence on the part of Defendant establishing why he or his attorney did not argue this preexisting law at the hearing on the motion to set aside the default.

For these reasons, the motion for reconsideration is denied.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for April, 2026 is as follows:

<https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyailnzo6lyz2dKaw.1>

Meeting ID: 160 526 7272

Passcode: 026935

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: <https://www.marin.courts.ca.gov>

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 04/21/26 TIME: 1:30 P.M. DEPT: A CASE NO. CV0006561

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: C. IBARRA

PLAINTIFF: GREGORY SMITH

vs.

DEFENDANT: C.D.C.R. ET AL

NATURE OF PROCEEDINGS: 1) DEMURRER
2) CASE MANAGEMENT CONFERENCE

RULING

The unopposed demurrer to the First Amended Complaint is **SUSTAINED**. **The Court will grant Plaintiff one final opportunity to amend his complaint.**

Discussion

Before the Court is the demurrer of Defendants California Department of Corrections and Rehabilitation (“CDCR”) and “Ron Bloomfield” (collectively “Defendants”) to the First Amended Complaint (“FAC”) of Plaintiff Gregory Smith. Plaintiff is an inmate at San Quentin State Prison. Based on his original complaint, he is bringing an action for damages alleging he was injured when he slipped on grease on the floor of the prison kitchen. His FAC, however, contains no factual allegations. Instead, the form complaint simply asserts a cause of action for general negligence and one for an unspecified intentional tort. He names “CDCR[,] Ron Bloomfield; et al [sic]” as Defendants.

Plaintiff has not filed a response or opposition to the demurrer. The failure of a party to oppose a demurrer may be construed as having abandoned the claims. (*Herzberg v. County of Plumas* (2005) 133 Cal.App.4th 1, 20.) Thus, the failure to oppose is treated as consent to the granting the motion. (Calif. Rules of Court, rule 8.54(c); Civ. Local Rule 2.8G.1.) Defendants’ demurrer is sustained on this basis.

Moreover, as set forth in the Court’s prior order sustaining the previous demurrer, public entities are not liable for injuries suffered by prisoners. (Gov. Code, § 884.6; *Towery v. State of California* (2017) 14 Cal.App.5th 226, 231.) The FAC does not contain any allegations that could demonstrate liability on the behalf of the CDCR or the individual and it therefore fails to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10.)

The Court recognizes that Plaintiff is a self-represented inmate and the Court has provided him with extensions of time and opportunities to correct deficiencies in his pleadings. However, courts have consistently held that self-represented parties must comply with all rules that would apply to represented parties, including pleading requirements in demurrer proceedings. (See *Barton v. New United Motor Manufacturing, Inc.* (1996) 43 Cal.App.4th 1200, 1210.) Accordingly, the Court will afford Plaintiff one further opportunity to amend his complaint to state a viable cause of action. Failure to do so will result in dismissal of the action.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 04/21/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0007390

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: C. IBARRA

PETITIONER: WILLIS LEASE FINANCE
CORPORATION, ET AL.

vs.

DEFENDANT: CHUBB EUROPEAN
GROUP SE, ET AL.

NATURE OF PROCEEDINGS: 1) MOTION – PRO HAC VICE
2) MOTION – PRO HAC VICE
3) MOTION – PRO HAC VICE

RULING

The applications for admission pro hac vice are all **GRANTED**.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN**

DATE: 04/21/26 TIME: 1:30 P.M. DEPT: A CASE NO: CV0008548

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: C. IBARRA

PETITIONER: VELOCITY
INVESTMENTS LLC

vs.

DEFENDANT: MIGUEL KING

NATURE OF PROCEEDINGS: 1) MOTION – COMPEL ARBITRATION

RULING

Defendant’s motion to compel arbitration and to stay these proceedings is **DENIED**.

Allegations in the Complaint

On December 17, 2025, Plaintiff Velocity Investments LLC filed its Complaint against Defendant Miguel King, alleging that Plaintiff is a debt buyer and the successor in interest of NBSF Ciao Trust Issued by Cross River Bank Serviced by Upstart Network, Inc. (“NBSF”). Defendant requested a line of credit from the original credit issuer, which request was accepted and credit was extended to Defendant. NBSF was the charge-off creditor and Plaintiff purchased or was assigned the debt after charge-off. Defendant has defaulted by failing to pay the agreed upon payments and the amount currently due is \$3,272.75. Plaintiff asserts causes of action for breach of contract and common counts.

Discussion

Defendant has moved to compel arbitration and to stay this action pending completion of arbitration. The promissory note for the debt, attached as Exhibit A to the Complaint, contains the following language:

17. Complaints; Disputes; Arbitration.

**NOTICE: IF I AM A COVERED BORROWER UNDER THE
MILITARY LENDING ACT, 10 U.S.C. § 987, THE**

FOLLOWING ARBITRATION PROVISION DOES NOT APPLY TO ME.

A. *Governing Law.* I acknowledge agree [sic] that the Note involves interstate commerce and that this arbitration clause will be construed, applied and governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq., (“FAA”), as amended. The Arbitrator (defined below) shall apply applicable law and applicable statutes of limitation consistent with the FAA and shall honor claims of privilege recognized at law.

B. *Dispute:* “Dispute” means any action, dispute, claim, or controversy of any kind arising out of, in connection with or in any way related, even indirectly, to the Note or the extension of credit set forth in the Note. For example, “Dispute” includes claims related to: any relationship resulting from, or activities connected to this Note; my application; information I have provided to you; information and disclosures you have provided to me; any prior agreements between you and me; extensions; renewals; refinancings; payment plans; underwriting; servicing; collections; privacy; and customer information. The term “Dispute” also includes: claims under federal or state consumer protection laws; claims in tort or contract; claims under statutes or common law; claims at law or in equity; other past, present or future claims, counterclaims, cross-claims, third party claims, interpleaders or otherwise; and any claim relating to the interpretation, applicability, enforceability or formation of this arbitration clause, including, any claim that all or any part of this arbitration clause, except paragraph G below, is void, voidable or unconscionable.

C. *Mandatory Arbitration:* Unless otherwise stated in this arbitration clause, any “Dispute” between the Parties shall, at your or my election or the election of any of our respective heirs, successors, assignees or related third parties, including Upstart, any other subsequent holder of my Note, and their affiliates, subsidiaries, and parents, (the “Parties”), be resolved by a neutral, binding arbitration, and not by a court of law. This procedure includes any Dispute over the interpretation, scope, or validity of this Note, this arbitration clause or the arbitrability of any issue, with the sole exception of the Parties’ waiver of any right to bring a class action or to participate in a class action as provided for

under paragraph G below shall be solely determined by the appropriate court, if necessary. This arbitration clause applies to the Parties, including their respective employees or agents, as to all matters which arise out of or relate to this Note or are in any way connected with the extension of credit set forth in this Note, or any resulting transaction or relationship . . .

I. *Exceptions:* The Parties agree that this arbitration clause is not applicable to “small claims” meaning those claims that either Party is entitled to file and maintain in an appropriate small claims court or any action where the total amount in controversy is no greater than \$10,000, including any claims for attorney’s fees and non-monetary relief

(Complaint, Exh. A., pp. 6-7.)

Defendant argues that the small claims exception in Paragraph I does not apply because Plaintiff cannot maintain its action in small claims court under Code of Civil Procedure Section 116.420. Plaintiff argues that the exception does apply because this is an “action where the total amount in controversy is no greater than \$10,000.” Plaintiff’s argument has merit. The language of the Promissory Note provides that the arbitration provision does not apply to actions where the amount in controversy is less than \$10,000, and the amount in controversy in this case is \$3,272.75. Accordingly, Defendant’s motion to compel arbitration is denied.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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