

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Mubiru v. Wells Fargo Bank, N.A.

No. 1:23-cv-01597-KES-SAB (E.D. Cal. Aug. 6, 2025) · No. 1:23-cv-01597-KES-SAB · Decided August 6,
2025

SUMMARY

The document contains findings and recommendations recommending that the Eastern District of California grant Wells Fargo Bank, N.A.’s motion for summary judgment in Frank K. Mubiru’s pro se action. The court addresses claims construed as intentional infliction of emotional distress, negligent infliction of emotional distress, and negligence arising from Mubiru’s erroneous designation as deceased on a bank account and the bank employees’ subsequent conduct. The court concludes that Mubiru failed to establish a duty supporting his direct-victim emotional-distress claim.

OPINION

Mubiru v. Wells Fargo Bank, N.A.

PER CURIAM.

1 2 3 4 5 6 7

UNITED STATES DISTRICT COURT

8

EASTERN DISTRICT OF CALIFORNIA

9 10 FRANK K MUBIRU, Case No. 1:23-cv-01597-KES-SAB 11 Plaintiff, FINDINGS AND
RECOMMENDATIONS

RECOMMENDING GRANTING

12 v. DEFENDANT’S MOTION FOR SUMMARY
JUDGMENT

13 WELLS FARGO BANK, N.A.,
(ECF No. 46, 48-52, 54-59) 14 Defendant.

OBJECTIONS DUE WITHIN TWENTY-
15 ONE DAYS

16 17 Plaintiff Frank K. Mubiru, appearing pro se and having paid the filing fee, brings this 18
action against Defendant Wells Fargo Bank, N.A. after Plaintiff, a Wells Fargo depositor, was 19
erroneously identified as deceased on his personal checking account. Plaintiff contends that 20
Defendant’s conduct after the error, but not the error itself, was negligent and caused him to 21
suffer emotional distress. 22 Currently before the Court is Defendant’s motion for summary
judgment for all claims 23 brought against it. This matter has been referred to the undersigned for

the preparation of 24 findings and recommendations pursuant to Local Rule 302(c) and 28 U.S.C. § 636(b)(1)(A). The 25 Court finds the matter suitable for decision without oral argument. L.R. 230(g). 26 Having considered the moving papers, the declarations and exhibits attached thereto, the 27 parties' statements of facts, as well as the Court's file, the Court recommends that Defendant's 1 I.

2 BACKGROUND

3 A. Procedural Background 4 On November 13, 2023, Plaintiff initiated this diversity action against Defendant. (ECF

5 No. 1.) Although Plaintiff's complaint does not state any specific cause of action against

6 Defendant, Plaintiff's civil cover sheet states that "Defendant caused injury by negligence." 7 (ECF No. 1-1.) In his request for relief, Plaintiff requests compensatory damages "because of 8 the impact of defendant's conduct on plaintiff's life rendering him unable to continue living and 9 working normally." (ECF No. 1 at 7.)¹ Plaintiff also requests punitive damages "because 10 [D]efendant's conduct was egregious and shocking to the conscience...." (Id.) 11 On February 27, 2024, Defendant filed its answer. (ECF No. 8.) 12 On August 12, 2024, the Court entered the parties' stipulation to conduct Plaintiff's 13 mental examination pursuant to Rule 35 of the Federal Rules of Civil Procedure. (ECF No. 33.) 14 On February 11, 2025, Defendant filed a redacted motion for summary judgment with 15 supporting exhibits.² (ECF No. 46-1.) One exhibit is Defendant's statement of undisputed facts. 16 (ECF No. 46-2.) 17 On February 24, 2025, Plaintiff filed his opposition. (ECF No. 55.) Plaintiff also filed a 18 separate response to each fact contained within Defendant's statement of undisputed facts. (ECF

19 No. 54.) Plaintiff filed an additional separate statement of disputed facts, supported by exhibits. 20 (ECF No. 56.) 21 On March 6, 2025, Defendant filed its reply. (ECF No. 57.) Defendant also filed a 22 separate response to Plaintiff's statement of facts; however, Defendant misconstrues Plaintiff's 23 separate statement of disputed facts (ECF No. 56) as a statement of undisputed facts. (ECF No. 24 58.) Additionally, Defendant filed objections to evidence that Plaintiff submitted in support of 25 his separate statement of disputed facts. (ECF No. 59.) 26 1 All references herein to pagination of electronically filed documents pertain to those as indicated on the upper 27 right corners via the CM/ECF electronic court docketing system. 1 B. Factual Background³ 2 Plaintiff had a Wells Fargo personal checking account, number x5251. (ECF No. 54 at 3 2.) Plaintiff was also a joint accountholder with his son on savings account number x7025. (Id.) 4 On October 28, 2021, Plaintiff and his son went to a Wells Fargo branch to remove 5 Plaintiff from the joint savings account. (ECF No. 54 at 2.) The "Relationship Change 6 Application" used to remove Plaintiff from account number x7025 erroneously identified 7 Plaintiff as deceased. (Id.) Neither Plaintiff nor his son noticed the error. (Id.) 8 On November 30, 2021, Plaintiff visited a Wells Fargo branch to withdraw cash from his 9 personal checking account. (ECF No. 54 at 2.) However, Plaintiff was unable to withdraw funds 10 due to the "deceased" designation. (Id.; ECF No. 58 at 2.) Plaintiff contends that he was 11 informed by Wells Fargo employees that his

account was closed. (ECF No. 54 at 2; ECF No. 58 12 at 2.) Plaintiff avers that when he inquired why his account was closed, employees told Plaintiff 13 that “as far as we are concerned, you are deceased.” (ECF No. 58 at 2; Affidavit of Frank K. 14 Mubiru (“Pl. Aff.”), ECF No. 56 at 9.) The employees give Plaintiff a pre-prepared form entitled 15 “Certificate Declaration of Life” to complete, notarize, and return to reinstate access to his 16 account. (Pl. Aff. ¶ 2; ECF No. 54-3.) 17 On the same day, November 30, 2021, Plaintiff returned the notarized form to a Wells 18 Fargo branch. (ECF No. 54 at 3.) An employee told Plaintiff the form would be sent for 19 processing. (Id.) On December 3, 2021, Plaintiff’s account was unfrozen. (Id.) 20 The Wells Fargo employees Plaintiff interacted with were polite, professional, and 21 helpful. (ECF No. 54 at 4.) However, Plaintiff claims that being informed he was deceased and 22 being required to complete a Declaration of Life to prove he was alive greatly distressed and 23 traumatized him, causing immediate mental stress, anguish, hopelessness, pain, and suffering. 24 (Pl. Aff. ¶¶ 2-3; ECF No. 56 at 2.) Plaintiff, however, did not raise a complaint with anyone at 25 Wells Fargo related to his symptoms (Dep. Frank. K. Mubiru (“Pl. Dep.”), ECF No. 46-4 at 30- 26 31), delayed seeking medical care, and attributed his symptoms to generalized stress rather than 27 3 The facts contained herein are relevant undisputed facts unless otherwise noted and are derived from the four iterations of the parties’ statements of undisputed and disputed facts, the exhibits attached thereto (ECF Nos. 46-2; 1 Defendant’s actions. (ECF No. 54 at 4.) Although Plaintiff has a pre-existing mental health 2 diagnosis, he did not disclose it when he did seek medical care. (Id.) Plaintiff contends his 3 mental health has been deteriorating since November 30, 2021. (Pl. Aff. ¶ 3.) 4 II.

5 JUDICIAL NOTICE AND EVIDENTIARY OBJECTIONS

6 A. Judicial Notice 7 On December, 26, 2024, Plaintiff filed a request for judicial notice, unattached to any 8 motion or corresponding request. (ECF No. 34.) Although Plaintiff’s request was filed months 9 before Defendant’s motion for summary judgment was filed, the Court addresses Plaintiff’s 10 request as though it is made in support of his opposition to the instant motion for summary 11 judgment in an abundance of caution. 12 Plaintiff first requests that the Court take judicial notice of the notarized Certificate 13 Declaration of Life, executed on November 30, 2021. (ECF No. 34 at 4-6.) The Court notes this 14 same document is provided as an exhibit to both Defendant’s motion for summary judgment 15 (ECF No. 46-7 at 1-2) and Plaintiff’s separate statement of disputed facts (ECF No. 56 at 6-7). 16 The Court takes judicial notice of the undisputed Certificate Declaration of Life. 17 Plaintiff also requests that the Court take judicial notice of a letter dated May 10, 2022, 18 that an employee of Defendant sent Plaintiff. (ECF No. 34 at 8-9.) The letter informs Plaintiff 19 of the standard notification procedures for deceased depositors, including the requirement that a 20 certified copy of a death certificate be presented before Defendant can designate that a customer 21 is deceased. (Id.) However, it is an undisputed fact that Plaintiff was erroneously identified as 22 deceased in the “Relationship Change Application” used to remove Plaintiff from joint savings 23 account number

x7025, which in turn effected his status on his personal account. (ECF No. 54 at 24 1-3.) Thus, Defendant's standard notification procedure for deceased depositors is irrelevant to 25 this action. The Court declines to take judicial notice of the May 10, 2022 correspondence. 26 Finally, Plaintiff requests that the Court take judicial notice of an unredacted page from 27 the independent medical examiner's psychological evaluation report. (ECF No. 44 at 11.) The 1 filed in support of Defendant's motion for summary judgment. The Court considers the report in 2 its entirety contained in the copy filed under seal. 3 B. Evidentiary Objections 4 In support of his statement of disputed facts filed with his opposition to Defendant's 5 motion, Plaintiff provides a printout of his employee earnings statement purporting to show that 6 his paycheck issued "by direct deposit in the forth [sic] week of November 2021 was rejected 7 and bounced back to the issuer." (ECF No. 56 at 2, 4.) 8 As to Defendant's objection to the printout on the basis of relevance, the Court notes that 9 when evaluating a motion for summary judgment for a genuine dispute of material fact, a court 10 "cannot rely on irrelevant facts, and thus relevance objections are redundant." *Burch v. Regents* 11 of the Univ. of Cal., 433 F. Supp. 2d 1110, 1119 (E.D. Cal. 2006). Defendant filed other 12 boilerplate evidentiary objections to the printout, including hearsay and 13 "foundation/authentication." (ECF No. 59); see *Torres v. Los Angeles Sheriff's Dept.*, Case No. 14 CV 22-07450-MWF (MARx), 2024 WL 4720808, at *5 (C.D. Cal. Aug. 14, 2024). However, 15 "at the summary judgment stage, we do not focus on the admissibility of the evidence's form. 16 We instead focus on the admissibility of its contents." *Sandoval v. Cnty. of San Diego*, 985 F.3d 17 657, 666 (9th Cir. 2021) (quoting *Fraser v. Goodale*, 342 F.3d 1032, 1036 (9th Cir. 2003)). In 18 other words, "[i]f the contents of a document can be presented in a form that would be 19 admissible at trial—for example, through live testimony by the author of the document—the 20 mere fact that the document itself might be excludable hearsay provides no basis for refusing to 21 consider it on summary judgment." *Id.* (citing *Fraser*, 342 F.3d at 1036-37). 22 Though Defendant's objections could prove cognizable at trial, for purposes of the 23 instant motion, the Court only focuses on the admissibility of the relevancy of the facts, not the 24 form of the facts as presented in the instant motion. See *Torres*, 2024 WL 4720808, at *5. Even 25 if this particular printout of Plaintiff's earnings statement itself is not admissible, it is possible 26 that Plaintiff could offer the facts underlying the document in an admissible form at trial. 27 Accordingly, to the extent the Court relies upon Plaintiff's earning statement in deciding 1 the Court does not, Defendant's objections are denied as moot. 2 III.

3 LEGAL STANDARD

4 "One of the principal purposes of the summary judgment rule is to isolate and dispose of 5 factually unsupported claims or defenses." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323-24 6 (1986). Summary judgment is proper only "if the movant shows that there is no genuine dispute 7 as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 8 56(a). Material facts are those that may affect the outcome of the case. *Anderson v. Liberty* 9 *Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute as to a material fact is genuine if the evidence 10

is such that a reasonable jury could return a verdict for the nonmoving party. *Id.* 11 The moving party “always bears the initial responsibility of informing the district court of 12 the basis for its motion, and identifying those portions of the pleadings and admissions on file, 13 together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue 14 of material fact.” *Celotex*, 477 U.S. at 323 (cleaned up). Where the moving party will not bear 15 the burden of proof on an issue at trial, it “must either produce evidence negating an essential 16 element of the nonmoving party’s claim or defense or show that the nonmoving party does not 17 have enough evidence of an essential element to carry its ultimate burden of persuasion at trial.” 18 *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102 (9th Cir. 2000). If the moving 19 party meets that burden, the burden then shifts to the non-moving party to designate specific 20 facts demonstrating the existence of genuine issues for trial. *Celotex*, 477 at 324. The non- 21 moving party “must do more than simply show that there is some metaphysical doubt as to the 22 material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 588 (1986). Rather, 23 the nonmoving party must “identify with reasonable particularity the evidence that precludes 24 summary judgment.” *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996). Should the non- 25 moving party fail to produce evidence that supports its claim or defense, courts enter judgment in 26 favor of the movant. *Celotex*, 477 U.S. at 323. 27 For purposes of summary judgment, the court must view the evidence in the light most 1 *Reinsurance Co. v. Northrop Grumman Corp.*, 975 F.3d 840, 844 (9th Cir. 2020). If, as to any 2 given material fact, evidence produced by the moving party conflicts with evidence produced by 3 the nonmoving party, the Court must assume the truth of the evidence set forth by the 4 nonmoving party with respect to that material fact. *Furnace v. Sullivan*, 705 F.3d 1021, 1026 5 (9th Cir. 2013). “[T]he mere existence of some alleged factual dispute between the parties will 6 not defeat an otherwise properly supported motion for summary judgment; the requirement is 7 that there be no genuine issue of material fact.” *Scott v. Harris*, 550 U.S. 372, 380 (2007) 8 (quoting *Anderson*, 477 U.S. at 247-48) (emphasis in original). In ruling on a motion for 9 summary judgment, a district court may not engage in credibility determinations or weigh 10 conflicting evidence. *Manley v. Rowley*, 847 F.3d 705, 711 (9th Cir. 2017). 11 IV.

12 DISCUSSION

13 Because Plaintiff’s complaint does not clearly set forth separate causes of action and 14 Defendant did not file any Rule 12 motion earlier in these proceedings, Defendant interprets the 15 pro se Plaintiff’s complaint at this late stage in the proceedings as one alleging intentional 16 infliction of emotional distress, negligent infliction of emotional distress, and negligence as a 17 result of the clerical error, and requests summary judgment of each claim. The Court shall 18 address each interpreted claim in turn. 19 A. Intentional Infliction of Emotional Distress 20 Defendant argues summary judgment should be granted to the extent Plaintiff alleges a 21 claim for intentional infliction of emotional distress (“IIED”) based on the unintentional clerical 22 error, as such error was not “extreme and outrageous,” committed “with the intention of causing,

23 or reckless disregard of the probability of causing, emotional distress.” *Hughes v. Pair*, 46 Cal. 24 4th 1035, 1050 (2009) (citations and quotations omitted); (ECF No. 46-1 at 6). 25 In his opposition brief, Plaintiff does not acknowledge Defendant’s IIED argument. See 26 *Jenkins v. Cnty. of Riverside*, 398 F.3d 1093, 1095 n.4 (9th Cir. 2005) (plaintiff abandoned 27 claims by not raising them in opposition to motion for summary judgment); *Foster v. City of 1* in an opposition to a motion for summary judgment may constitute a waiver of that claim.”). 2 Instead, Plaintiff clarifies that he does not attribute any of his symptoms to the October 28, 2021 3 clerical error; rather, Plaintiff contends he suffered serious emotional distress as a result of what 4 Defendant’s employees said and did to him on November 30, 2021. (ECF No. 55 at 1; ECF No. 5 54 at 4, 5; ECF No. 56 at 9.) Notably, Plaintiff does not argue that he makes an IIED claim 6 based upon the Defendant’s employees’ conduct after the clerical error. Rather, Plaintiff clearly 7 argues his action is one of “negligence [that] led to personal injury to the Plaintiff arising to the 8 claim for the Negligent Infliction of Emotional Distress.” (ECF No. 55 at 3.) Thus, Plaintiff 9 does not allege any IIED claim against Defendant in this action. Summary judgment of a 10 nonexistent claim is therefore unnecessary. 11 B. Negligent Infliction of Emotional Distress 12 Defendant’s motion for summary judgment rests on its interpretation that Plaintiff’s 13 alleged serious emotional distress is a direct result of the clerical error that identified Plaintiff as 14 deceased. Plaintiff argues that Defendant’s motion misconstrues the basis of his claim. As 15 previously stated, Plaintiff clarifies that he suffered serious emotional distress not as a result of 16 the October 28, 2021 clerical error, but as a result of what Defendant’s employees said and did to 17 him on November 30, 2021 when he requested to withdraw funds from his checking account and 18 was denied access. (ECF No. 55 at 1.) The cause of Plaintiff’s alleged serious emotional 19 distress is being told by Defendant’s employees on November 30, 2021 that his account is 20 closed,4 that he is deceased, and that he is required to complete a Certificate Declaration of Life. 21 22 4 The parties vigorously dispute whether Plaintiff’s account was actually closed or only temporarily frozen. Defendant provides redacted-only copies of transaction histories for Plaintiff’s personal checking account purporting 23 to show the account was not closed because Plaintiff had access to online and mobile banking and there continued to be activity on the account. (Decl. Tiffany Ward, ECF No. 46-5 at 3, ¶ 8; ECF Nos. 46-8, 46-9). In response, Plaintiff 24 provides a printout of his earnings statement which purports to show his account was closed because a blank row reflects that his late November 2021 paycheck bounced back to the issuer. (ECF No. 56 at 2, 4.) Neither party’s 25 evidence establishes the status of Plaintiff’s personal checking account from October 28, 2021 through December 3, 2021. Thus, viewing the evidence in the light most favorable to Plaintiff and drawing all justifiable inferences in his favor, a genuine dispute of fact exists as to the status of Plaintiff’s personal checking account. However, whether 26 the account was actually closed or frozen is immaterial. See *Scott*, 550 U.S. at 380 (the requirement to grant summary judgment “is that there be no genuine issue of material fact.”). Plaintiff does not claim any damages as a 27 result of his account being closed or frozen; rather, he alleges a claim solely for emotional distress

related to Defendant's employees' conduct on November 28, 2021, when Plaintiff was allegedly told his account was closed 1 (See *id.*) Plaintiff avers that Defendant's employees should have known that telling Plaintiff that 2 he is deceased would demean and harm him. (*Id.* at 4.) Plaintiff argues that Defendant's 3 employees' failure to behave with the level of care that a reasonable person would have 4 exercised under the same circumstances "led to personal injury to the Plaintiff arising into the 5 claim for the Negligent Infliction of Emotional Distress." (ECF No. 55 at 3.) In reply, 6 Defendant primarily argues summary judgment should be granted because Plaintiff fails to 7 establish that Defendant owed him a duty of care to avoid causing him emotional distress. 8 In California, there is no independent tort of negligent infliction of emotional distress 9 ("NIED"); rather, "[t]he tort is negligence, a cause of action in which a duty to the plaintiff is an 10 essential element." *Potter v. Firestone Tire & Rubber Co.*, 6 Cal. 4th 965, 984 (1993). Thus, 11 "[t]he traditional elements of duty, breach of duty, causation, and damages apply. Whether a 12 defendant owes a duty of care is a question of law. Its existence depends upon the foreseeability 13 of the risk and a weighing of policy considerations for and against imposition of liability." 14 *Marlene F. v. Affiliated Psychiatric Med. Clinic, Inc.*, 48 Cal. 3d 583, 588 (1989) (citation 15 omitted). "Duty is not universal; not every defendant owes every plaintiff a duty of care. A duty 16 exists only if the plaintiff's interests are entitled to legal protection against the defendant's 17 conduct. Whether a duty exists is a question of law to be resolved by the court." *Brown v. USA* 18 *Taekwondo*, 11 Cal. 5th 204, 213 (2021) (internal quotations and citations omitted). 19 California NIED claims are categorized as one of two cases: bystander cases and direct 20 victim cases. *Burgess v. Superior Court*, 2 Cal. 4th 1064, 1071 (1992). The distinction between 21 them is found in the source of the duty owed by the defendant to the plaintiff. *Id.* at 1072. 22 Bystander cases are "premised upon a defendant's violation of a duty not to negligently cause 23 emotional distress to people who observe conduct which causes harm to another." *Id.* at 1073. 24 Direct victim cases "are cases in which the plaintiff's claim of emotional distress is not based 25 upon witnessing an injury to someone else, but rather is based upon the violation of a duty owed 26 directly to the plaintiff." *Wooden v. Raveling*, 61 Cal. App. 4th 1035, 1038 (1998). In a direct 27 victim case, "damages for serious emotional distress are sought as a result of a breach of duty 1 law, or that arises out of a relationship between the two." *Burgess*, 2 Cal. 4th at 1073 (quoting 2 *Marlene F.*, 48 Cal. 3d at 590). 3 Here, Plaintiff's claim is not based upon witnessing injury to another. Rather, Plaintiff 4 claims he personally suffered serious emotional distress upon being informed by Defendant's 5 employees that his account was closed because he was deceased, and that he needed a notarized 6 Declaration of Life to reinstate access. (Pl. Aff. ¶ 2.) Plaintiff thus claims he is a direct victim of 7 Defendant's employees' purportedly negligent conduct on November 30, 2021. There is no duty 8 in California to avoid negligently causing emotional distress to another. *Potter*, 6 Cal. 4th at 984- 9 85; *Henry v. Bank of Am. Corp.*, No. C 09-00628 RS, 2011 WL 13143145, at *4 (N.D. Cal. July 10 15, 2011), *aff'd*, 522 F. App'x 406 (9th Cir. 2013). Thus, Plaintiff's alleged damages for 11 emotional distress are recoverable only if

Defendant has breached some other duty that it 12 assumed, is imposed by law, or arises out of a relationship between itself and Plaintiff. 13 Plaintiff generally argues that “Defendant owed a duty of ordinary care to the Plaintiff 14 who was a customer.” (ECF No. 55 at 4.) To the extent Plaintiff contends that the duty 15 supporting his direct victim NIED case arises out of a duty assumed by Defendant or a 16 preexisting relationship between a bank and its depositor, the Court is unpersuaded. “The 17 relationship between a bank and its depositor is not fiduciary in character but, rather, ‘founded 18 on contract.’ ” *Kurtz-Ahlers, LLC v. Bank of Am., N.A.*, 48 Cal. App. 5th 952, 956 (2020) 19 (quoting *Chazen v. Centennial Bank*, 61 Cal. App. 4th 532, 537 (1998) (“banks ‘are not 20 fiduciaries for their depositors’ ”)). Nevertheless, a bank has “a duty to act with reasonable care 21 in its transactions with its depositors....” *Bullis v. Sec. Pac. Nat. Bank*, 21 Cal. 3d 801, 808 22 (1978). Such duty “is an implied term in the contract between the bank and its depositor.” 23 *Chazen*, 61 Cal. App. 4th at 543. This duty generally arises in cases seeking recovery in tort for 24 negligently inflicted purely economic losses stemming from financial transactions. See, e.g., 25 *S&S Worldwide, Inc. v. Wells Fargo Bank*, 509 F. Supp. 3d 1154, 1161-62 (N.D. Cal. 2020) 26 (“[C]ase law reflects the narrow scope of a bank’s duties under the deposit agreement,” namely a 27 duty “to honor checks properly payable from the depositor’s account,” a duty “to dishonor checks 1 contract of deposit”) (citation omitted); *Hawkins v. Bank of Am., N.A.*, No. 17-CV-01954-BAS- 2 AGS, 2018 WL 1316160, at *3 (S.D. Cal. Mar. 14, 2018) (finding plaintiff sufficiently pled a 3 breach of an assumed duty of care where plaintiff informed the bank about fraudulent transfers, a 4 bank employee assured plaintiff that the legal department would handle the matter, but the bank 5 allowed seven months to lapse before taking action). 6 Here, Plaintiff asserts that his claim is based on Defendant’s employees’ conduct on 7 November 30, 2021, and not on any potential failure to take due care in connection with the 8 October 28, 2021 clerical error. Plaintiff, however, does not provide any caselaw—and the 9 Court independently finds none—to support extending a bank’s implied duty of care to discharge 10 its contractual duties with reasonable care to a duty to avoid causing its depositor emotional 11 distress during an in-person interaction. Defendant argues—and Plaintiff does not dispute—that 12 Wells Fargo’s contractual relationship with its depositor does not give rise to any obligation to 13 prevent causing emotional harm. (ECF No. 57 at 2.) Plaintiff fails to establish that Defendant 14 voluntarily assumed a duty of care to avoid causing Plaintiff emotional distress when 15 Defendant’s employees informed Plaintiff that “as far as we are concerned, you are deceased” 16 and required that he return a notarized pre-prepared form to correct the clerical error. 17 Accordingly, the Court finds Plaintiff fails to establish that Defendant has breached some duty 18 that it assumed or one that arises out of the bank-depositor relationship. 19 To the extent Plaintiff contends that the duty supporting his NIED claim is one imposed 20 on Defendant as a matter of law, the Court is also unpersuaded. Plaintiff repeatedly argues that 21 Defendant’s employees failed to act reasonably and that Defendant’s employees “had an 22 ordinary duty of care to the Plaintiff which they breached by their negligence.” (ECF No. 55 at 23 3-4.) The Court

liberally construes the pro se Plaintiff's argument to aver that Defendant is liable under California's general duty rule, which provides that "[e]veryone is responsible...for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person[.]" Cal. Civ. Code § 1714(a). "Section 1714(a) establishes a general duty of each person to exercise, in his or her activities, reasonable care for the safety of 1 (internal quotations and citation omitted). However, "[w]hat Civil Code section 1714 does not 2 do is impose a presumptive duty of care to guard against any conceivable harm that a negligent 3 act might cause." *S. California Gas Leak Cases v. Superior Court*, 7 Cal. 5th 391, 399 (2019). 4 Plaintiff points to no authority where Section 1714(a) has been applied to banks or other 5 financial institutions. This failure is understandable, as "[c]ourts have generally held that banks 6 have a limited duty of care or no duty of care beyond the duties created by the bank-depositor 7 relationship." *Gray v. Ben*, No. CV 22-03090-DSF (PVCx), 2022 WL 16859609, at *4 (C.D. 8 Cal. Nov. 9, 2022); *Gray v. JPMorgan Chase Bank, N.A.*, 661 F. Supp. 3d 991, 997 (C.D. Cal. 9 2023), *aff'd*, No. 23-55318, 2024 WL 1342619 (9th Cir. Mar. 29, 2024) (declining to extent 10 California Civil Code section 1714(a) to create liability for a bank). The Court is not persuaded 11 that Plaintiff's "ordinary duty of care" rule, Section 1714(a), imposes a presumptive duty of care 12 on Defendant to generally avoid distressing its depositors. Accordingly, the Court finds Plaintiff 13 does not establish that Defendant owed him a duty of care imposed by law to avoid causing 14 Plaintiff emotional distress when its employees informed Plaintiff during a "polite, professional, 15 and helpful" interaction (ECF No. 54 at 4) that his account was closed because he was deceased, 16 and he needed to complete a pre-prepared form to reinstate access.⁵ 17 Further, had Plaintiff established that a legal duty existed, absent "rare exceptions, a 18 breach of the duty must threaten physical injury, not simply damage to property or financial 19 interests." *Potter*, 6 Cal. 4th at 985. Rare exceptions to emotional distress absent physical injury 20 include "certain specialized classes of cases[w]here the negligence is of a type which will cause 21 highly unusual as well as predictable emotional distress." *Branch v. Homefed Bank*, 6 Cal. App. 2d 793, 800, (1992) (emphasis added); see *Kasramehr v. Wells Fargo Bank N.A.*, No. CV 11- 23 0551 GAF OPX, 2011 WL 12473383, at *10 (C.D. Cal. May 18, 2011) (noting NIED claims are 24 limited to specific types of cases, including "where a defendant mishandled the cremated remains 25 of a plaintiff's brother, a doctor negligently advised a plaintiff's wife that she suffered from 26 5 Although a determination of breach of the standard of care usually is a question of fact, even if the Court did extend the ordinary duty of care to Wells Fargo, the Court would be hard pressed to agree that a reasonable jury 27 would find Defendant's undisputed "polite, professional, and helpful" employees engaged in conduct—telling Plaintiff that his account was closed because he was designated as deceased and providing Plaintiff with the 1 syphilis, [and] where the defendant owed the plaintiff fiduciary or quasi-fiduciary duties...."). 2 Plaintiff does not provide any evidence that he suffered any threat of physical injury by 3 Defendant's employee's conduct on November 30, 2021. Nor does Plaintiff establish that this 4 case should fall within a specialized

class of cases in which negligence absent a threat of physical injury can cause highly unusual and predictable emotional distress.⁶ Here, it is undisputed that the Relationship Change Application completed on October 28, 2021, to remove Plaintiff from his son's account erroneously indicated that Plaintiff was deceased. (ECF No. 46- 8 6 at 1.) Plaintiff expressly states he does not attribute any symptoms to that clerical error. (ECF 9 No. 54 at 4, 5.) It is also undisputed that Defendant's employees who interacted with Plaintiff 10 were polite, professional, and helpful. (Id. at 4.) When Defendant's employees informed 11 Plaintiff that "as far as they were concerned, [Plaintiff] was deceased," Plaintiff knew he was not 12 deceased and "insisted that there must be a mistake." (ECF No. 56 at 9.) Plaintiff has genuine 13 cause to feel "shock and disbelief" (id.) upon being told by his bank that his account was closed 14 because he was deceased and to feel "demeaned" (ECF No. 55 at 4) by his bank's refusal to 15 accept his insistence that he is not deceased. However, the type of conduct that Plaintiff 16 claims—being informed by Defendant's employees during a polite, professional, and helpful 17 interaction that Plaintiff's bank account indicates he is deceased, and that Plaintiff needs to 18 complete a pre-prepared form to correct the error—is not within a class of NIED cases which 19 will foreseeably cause highly unusual and predictable serious emotional distress.⁷ 20 6 In his response to Defendant's argument regarding physical injury or a specialized class of cases (ECF No. 46-1 at 21 9), Plaintiff relies on *Wooden v. Raveling*, 61 Cal. App. 4th 1035 (1998) primarily for the proposition that serious emotional distress under an NIED claim need not be caused by outrageous negligent conduct and does not require 22 physical injury. (ECF No. 55 at 5 (quoting *Wooden*, 61 Cal. App. 4th at 1043, 1046).) Notably, the facts in *Wooden* are distinguishable from the instant action as *Wooden* fell into a specialized NIED category of "near-miss cases." In 23 other words, the *Wooden* Court held the plaintiff could maintain an action for NIED against a motorist whose car came onto her property and, although the car did not strike her to cause her physical injury, it placed her in 24 predictable fear of injury. *Wooden*, 61 Cal. App. 4th at 1036. 25 7 Because Plaintiff cannot establish that Defendant owed Plaintiff a duty of care to support his NIED claim, the Court need not address the subsequent elements of causation and damages, including Plaintiff's invocation of the eggshell plaintiff doctrine due to his pre-existing mental health diagnosis. (ECF No. 55 at 5.) However, the Court 26 must briefly note that it disagrees with Defendant's categorization of its expert's report. Specifically, Defendant requests summary judgment because of the "undisputed evidence" that Plaintiff's serious emotional distress was not 27 caused by the November 30, 2021 incident; rather, as reflected in Defendant's retained expert's report, Plaintiff's damages are opined to be overstated and/or stem from a pre-existing mental health disorder. (ECF No. 54 at 4.) The 1 Defendant also argues Plaintiff's NIED claim is barred by the economic loss rule because 2 Plaintiff seeks recovery in tort for what are essentially contract claims. The Court disagrees. 3 The judicially created economic loss rule "bars recovery in negligence for pure economic losses 4 when such claims would disrupt the parties' private ordering, render contracts less reliable as a 5 means of organizing commercial

relationships, and stifle the development of contract law.” 6 *Sheen v. Wells Fargo Bank, N.A.*, 12 Cal. 5th 905, 915 (2022) (emphasis added). This is not a 7 case where Plaintiff alleges that Defendant failed to perform its contractual promises and 8 Plaintiff suffered harm as a result. Nowhere in Plaintiff’s complaint, his opposition, his 9 statements of fact, nor his supporting documents does he contend that his claim arises from any 10 contract with Defendant. Rather, Plaintiff contends that his claim for emotional distress arises 11 from the November 30, 2021 “polite, professional, and helpful” interaction with Defendant’s 12 employees when they unreasonably told Plaintiff that he was deceased despite “talking with him 13 face to face,” and that they required that Plaintiff complete a Certificate of Life. (ECF No. 54 at 14 4; ECF No. 55 at 1-2, 4.) Additionally, Plaintiff does not seek purely economic losses. As 15 discussed further below, Plaintiff does not claim any pure economic loss. Rather, his requested 16 relief is for compensatory damages “because of the impact of defendant’s conduct on plaintiff’s 17 life rendering him unable to continue living and working normally.” (ECF No. 1 at 7.) 18 Accordingly, the Court does not find Plaintiff’s NIED claim is barred by the economic loss rule 19 and thus does not recommend summary judgment on such basis. 20 There is no duty to avoid negligently causing emotional distress to another. Plaintiff’s 21 “direct victim” NIED claim fails as he fails to establish the existence of a viable duty owed on 22 behalf of Defendant to Plaintiff that would support his NIED claim. Accordingly, the Court 23 recommends granting Defendant’s motion for summary judgment as to Plaintiff’s NIED claim. 24 / / / 25 / / / 26 pointing to record evidence. (Id.) However, Plaintiff provides in a sworn affidavit that the November 30, 2021 incident “greatly distressed and traumatized [Plaintiff and s]ince that day, [his] mental health has been 27 deteriorating,” and he continues to receive mental health treatment. (Pl. Aff. ¶ 3.) That Defendant has retained a psychologist who has analyzed Plaintiff’s psychological test scores and opined as to the cause and extent of 1 C. Negligence 2 To the extent Plaintiff makes a claim of general negligence against Defendant, the Court 3 recommends granting summary judgment on such claim. The Court need not further address the 4 duty element as explained above, and incorporates that analysis here. Plaintiff fails to establish 5 that Defendant owed Plaintiff a duty of care or that any subscribed duty of “ordinary care” 6 placed on Wells Fargo was breached by Defendant’s employees on November 30, 2021. 7 The Court shall briefly address Plaintiff’s argument in his opposition that “[a]s a bank, 8 the Defendant[’s] duty was to provide the Plaintiff with his cash when requested. The Defendant 9 failed that duty. And after having failed that duty, the Defendant’s employees further caused 10 emotional distress by their careless and reckless utterances and actions.” (ECF No. 55 at 4-5.) 11 Plaintiff fails to elaborate how the denial of access to his bank account constitutes a negligent 12 action. Further, Plaintiff’s complaint does not allege any damages stemming from Defendant’s 13 refusal to allow Plaintiff to withdraw funds from his personal checking account on November 30, 14 2021. (See ECF No. 1.) Nor are any allegations in the complaint related to Plaintiff’s inability 15 to access his funds between November 30, 2021 through the date of his account’s reinstatement 16 on December 3, 2021. (Id.)

Plaintiff may not now expand the scope of this litigation via 17 opposition to Defendant's motion for summary judgment. *Alvarez v. Hashemi*, No. 16-cv- 18 00203-AWI-JLT, 2019 WL 1099838, at *12 (E.D. Cal. Mar. 8, 2019) (citing *Wasco Prods., Inc. 19 v. Southwall Techs., Inc.*, 435 F.3d 989, 992 (9th Cir. 2006) (“[S]ummary judgment is not a 20 procedural second chance to flesh out inadequate pleadings.”). Even in opposition, Plaintiff 21 ascribes no damages specifically stemming from Defendant’s refusal to withdraw funds and/or 22 Plaintiff’s inability to access his funds from at least November 30, 2021 to December 3, 2021. 23 Although Plaintiff provides a record purporting to show that Plaintiff’s pay check was rejected 24 and returned to the issuer in the fourth week of November 2021 (ECF No. 56 at 4), Plaintiff does 25 not allege any damages related to that returned paycheck. 26 If Plaintiff did allege damages, however, the Court would agree with Defendant that the 27 economic loss doctrine would bar the claim. In such case, the challenged conduct would be that 1 | failure to perform under the bank-depositor contract, not an independent duty of tort law. Tort 2 | claims are barred by the economic loss rule “when they arise from — or are not independent of — 3 | the parties’ underlying contracts.” *Sheen*, 12 Cal. 5th at 923. Accordingly, even if Plaintiff's 4 | complaint had alleged a negligence claim based upon Defendant’s refusal to allow Plaintiff to 5 | withdraw funds from his account and Plaintiff had alleged damages as a result of that refusal, the 6 | economic loss rule would bar such claim. Accordingly, to the extent Plaintiff alleges a general 7 | negligence claim against Defendant, the Court recommends granting summary judgment. 8 IV.

9 CONCLUSION AND RECOMMENDATION

10 Accordingly, IT IS HEREBY RECOMMENDED that: 11 1. Defendant’s motion for summary judgment (ECF No. 46) be GRANTED; and 12 2. Judgment be entered in favor of Defendant Wells Fargo, N.A. and against Plaintiff 13 Frank K. Mubiru. 14 These Findings and Recommendations will be submitted to the United States District 15 | Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty- 16 | one (21) days after being served with these Findings and Recommendations, any party may file 17 | written objections with the Court. The document should be captioned “Objections to Magistrate 18 | Judge’s Findings and Recommendations.” Failure to file objections within the specified time 19 | may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th 20 | Cir. 2014), citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991). 21

IT IS SO ORDERED. DAA Le

23 | Dated: _ August 6, 2025 _ EO

STANLEY A. BOONE

24 United States Magistrate Judge 25 26 27 28