Tentative Rulings for April 23, 2024
Department 501

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)
The above rule also applies to cases listed in this "must appear" section

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The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

23CECG03227 ***Boyd v. Haron*** **is continued to Wednesday, June 12, 2024, at 3:30 p.m. in Department 501**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

Begin at the next page

(34)

Tentative Ruling

Re: ***Biacinto v. Forristall***
Superior Court Case No. 21CECG03370

Hearing Date: April 23, 2024 (Dept. 501)

Motion: to be Relieved as Counsel

Tentative Ruling:

To take the motion off calendar as the action was dismissed by court order on February 21, 2024.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 4/18/2024.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Hill v. ASFC, LLC, et al.***
Superior Court Case No. 23CECG02077

Hearing Date: April 23, 2024 (Dept. 501)

Motion: ASFC, LLC and Sierra Vista Healthcare's Demurrer and Motion to Strike the Complaint

Tentative Ruling:

To take the demurrer and motion to strike off calendar due to defective moving papers.

Explanation:

Demurrer

The papers filed in support of a demurrer must include at least (1) the demurrer itself, (2) a notice of hearing on the demurrer, and (3) a memorandum in support of the demurrer. (Cal. Rules of Court, rule 3.1112(a).) These papers may be filed as separate documents or may be combined n one or more documents if specified separately in the caption of the combined pleading. (Cal. Rules of Court, rule 3.1112(c).)

Importantly, the demurrer itself must distinctly specify the grounds upon which any of the objections to the complaint are taken. (Code Civ. Proc. §430.60.) Each ground of demurrer must be in a separate paragraph and must state whether it applies to the entire complaint or to specified causes of action. (Cal. Rules of Court, rule 3.1320(a).) Unless it does so the demurrer may be disregarded. (Code. Civ. Proc. § 430.60.)

In the case at bench, there is no demurrer filed which complies with the requirements of Code of Civil Procedure section 430.60. Defendants have filed a "Notice of Demurrer" that fails to include the demurrer itself with each ground for the demurrer separately stated in compliance with Rules of Court, rule 3.1320(a). For these reasons, the court finds the moving papers are not code-compliant and are defective.

Motion to Strike

"A notice of motion to strike a portion of a pleading must quote in full the portions sought to be stricken except where the motion is to strike an entire paragraph, cause of action, count, or defense. Specifications in a notice must be numbered consecutively." (Cal. Rules of Court, rule 3.1322(a).)

In the case at bench, defendants' "Notice of Motion" fails to specify any portion of the Complaint defendants seek to have stricken. As such, the moving papers are defective.

Meet and Confer

Had defendants filed code-compliant moving papers the court could not rule on the merits due to the parties' failure to meet and confer*, in person or by telephone*, as required. (Code Civ. Proc. §§ 430.41 and 435.5.) Here, defense counsel sent a letter to plaintiff's counsel with their phone number requesting a phone call. (Jurenka Decl., ¶ 3.) Written correspondence alone does not satisfy the clear and explicit requirements of the aforementioned statutes.

Notwithstanding plaintiffs' late-filed opposition, the court would be unable to reach the merits of the demurrer or motion to strike unless and until the parties engaged in and satisfactorily documented telephonic and/or in-person meet and confer, as required.

Accordingly, the demurrer and motion to strike are off calendar.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 4/18/2025.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Cardona v. Engen, et al.***
Superior Court Case No. 23CECG01378

Hearing Date: April 23, 2024 (Dept. 501)

Motion: by Defendants Ashley Engen and Stephen Smith to Strike Portions of the Second Amended Complaint

Tentative Ruling:

To grant the motion to strike the allegations, specified in the notice of motion, at Paragraph 10f: "gross negligence;" Paragraph 14a(2) [prayer for punitive damages]; the last sentence in the general negligence cause of action and second to last sentence in the wrongful death cause of action which reads, "Plaintiffs also contend that these defendants' negligence was not only simple, but also gross, and that punitive and exemplary damages should be awarded against all defendants named in the accompanying punitive damages attachment;" and the entire exemplary damages attachment. Leave to amend is denied.

The motion is denied as to the allegations of plaintiff's alternative theory of liability, negligence per se.

Explanation:

Defendants seek to strike the following portions of the Second Amended Complaint: Paragraph 10f ("negligence per se, gross negligence"), Paragraph 14a (2) ("punitive damages"), the last sentences of the general negligence and wrongful death causes of action, and the entire exemplary damages attachment. All the requests relate to plaintiffs' request for punitive damages or reference negligence per se as an alternative theory of liability. (Code Civ. Proc., §§ 435, 436.) Defendants characterize these portions of the FAC as "irrelevant, false, and improper" since the Complaint merely contains general conclusory allegations and pleads no specific facts showing malice, oppression, fraud or despicable conduct to support the claim for punitive damages.

"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) Strike out 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." (Code Civ. Proc., § 436.) A motion to strike may be used to remove a claim for punitive damages that is not adequately supported by the facts alleged in the complaint. (*Cryolife, Inc. v. Superior Court* (2003) 110 CalApp.4th 1145; *Kaiser Foundation Health Plan, Inc. v. Superior Court* (2012) 203 Cal.App.4th 696.)

Civil Code section 3294, subdivision (a), provides:

> 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.

Civil Code section 3294 was amended in 1987 to require a showing of despicable conduct as a predicate to the recovery of punitive damages. "Despicable conduct" is defined as conduct that is so vile, base or contemptible that it would be looked down on and despised by reasonable people."

> Used in its ordinary sense, the adjective "despicable" is a powerful term that refers to circumstances that are "base," "vile," or "contemptible." (4 Oxford English Diet. (2d ed. 1989) p. 529.) As amended to include this word, the statute plainly indicates that absent an intent to injure the plaintiff, "malice" requires more than a "willful and conscious" disregard of the plaintiffs' interests. The additional component of "despicable conduct" must be found. (Accord, BAJJ No. 14.72.1 (1992 Re-Rev.)); *Mock v. Michigan Miliers Mutual ins. Co.* (1992) 4 Cal.App.4th 306, 331.)

(*College Hospital, Inc., v. Superior Court of Orange County* (1994) 8 Cal.4th 704, 725.)

The addition of the criterial adjective "despicable" was a significant substantive limitation on the recovery of punitive damages (along with the elevation of the burden of proof), as it is a "powerful term." (*College Hospital, Inc. v. Superior Court* (1994) 8 Cal.4th 704, 725.) On the continuum of conduct, it is toward the extreme, eliciting adjectives such as vile or base and rousing the contempt or outrage of reasonable people. (*American Airlines, Inc. v. Sheppard, Mullin, Richter & Hampton* (2002) 96 Cal.App.4th 1017, 1050-1051.)

In *Lackner v. North* (2006) 135 Cal.App.4th 1188, 1212, the court noted that an award of punitive damages in cases involving *unintentional* torts are rare, and there had not been any such California case involving a collision. "[O]rdinarily, routine negligent or even reckless disobedience of traffic laws would not justify an award of punitive damages." (*Tavlor v. Superior Court* (1979) 24 Cal.3d 890, 899-900.)

The claim for punitive damages against defendant Engen is premised on her allegedly driving her vehicle 21 miles per hour in excess of the speed limit, driving distracted, and ultimately running a stop sign. Plaintiffs argue these allegations support finding defendant Engen's actions amount to "willful misconduct" as her actions were unreasonable and done in disregard of the obvious risk of great harm, making it highly probable that harm will follow. (*Morgan v. Southern Pacific Transp. Co*. (1974) 37 Cal.App.3d 1006, 1011.)

"[A]bsent an intent to injure the plaintiff, 'malice' requires more than a willful and conscious disregard of the plaintiff's interests. The additional component of 'despicable conduct' must be found." (*College Hosp. Inc. v. Superior Court*, *supra*, 8 Cal.4th at p. 725.) Plaintiffs have not pled facts to demonstrate defendant Engen's alleged violations

of traffic laws rise to a level of despicable conduct to support the claim for punitive damages, despite the strong rhetoric of the Second Amended Complaint and opposition.

Plaintiff's characterization of the actions as "gross negligence" similarly fails to support the claim for punitive damages. "[M]ere negligence, Even [sic] gross negligence is not sufficient to justify an award of punitive damages." (*Ebaugh v. Rabkin* (1972) 22 Cal.App.3d 891, 894.)

The court intends to grant the motion to strike the allegations, specified in the notice of motion, at Paragraph 10f "gross negligence," the prayer for punitive damages at Paragraph 14a(2); the last sentence in the general negligence and second to last sentence in the wrongful death causes of action, and the entire exemplary damages attachment.

The allegations of the Second Amended Complaint are sufficient to support the claim of negligence per se. The Second Amended Complaint does not plead a separate cause of action for negligence per se, rather it is incorporated into the allegations of plaintiffs' general negligence and wrongful death causes of action as an alternative theory of liability. The statutes violated are now pled and plaintiffs have alleged facts to support finding the injuries resulted from an occurrence the statute was designed to prevent and that plaintiffs, as other motorists on the roads, were the class of persons for whom the statute was intended to protect. (See, *Alcala v. Vazmar Corporation* (2008) 167 Cal.App.4th 747, 755.)

The motion is denied as to the allegations of plaintiff's alternative theory of liability, negligence per se.

To obtain leave to amend, "plaintiff[s] must show in what manner [they] can amend [their] complaint and how that amendment will change the legal effect of [their] pleading." (*Bergeron v. Boyd* (2014) 223 Cal.App.4th 877, 881.) Plaintiffs have not shown how they can effectively amend the pleading at this time. Leave to amend is denied.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 4/19/2024.
(Judge's initials) (Date)

(20)

Tentative Ruling

Re: ***Not Too Big To Fall Assoc., Inc. v. Bank of America, N.A., et al.***
Superior Court Case No. 19CECG03998

Hearing Date: April 23, 2024 (Dept. 501)

Motion: Applications to Appear Pro Hac Vice for Defendant U.S. Bank National Association

Tentative Ruling:

To take off calendar as moot in light of the moving party's dismissal from this action.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 4/19/2024.
(Judge's initials) (Date)

(29)

Tentative Ruling

Re: ***Funk v. City of Clovis***
Superior Court Case No. 23CECG02589

Hearing Date: April 23, 2024 (Dept. 501)

Motions (x2): Petitions to Approve Compromise of Disputed Claim of Minor

Tentative Ruling:

To grant both Petitions. The proposed Orders will be signed. No appearances necessary.

The court sets a status conference for Thursday, July 25, 2024, at 3:30 p.m., in Department 501, for confirmation of deposit of the minors' funds into the blocked accounts. If Petitioner files the Acknowledgments of Receipt of Order and Funds for Deposit in Blocked Account (MC-356) at least five court days before the hearing, the status conference will come off calendar.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 4/19/2024.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Kaler v. Carmax Auto Superstores, Inc. et al.***
Superior Court Case No. 23CECG05268

Hearing Date: April 23, 2024 (Dept. 501)

Motion: by Defendants Carmax Auto Superstores, Inc., Carmax Business Services, LLC, and Safeco Insurance Company of America on Demurrer and Motion to Strike Portions of the Complaint

Tentative Ruling:

To overrule the demurrer in its entirety. (Code Civ. Proc. § 430.10, subd. (e).)

To deny the motion to strike in its entirety.

Defendants Carmax Auto Superstores, Inc., Carmax Business Services, LLC, and Safeco Insurance Company of America are directed to file an Answer within 10 days of service of the minute order by the clerk.

Explanation:

Demurrer

Defendants Carmax Auto Superstores, Inc., Carmax Business Services, LLC, and Safeco Insurance Company of America (collectively "Defendants") generally demur to the entirety of the Complaint by plaintiff Parminder S. Kaler ("Plaintiff") for failure to state facts sufficient to support a cause of action. The Complaint states seven causes of action: (1) violation of the Consumer Legal Remedies Act ("CLRA"); (2) intentional misrepresentation; (3) concealment; (4) negligent misrepresentation; (5) violation of Civil Code section 1795.51 [under the Song-Beverly Consumer Warranty Act]; (6) Violation of the Unfair Competition Law ("UCL"); and (7) Vehicle Code section 11711. All causes of action are stated as to the purchase of a used 2017 Land Rover Range Rover.

On a demurrer a court's function is limited to testing the legal sufficiency of the complaint. A demurrer is simply not the appropriate procedure for determining the truth of disputed facts. (*Fremont Indemnity Co. v. Fremont General Corp*. (2007) 148 Cal.App.4th 97, 113-114.) In determining a demurrer, the court assumes the truth of the facts alleged in the complaint and the reasonable inferences that may be drawn from those facts. (*Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 883.) The court must determine if the factual allegations of the complaint are adequate to state a cause of action under any legal theory. (*Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 103.)

Contentions, deductions, and conclusions of law, however, are not presumed as true. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.) A plaintiff is not required to

plead evidentiary facts supporting the allegation of ultimate facts; the pleading is adequate if it apprises the defendant of the factual basis for the plaintiff's claim. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.)

First Cause of Action – Violation of CLRA

Defendants contend that the Complaint fails to state a cause of action because the only allegation in support is that Carmax Auto Superstores, Inc., told Plaintiff that the vehicle was certified and passed the Certified Pre-Owned inspection, even though the vehicle had previously been in an accident.

The CLRA prohibits 27 distinct unfair methods of competition and unfair or deceptive acts or practices with regards to consumer transactions. (Civ. Code § 1770, subd. (a).) In a misrepresentation claim, the plaintiff must have relied on the information given. (*Nelson v. Pearson Ford Co.* (2010) 186 Cal.App.4th 983, 1022, *disapproved of on other grounds in Raceway Ford Cases* (2016) 2 Cal.5th 161, 180.) In a failure to disclose information claim, reliance is expressed where the plaintiff would have behaved differently had the facts been known. (*See Mirkin v. Wasserman* (1993) 5 Cal.4th 1082, 1093.) Any consumer who suffers any damage as a result of the use or employment by any person of a method, act, or practice unlawful under the CLRA is entitled to relief. (Civ. Code § 1780, subd. (a); *Massachusetts Mutual Life Ins. Co. v. Superior Court* (2002) 97 Cal.App.4th 1282, 1293.)

Here, the Complaint alleges that Defendants misrepresented the sponsorship, approval or certification of goods; misrepresented the affiliation, connection or association with, or certification by, another; representing that goods have sponsorship, approval, characteristics, uses or benefits, which they do not have; representing that goods are of a particular standard, quality or grade, if they are of another; advertising goods with intent not to sell them as advertised; representing that a transfer confers or involves rights, remedies or obligations which it does not have or involve, or which are prohibited by law; and representing that the subject of the transaction has been supplied in accordance with a previous representation when it has not. (Complaint, ¶ 42.) While these are legal conclusions, facts were alleged in support, namely that Defendants represented that the vehicle had no prior collisions, had passed a certified inspection, and was in accordance with certified vehicle guidelines. (*Id.*, ¶ 9-12.) Based on those representations, Plaintiff purchased the vehicle. (*Id.*, ¶ 13.) The complaint further alleges that subsequent to the purchase, Plaintiff discovered that the vehicle had been involved in an accident some years prior to his purchase. (*Id.*, ¶ 15.) That information resulted in a lower value assigned to the vehicle. (*Ibid.*) The complaint alleges that due to the prior accident, the vehicle should not have been advertised as certified under Vehicle Code section 11713.18, subdivision (a). (*Id.*, ¶¶ 18 and 19.)

Based on the above, the court finds that the Complaint validly states a cause of action under the CLRA. The demurrer to the first cause of action for violation of the CLRA is overruled.

Second Cause of Action – Intentional Misrepresentation
Third Cause of Action – Concealment
Fourth Cause of Action – Negligent Misrepresentation

Defendants next argue that the second, third and fourth causes of action for intentional misrepresentation, concealment and negligent misrepresentation all fail to state causes of action as fraud actions because they are insufficiently specific. Defendants argue that the Complaint fails to identify who made alleged misrpresentations, and that in any event the alleged misrepresentations constituted puffery.

The general elements which give rise to a tort action for fraud are: (1) a misrepresentation (false representation, concealment or nondisclosure); (2) knowledge of the falsity; (3) intent to defraud or induce reliance; (4) justifiable reliance; and (5) resulting damages. (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 974.) Where the claim is for intentional misrepresentation, the claim requires an allegation of intent to misrepresent or deceive. (*City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith* (1998) 68 Cal.App.4th 445, 482.) Where the claim is negligent misrepresentation, a defendant makes false statements, honestly believing that they are true, but without reasonable grounds for such belief. (*Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, 407.) Where the claim is concealment, the misrepresentation must be the result of a duty to disclose the fact, that the plaintiff was unaware of the fact, and that the plaintiff would not have acted had the fact been known. (*Boschma v. Home Loan Center, Inc.* (2011) 198 Cal.App.4th 230, 248.)

All fraud-based claims must be pled specifically; general and conclusory allegations do not suffice. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) The policy of liberal construction of pleadings will not ordinarily be invoked to sustain a pleading defective in any material respect for allegations of fraud. (*Ibid.*) The particularity required in pleading facts depends on the extent to which the defendant in fairness needs detailed information that can be conveniently provided by the plaintiff. (*Semole v. Sansoucie* (1972) 28 Cal.App.3d 714, 719.) Less particularity is required where the defendant may be assumed to have knowledge of the facts equal to that possessed by the plaintiff. (*Ibid.*)

Here, the Complaint states that the sale occurred on August 29, 2022. Defendants are apprised of to whom the sale was made, on which vehicle, and on what day. Defendants are positioned to ascertain who made the representations in question to Plaintiff. (*Semole v. Sansoucie*, *supra*, 28 Cal.App.3d at p. 719.) Moreover, the allegations regarding the representation that the vehicle in question is certified, as identified in the Complaint, are not akin to mere puffery. (*Compare Consumer Advocates v. Echostar Satellite Corp.* (2003) 113 Cal.App.4th 1351, 1361, fn. 3 [finding that "crystal clear" and "CD quality" were not factual representations as to a given standard].) As alleged, the representation of "certified" violates Vehicle Code section 11713.18. Vehicle Code section 11713.18 makes it a violation for a holder of dealer's licenses issued under this article of the Vehicle Code to advertise or sell a used vehicle as "certified" or similar descriptive terms to imply that the vehicle has been certified to meet the terms of a used vehicle certification program under certain conditions. Accordingly, the use of the term "certified" is not, as Defendants argue, a mere matter of opinion.

Defendants alternatively argue that the Complaint contains no allegations that Defendants had actual knowledge that the vehicle had problems at the time of Plaintiff's purchase. However, as to each of the three fraud causes of action, the Complaint makes allegations that Defendants knew or should have known or concealed the knowledge of the vehicle's certification status. (Complaint, ¶¶ 53-55, 64, 66-68 and 80-82.) Though Defendants argue that Plaintiff had no trouble with the vehicle, the Complaint alleges that Plaintiff's trouble with the misrepresentation and/or concealment was that when Plaintiff tried to resell the vehicle, the vehicle was revealed to have a lower value as a result of Defendants' acts. (*Id.*, ¶¶ 15 and 19.)

For the above reasons, the demurrer to the second, third and fourth causes of action for, respectively, intentional misrepresentation, concealment and negligent misrepresentation, are overruled.

Fifth Cause of Action – Violation of Civil Code section 1795.51

Defendants argue that the fifth cause of action for violation of Civil Code section 1795.51 fails to state a cause of action because the Complaint only has a conclusory statement that Defendants are a "buy here pay here" dealer as defined by Vehicle Code section 241. Civil Code section 1795.51 applies only to "buy here pay here" dealers as defined by Vehicle Code section 241.

As noted above, legal conclusions are not assumed as true on demurrer. (*Aubry v. Tri-City Hospital Dist.*, 2 Cal.4th at p. 967.) However, also as noted above, allegations of ultimate facts are sufficient if the allegations adequately apprise the defendant on the factual basis of the claim. (*Perkins v. Superior Court*, *supra*, 117 Cal.App.3d at p. 6.) Whether Defendants are a "buy here pay here" dealer as defined by Vehicle Code section 241 is an allegation of an ultimate fact. Vehicle Code section 241 expressly indicates four conditions that determine a dealer as a "buy here pay here" dealer, subject to exceptions as set forth in Vehicle Code section 241.1. Defendants are apprised of what they are called to answer, as to whether they are or are not qualified as "buy here pay here" dealers. All other challenges thereof go to the merits of the cause of action, which is an inappropriate challenge on demurrer.

The demurrer to the fifth cause of action for violation of Civil Code section 1795.51 is overruled.

Sixth Cause of Action – Violation of UCL

Defendants argue that the sixth cause of action for violation of the UCL fails to state a cause of action because it is based on the same alleged misrepresentations of the fraud causes of action, which are subject to heightened pleading standards. As this challenge to the sixth cause of action rests on the same arguments as to the second, third and fourth causes of action, the demurrer to the sixth cause of action similarly is without merit. The demurrer to the sixth cause of action for violation of the UCL is overruled.

Seventh Cause of Action – Vehicle Code Section 11711

Defendants argue that because all other causes of action fail, they fail as to defendant Carmax Business Services, LLC and defendant Safeco Insurance Company of America. The seventh cause of action is not stated as to defendant Carmax Business Services, LLC. Further, as the Complaint states valid causes of action as to all other causes of action, the Complaint states a valid seventh cause of action as defendant Safeco Insurance Company of America. The demurrer to the seventh cause of action is overruled.

In sum, Defendants demurrer is overruled in its entirety. (Code Civ. Proc. § 430.10, subd. (e).)

Motion to Strike

Defendants further move to strike certain portions of the Complaint. Defendants seek to strike, as irrelevant or improper:

1. paragraph 47, page 6, lines 26 to 28 regarding the seeking of an order of injunction;
2. paragraph 62, page 8, lines 1 to 3 regarding allegations that Defendants' conduct amounts to fraud, malice and/or oppression as defined by Civil Code section 3294;
3. paragraph 76, page 8, lines 26 to 27 again referring to Civil Code section 3294;
4. paragraph 104, page 11, lines 21 to 22 regarding allegations of Defendants' engagement in deceptive acts and/or practices;
5. paragraph 105, page 11, lines 23 to 25 regarding allegations of Defendants' prior and unlawful business practices;
6. paragraph 106, page 11, line 26 through page 12, line 5, regarding certain equitable relief under Business and Professions Code section 17203;
7. Prayer item 4, for punitive damages;
8. Prayer item 6, for equitable and injunctive relief pursuant to the CLRA and the UCL; and
9. Prayer item 9, for relief under the UCL.

As to all punitive damages issues, Defendants submit that the Complaint fails to state sufficiently particular facts to support an award of punitive damages. As on demurrer, the court finds that the Complaint is sufficiently particular as to facts alleged.

Defendants argue that punitive damages only attach to business entities if corporate officers ratify actions done on their behalf. (Civ. Code § 3294, subd. (b).) However, as Defendants note, the Complaint alleges that the acts stated in the Complaint were authorized or ratified by an officer, director, or managing agent. (*E.g.*, Complaint, ¶ 62.) As on demurrer, while this statement is a legal conclusion, it is also an ultimate fact. The court finds that Defendants are sufficiently positioned to know, and therefore are apprised, of what they are called to answer.[1]

[1] Defendants cite to *J.R. Norton Company v. General Teamsters, Warehousemen and Helpers Union*. ((1989) 208 Cal.App.3d 430.) The holdings there were based on a full trial and jury verdict,

Defendants argue that Plaintiff is not entitled to injunctive relief under the CLRA and the UCL because injunctive relief is limited to the individual absent a class claim. (*E.g.*, Bus. & Prof. Code § 17203.) Defendants submit that the language in the Complaint seeks injunctive relief that would affect non-parties to the action. On this argument, Defendants seek to strike all items in the above list except 2, 3 and 7.

As to the CLRA basis, the Complaint alleges in paragraph 47, under Civil Code section 1780, subdivision (a)(2), Plaintiff seeks an order enjoining Defendants from the acts, methods or practices as alleged; and prays for, in item 6, for equitable and injunctive relief pursuant to Civil Code section 1780.

Civil Code section 1780 provides, in pertinent part:

> Any consumer who suffers any damage as a result of the use or employment by any person of a method, act, or practice declared to be unlawful by Section 1770 may bring an action against that person to recover or obtain…
>
> (a)(2) An order enjoining the methods, acts, or practices.

Nothing in this section limits the scope of the injunction to only those affecting Plaintiff. Rather, as Plaintiff notes, the purpose of the injunctive relief provision of the CLRA is not to resolve a private dispute, but to remedy a public wrong. (*Broughton v. Cigna Healthplans of Cal.* (1999) 21 Cal.4th 1066, 1080 *superseded by statute on other grounds as noted in In re Pacific Fertility Cases* (2022) 85 Cal.App.5th 887, 900.) Whatever the individual motive of the party requesting injunctive relief, the benefits of granting injunctive relief by and large do not accrue to that party, but to the general public in danger of being victimized by the same deceptive practices as the plaintiff suffered. (*Ibid.*) In other words, the plaintiff in a CLRA damages action is playing the role of a bona fide private attorney general. (*Ibid.*) The injunction is for the public benefit. (*Id.* at p. 1081.) The court finds that the Complaint does not improperly seek injunctive relief under the CLRA.

As to the UCL basis, the Complaint alleges in paragraphs 104, 105 and 106, that Defendants engaged in deceptive acts or practices, that Defendants' unlawful, unfair, and/or fraudulent business acts and practices are a continuing threat to Plaintiff and others, and that Plaintiff is entitled to an order enjoining Defendants from engaging in acts and/or practices that violate the UCL and equitable monetary relief. The Complaint prays for, in item 6, injunctive relief pursuant to the UCL under Business and Professions Code section 17203, and in item 9, general relief under the UCL as limited by law.

Defendants rely heavily on a 2003 decision, *Kraus v. Trinity Management Services, Inc.*, 23 Cal.4th 116, for the proposition that the equitable relief available under the UCL may not extend to others unless the action is certified for class. (*Kraus v. Trinity Management Services, Inc.* (2003) 23 Cal.4th 116, 138 ["*Kraus*"].) It should be first noted that *Kraus* predates the present version of Business and Professions Code section 17203,

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and addresses the sufficiency of evidence, not of pleadings. (*Id.* at pp. 443-445.) Moreover, the holding in the case simply affirms the language of Civil Code section 3294, subdivision (b).

material to the issues here. (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 977.) Moreover, *Kraus*, under the former section 17203, expressly found that UCL actions allowed for an individual plaintiff to seek restitution on behalf of all those affected. (*Kraus*, *supra*, 23 Cal.4th at pp. 126-127.) The question in *Kraus* was whether disgorgement, not restitution, may be sought on behalf of others absent a class action. (*Ibid.*) Disgorgement, as the California Supreme Court in *Kraus* noted, may include more than restitution. (*Id.* at p. 127.) As Defendants quote, a UCL action, absent a class action, did not authorize disgorgement. (*Id.* at p. 137.) The California Supreme Court however, did affirm the award of restitution. (*Id.* at p. 138 ["The judgment of the trial court for disgorgement of sums collected to secure liquidated damages may be enforced only to the extent that it compels restitution to those former tenants who timely appear to collect restitution."])

In 2004, Business and Professions Code section 17203 was amended to its present version, which states, in pertinent part that "[a]ny person may pursue representative claims or relief on behalf of others only of the claimant meets the standing requirements of Section 17204 and complies with Section 382 of the Code of Civil Procedure." Accordingly, a private party may pursue relief a representative action under the UCL now only if the party complies with section 382 of the Code of Civil Procedure, which is to say that the action meets the requirements for a class action. (*Arias v. Superior Court*, *supra*, 46 Cal.4th at p. 980.)

The California Supreme Court further evaluated the issue in *McGill v. Citibank, N.A.* ((2017) 2 Cal.5th 945, 958 ["*McGill*"].) In *McGill*, the court considered the amendment to the UCL and considered whether private plaintiffs may seek a public injunctive relief. The court found that the amendment does not preclude a private individual who has suffered injury in fact and has lost money or property as a result of a violation of the UCL, and therefore who has standing to file a private action, from requesting public injunctive relief in connection with that action. (*Id.* at p. 959.) Such a request for public injunctive relief does not constitute the pursuit of "representative claims or relief on behalf of others" within the meaning of Business and Professions Code section 17203. (*Id.* at p. 959-960.) The class action requirement has never been imposed on enjoining future wrongful business practices, and nothing in the intent of the amendment suggests a desire to link or restrict such relief to a class action. (*Id.* at p. 960.) The amendment was to address when a party seeks disgorgement or restitution on behalf of persons other than or in addition to the plaintiff. (*Id.* at p. 960-961 *citing Kraus*, *supra*, 23 Cal.4th at p. 126, fn. 10.)

Based on the above, the court finds that the paragraphs seeking injunctive relief under either or both of the CRLA and the UCL are not subject to strike.

For the same reasons, as Defendants correctly note, only on a class action may Plaintiff seek restitution or other monetary relief on behalf of others. (Bus. & Prof. Code § 17203.) In opposition, Plaintiff concedes that he cannot pursue monetary relief on behalf of others absent a class action. Plaintiff affirms his intent not to pursue monetary relief on behalf of others by way of the Complaint. A careful reading of the portions of the Complaint on this issue seek relief under the UCL as limited by applicable law.

For the above reasons, the motion to strike is denied in its entirety.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DTT on 4/19/2024.
(Judge's initials) (Date)