Tentative Rulings for August 5, 2025
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.***

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

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

Begin at the next page

(20)

Tentative Ruling

Re: ***Top Choice Entourage, Inc. v. Singh***
Superior Court Case No. 21CECG02811

Hearing Date: August 5, 2025 (Dept. 501)

Motion: by Plaintiff for Attorney Fees

Tentative Ruling:

To continue the hearing to August 26, 2025, at 3:30 p.m., in Department 501. Any further proof of fees incurred shall be submitted by way of declaration filed at least nine court days before the continued hearing date.

Explanation:

"Except as attorney's fees are specifically provided for by statute, the measure and mode of compensation of attorneys and counselors at law is left to the agreement, express or implied, of the parties, but parties to actions or proceedings are entitled to their costs, as hereinafter provided." (Code Civ. Proc., § 1021.)

"In any action on a contract, where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party, then the party who is determined to be the party prevailing on the contract, whether he or she is the party specified in the contract or not, shall be entitled to reasonable attorney's fees in addition to other costs." (Civ. Code, § 1717, subd. (a).)

Plaintiffs, prevailing parties following court trial, seek an award of attorney fees paid to counsel Thornton Davidson. Plaintiffs' action generally can be broken up into two breach of contract claims. In the first cause of action, plaintiffs seek to recover defendant's pro-rata share of settlement agreements entered into by Top Choice. It does not appear that the motion can be granted as to these fees, as plaintiffs identify no contractual agreement that provides for recovery of attorney fees relating to these settlements. Given that defendant's obligation arises from his status as a shareholder and officer in Top Choice, the contract with an attorney fee provision would presumably relate to his role in the corporation, but no such contract is identified or produced.

In the second cause of action plaintiffs seek to recover defendant's share of Top Choice's payment to Paramveer Food & Fuel, Inc., pursuant to a promissory note. The promissory note does include an attorney fee provision, which was assigned by Paramveer to plaintiffs for collection. (See Davidson Decl., Exhs. A, B.) Plaintiffs can recover attorney fees for work done on this cause of action, provided they supply adequate proof.

Plaintiffs recognize in their motion that "the debt to Paramveer included an attorney's fees provision whereas the other debts did not." (MPA 5:13.) They rely on

authority providing that apportionment of fees for nonrecoverable work is not required where the claims for relief are so intertwined that it would be impracticable to separate the attorney's time into compensable and noncompensable units. (*Maxim Crane Works, L.P. v. Tilbury Constructors* (2012) 208 Cal.App.4th 286, 298.) However, it is quite normal for an attorney to represent a client on different matters, and separate out those matters in the billings. Plaintiffs make no showing here that doing so would have been impossible or impracticable. Plaintiffs do no show that they should recover attorney fees for anything other than work relating to the Paramveer promissory note. The court intends to award fees only for work done relating to the Paramveer promissory note.

The difficulty in coming to a proper fee award is compounded by the apparent fact that plaintiffs' counsel's computers were the subject of a malware attack that resulted in loss of all electronic records, and all his invoices and billing records were stored electronically. (Davidson Decl., ¶ 9.) However, Davidson does state that he retained records of all payments received from clients (*ibid.*), but he does not submit such records in support of this fees motion. Presumably plaintiffs received invoices and/or billing details, but such records have not been provided in support of the fees motion. Nor has counsel provided copies of the records from which he estimated the fees incurred. (See Davidson Decl., ¶ 10.) While detailed billing records are not required if the attorney's fees motion is accompanied by a declaration from counsel substantiating that the fees are based on a reasonable calculation method (see *People v. Kelly* (2020) 59 Cal.App.5th 1172), the court would like to see the fees substantiated to the extent possible.

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 7/29/2025 .
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Robin Benites v. FCA US, LLC***
Superior Court Case No. 24CECG03858

Hearing Date: August 5, 2025 (Dept. 501)

Motion: by Defendant Demurring to First Amended Complaint

Tentative Ruling:

To sustain defendant's demurrer to the third and sixth causes of action, with leave to amend. Plaintiff is granted 20 days' leave to file a Second Amended Complaint, which shall run from service by the clerk of the minute order. New language must be set in **boldface** type.

Explanation:

In July 2024, plaintiff purchased a 2022 Chrysler Pacifica (Vehicle), which "was manufactured and/or distributed" by defendant FCA US, LLC. Plaintiff alleged problems with the Vehicle ensued, "including but not limited to, stalling defects, engine defects; defects causing stalling; among other defects and non-conformities." (Compl., p. 2:13-14.) Plaintiff alleged the "Stalling Defect" may result in stalling, shutting off, and/or loss of power, and that these safety defects have been known to defendant and concealed to consumers like plaintiff. (Compl., ¶¶ 12-20.)

The court sustained defendant's demurrer to plaintiff's third and fifth causes of action of the original Complaint with leave to amend. Thereafter, plaintiff filed a First Amended Complaint (FAC).[1] In the FAC, plaintiff added a new paragraph, stating, "Plaintiff was the first retail buyer of the Subject Vehicle." (FAC, ¶ 9.) As before, plaintiff alleged the Stalling Defect may result in stalling, shutting off, and/or loss of power, and that these safety defects have been known to defendant and concealed to consumers like plaintiff. (Compl., ¶¶ 13-21.)

Plaintiff added five additional paragraphs regarding a problem with a drained battery and two new causes of action to the FAC. Plaintiff bases the sixth cause of action for breach of the Consumer Legal Remedies Act (CLRA, Civ. Code, § 1750 et seq.) on a different problem—the Vehicle allegedly has a defective nine-speed transmission (Transmission Defect). Defendant now demurs to the third and sixth causes of action of the FAC.

Meet and Confer

Counsel for defendant filed and served a declaration stating counsel met and conferred with plaintiff's counsel by telephone on July 16, 2025. As a result of the productive conversation, plaintiff agreed to withdraw the fifth cause of action for

[1] Plaintiff failed to include new allegations in boldface type, as the court had directed.

fraudulent concealment. At plaintiff's request, the clerk entered the dismissal of the fifth cause of action on July 16, 2025. Thereafter, defendant withdrew its demurrer to the fifth cause of action. The parties were unable to resolve their remaining differences. This satisfies the requirements of Code of Civil Procedure section 430.41 to meet and confer before filing a demurrer.

Third Cause of Action – Violation of Civil Code Section 1793.2, subdivision (a)(3)

Defendant again demurs to the third cause of action for violation of Civil Code section 1793.2, subdivision (a)(3), on the ground that the complaint fails to state facts sufficient to state a claim.

The relevant provisions of Civil Code section 1793.2, subdivision (a)(3), provide:

> (a) Every manufacturer of consumer goods sold in this state and for which the manufacturer has made an express warranty shall: …
> (3) Make available to authorized service and repair facilities sufficient service literature and replacement parts to effect repairs during the express warranty period.

(Civ. Code, § 1793.2, subd. (a)(3).)

Here, plaintiff repeats verbatim the allegation from the Complaint that "Defendant FCA failed to make available to its authorized service and repair facilities sufficient service literature and replacement parts to effect repairs during the express warranty period." (Compare Compl., ¶ 73, p. 11:18-20 and FAC ¶ 74, p. 12:14-16.) However, plaintiff again fails to plead sufficient facts to support this conclusory allegation. Where statutory remedies are invoked, the cause of action "must be pleaded with particularity." (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 410, citations omitted.)

Plaintiff adds additional allegations about repair attempts for a drained battery. Specifically, plaintiff adds five new paragraphs (FAC, ¶¶ 23-27) regarding "electrical complaints including, inter alia, a drained battery." (FAC, ¶ 24, p. 4:2-3.)[2] The additional paragraphs describe three presentations of the Vehicle to defendant's authorized repair facility for the battery problem. Plaintiff alleges the first service visit occurred on July 15, 2025. (FAC, ¶ 24.) This date appears to include a typographical error, because plaintiff filed the FAC on February 20, 2025, well before July 15, 2025. Plaintiff also presented the Vehicle for repairs on August 14, 2024, and again on October 28, 2024. On each presentation, "Defendant's technician inspected the [V]ehicle and performed warranty repairs. At pick up, Defendant's authorized repair facility again advised the Vehicle had been repaired and was working as designed." (FAC, ¶¶ 25, 26, 27.) Plaintiff then alleges defendant's authorized repair facility, Fresno Chrysler Dodge Jeep Ram Fiat, performed at least some of the repairs.

[2] After paragraph 50 on page 7 of the FAC, plaintiff stops renumbering the paragraphs and includes duplicate paragraphs 45 through 50.

Plaintiff's addition of the following conclusory paragraph fails to supply the necessary factual predicate:

> On multiple occasions, Plaintiff presented the Vehicle to Defendant FCA's authorized repair facilities for a drained battery. Defendant's technicians inspected the vehicle and performed repairs. However, despite repeated efforts, the defects persisted due to the literature being insufficient to allow diagnosis and/or repair of the defects, and/or the unavailability of parts necessary for repairs.

(FAC, ¶ 73.) Plaintiff's speculative assumption that the statute was violated simply because the defects about the battery persisted despite a few repair attempts is insufficient. For example, the defects could have persisted for reasons other than because defendant failed to make sufficient service literature or replacement parts available. Furthermore, plaintiff alleges defendant had superior and exclusive knowledge about the *Stalling Defect* (see FAC, ¶ 28), not a defective battery.

In opposition, plaintiff argues that further particularity cannot be pleaded, as the information is known only to defendant. However, plaintiff fails to allege sufficient facts about specific repair attempts presumptively within plaintiff's knowledge—such as how and when defendant was notified of the need to provide replacement parts or service literature, what type of replacement parts or service literature defendant failed to provide, and the specific persistent defect(s) plaintiff encountered after failed repair attempts, such as a persistent Stalling Defect, Transmission Defect, and/or battery defect. Accordingly, the court sustains the demurrer to the third cause of action, with leave to amend.

Sixth Cause of Action – Violation of CLRA

Next, defendant demurs to the sixth cause of action for violation of the CLRA, which prohibits unfair methods of competition and deceptive practices. (Civ. Code, § 1770.) The CLRA allows a plaintiff to obtain damages, as well as equitable relief and other remedies. (Civ. Code, § 1780, subd. (a).) In addition to alleging a defendant's deceptive conduct, a CLRA plaintiff must allege the deception harmed the plaintiff. As the court explained in *In re Vioxx Class Cases* (2009) 180 Cal.App.4th 116:

> The CLRA declares numerous practices in the sale of goods or services to consumers to be unlawful. (Civ. Code, 1770, subd. (a).) Among the practices deemed unlawful under the CLRA are: "[r]epresenting that goods ... have ... characteristics, ... uses, [or] benefits ... which they do not have" (Civ. Code, § 1770, subd. (a)(5)); "[r]epresenting that goods ... are of a particular standard, quality, or grade ... if they are of another" (Civ. Code, § 1770, subd. (a)(7)); and "[a]dvertising goods ... with intent not to sell them as advertised" (Civ. Code, § 1770, subd. (a)(9)). The CLRA then provides that "[a]ny 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 [Civil Code s]ection 1770 may bring an action against that person to recover or obtain" actual damages, an injunction, restitution, and punitive damages. (Civ. Code, § 1780, subd. (a).) [¶] The language of the

> CLRA allows recovery when a consumer "suffers damage as a result of" the unlawful practice. *This provision "requires that plaintiffs in a CLRA action show not only that a defendant's conduct was deceptive but that the deception caused them harm*." [Citation.]

(*In re Vioxx Class Cases, supra,* 180 Cal.App.4th at pp. 128–129, fn. omitted, italics added.)

In *Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828 (*Dhital*), the court held that "[f]raud, including concealment, must be pleaded with specificity. [Citation.]" (*Id.* at pp. 843-844.) Here, unlike the allegations in *Dhital*, plaintiff fails to allege sufficient facts specific to the Vehicle's repair history. Instead, plaintiff alleges many general facts, copied and pasted from form complaints in other lawsuits.

For example, plaintiff's formulaic allegations fail to identify what deceptive conduct by defendant caused plaintiff harm. For its CLRA claim, plaintiff incorporates the prior allegations of a Stalling Defect and a problem with the battery, but bases the CLRA claims on a general problem for all vehicles with the same nine-speed transmission as the Vehicle, all of which suffer from the alleged Transmission Defect. (Compare plaintiff's allegations to allegations in *Dhital, supra,* 84 Cal.App.5th at p. 833 [*Dhital* plaintiffs identified selling dealership, described specific repair attempts, and alleged plaintiffs eventually stopped using vehicle because it posed safety risk to them and others].)[3]

In conclusion, the court sustains the demurrer to the sixth cause of action, with leave to amend, based on plaintiff's failure to allege facts to identify the Vehicle's specific defect(s) and failure to plead defendant's alleged concealment with the requisite specificity.

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 8/1/2025.
(Judge's initials) (Date

[3] As to defendant's contention that the economic loss rule bars plaintiff's statutory claim under the CLRA, neither party cites authority analyzing the application of the economic loss rule to a statutory claim. Therefore, the court does not address this issue in ruling on defendant's demurrer to the FAC.

(20)

Tentative Ruling

Re: ***Zart Transmission, Inc. v. The Estate of Rosalie Morton***
Superior Court Case No. 20CECG01307

Hearing Date: August 5, 2025 (Dept. 501)

Motion: by Defendants Strong Holdings, Inc., dba KW Commercial and Jared Ennis to Bifurcate Trial

Tentative Ruling:

To deny.

Explanation:

Under Code of Civil Procedure section 598, the court is given great discretion in regard to the order of issues at trial:

> The court may, when the convenience of witnesses, the ends of justice, or the economy and efficiency of handling the litigation would be promoted thereby, on motion of a party, after notice and hearing, make an order…that the trial of any issue or any part thereof shall precede the trial of any other issue or any part thereof in the case….

Similarly, Code of Civil Procedure section 1048, subdivision (b), specifies the court's discretion in regard to bifurcating issues for separate trial:

> The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any cause of action … or of any separate issue or of any number of causes of action or issues.

The decision to grant or deny a motion to bifurcate issues and/or to have separate trials, lies within the court's sound discretion. (See *Grappo v. Coventry Financial Corp*. (1991) 235 Cal.App.3d 496, 503-504.)

Strong Holdings, Inc., dba KW Commercial and Jared Ennis (together "Keller Williams") move to bifurcate the cross-claims asserted against them by Kenneth Loveman as executor of the Estate of Rosalie Morton ("Estate") from the claims brought by plaintiff Zart Transmission, Inc., against Aileen Leavitt and the Estate.

While the claims in the Complaint and Cross-Complaint are distinct, the court is not convinced that judicial economy would be served by bifurcating the case and having two separate trials. As the parties have conflicting viewpoints on the degree to which the claims are interconnected, the court feels it is best to let the jury resolve the claims. Keller Williams expresses confidence that it will be dismissed from the action prior

to trial when it moves for judgment on the pleadings. In that event bifurcation would be moot.

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 8/1/2025.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Ashtsabi v. Pacific Bells, LLC***
Superior Court Case No. 24CECG03028

Hearing Date: August 5, 2025 (Dept. 501)

Motion: Application of Benjamin J. Mueller to Appear as Counsel *Pro Hac Vice*

Tentative Ruling:

To grant. (Cal. Rules of Court, rule 9.40(a).) The proposed Order will be signed.

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 8/1/2025.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Tucker v. Young***
Superior Court Case No. 23CECG01280

Hearing Date: August 5, 2025 (Dept. 501)

Motion: by Defendant Demurring to the Complaint

Tentative Ruling:

To sustain the demurrer to the first, third and fourth causes of action, with leave to amend. (Code Civ. Proc., § 430.10, subds. (e),(g).) To overrule the demurrer to the second cause of action. (Code Civ. Proc., § 430.10. subd. (e).)

Defendant's request for judicial notice is granted. (Evid. Code, § 452, subd. (d).)

Plaintiff is granted 20 days' leave to file a First Amended Complaint. The time in which such pleading can be filed will run from service by the clerk of the minute order. All new allegations in the pleading are to be set in **boldface** type.

Explanation:

Defendant demurs to each cause of action in the Complaint on the grounds that the claims are barred by the applicable statute of limitations and plaintiff fails to allege facts sufficient to state a cause of action.

The function of a demurrer is to test the sufficiency of a plaintiff's pleading by raising questions of law. (*Plumlee v Poag* (1984) 150 Cal.App.3d 541, 545) The test is whether plaintiff has succeeded in stating a cause of action; the court does not concern itself with the issue of plaintiff's possible difficulty or inability in proving the allegations of her complaint. (*Highlanders, Inc. v. Olsan* (1978) 77 Cal.App.3d 690, 697.) The truth of the facts alleged in the complaint are assumed true as well as the reasonable inferences that may be drawn from those facts. (*Miklosy v. Regents of University of California* (2008) 2 Cal.4th 876, 883.)

"The defense of statute of limitations may be asserted by general demurrer if the complaint shows on its face that the statute bars the action." (*E-Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1315.) However, in order for the bar of the statute of limitations to be raised by demurrer, the defect must clearly and affirmatively appear on the face of the complaint; it is not enough that the complaint shows merely that the action may be barred." (*McMahon v. Republic Van & Storage Co., Inc.* (1963) 59 Cal.2d 871, 874.)

Statute of Limitations as to all Causes of Action

The only date that appears in the Complaint is May 30, 2011, when plaintiff alleges she moved into the subject property. Defendant contends that all of the applicable

statute of limitations for each cause of action in this action is no more than 4 years (Code Civ. Proc., §§ 337 [4 years—written lease], 339 [2 years—oral lease], 335.1 [2 years—injury to person], 338 [3 years—damage to property].), and since the only date alleged in the Complaint occurred over twelve years prior to the commencement of this action, each cause of action is time barred.

The party asserting a statute of limitations defense has the initial burden of proving the claims are barred. (*Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1197.) Thereafter, the burden shifts to the opposing party to demonstrate his or her claims survive based on one or more nonstatutory exceptions to the limitations period. (*Ibid*.) Additionally, "[c]ritical to applying a statute of limitations is determining the point when the limitations period begins to run. Generally, a plaintiff must file suit within a designated period after the cause of action accrues. (Code Civ. Proc., § 312.) A cause of action accrues 'when [it] is complete with all of its elements'. . ." (*Pooshs v. Philip Morris USA, Inc.* (2011) 51 Cal.4th 788, 797, citation omitted.)

According to the Complaint, plaintiff moved into the subject property on May 30, 2011, and she "became increasingly aware of [the] defective and dangerous conditions on the premises. . ." (Compl., ¶ 5.) While it is known when plaintiff moved into the premises, it is unknown when all of the elements for each cause of action occurred. For example, it is not alleged exactly when either plaintiff or defendant became aware of the defects existing on the premises. Nor it is alleged when plaintiff actually vacated the subject property, which would be relevant to the limitations period for her constructive eviction claim. Therefore, it is unclear when any of the causes of action asserted in the Complaint began to accrue and the demurrer is not sustained on this ground.

First Cause of Action – Breach of Implied Warranty of Habitability

Defendant argues that the Complaint fails to allege: (1) whether the lease was oral or written; and (2) facts to support the allegations that Defendant had actual and constructive knowledge of the defects and conditions.

"In an action founded upon a contract, it cannot be ascertained from the pleading whether the contract is written, is oral, or is implied by conduct." (Code Civ. Proc., § 430.10, subd. (g).) "[A] warranty of habitability is implied by law in residential leases." (*Green v. Superior Court* (1974) 10 Cal.3d 616, 637.) The elements of a cause of action for breach of the implied warranty of habitability 'are the existence of a material defective condition affecting the premises' habitability, notice to the landlord of the condition within a reasonable time after the tenant's discovery of the condition, the landlord was given a reasonable time to correct the deficiency, and resulting damages.' (*Erlach v. Sierra Asset Servicing, LLC* (2014) 226 Cal.App.4th 1281, 1297.)

Indeed, it is not alleged whether the lease was oral, written, or implied by conduct. Nor is it alleged when and how defendant was informed or otherwise became aware of the defective conditions existing on the property, and whether defendant was given a reasonable time to cure. Thus, the first cause of action is sustained, with leave to amend.

Second Cause of Action – Negligence

Next, defendant contends that the Complaint fails to allege facts to support a cause of action for negligence. "The elements of a cause of action for negligence are well established. They are '(a) a legal duty to use due care; (b) a breach of such legal duty; [and] (c) the breach as the proximate or legal cause of the resulting injury.' " (*Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917, citation and italics omitted.)

Defendant does not challenge the allegation relating to defendant's duty to maintain the property in a safe and habitable condition; however, defendant indicates there are insufficient to facts to show a breach of duty. Particularly, defendant argues that plaintiff only alleges conclusory facts and fails to provide specific detail of how and when defendant had knowledge and failed to repair. Although as defendant points out, there appears to be paragraphs in the Complaint that are either numbered incorrectly or missing, the court considers the allegations of the Complaint in its entirety even despite these errors.

Here, plaintiff alleges that defendant negligently maintained the rental property by failing to correct defective and dangerous conditions existing on the premises such as structural weaknesses in the walls and foundation, leaky plumbing, defective electrical wiring, mold and mildew, and lack of air conditioning and heating. Plaintiff also alleges that her husband fell through the bathroom floor. Further, it is alleged that defendant had knowledge of the defects and plaintiff was injured. While it is not alleged how or when defendant became aware of these defects, these facts are not necessary to allege the elements of negligence. For example, unlike plaintiff's claim for breach of the implied warranty of habitability, reasonable time is not a necessary component of the claim. Accordingly, the pleadings sufficiently state a cause of action for negligence and the demurrer to the second cause of action is overruled.

Third Cause of Action – Constructive Eviction

" 'A constructive eviction occurs when the acts or omissions . . . of a landlord, or any disturbance or interference with the tenant's possession by the landlord, renders the premises, or a substantial portion thereof, unfit for the purposes for which they were leased, or which has the effect of depriving the tenant for a substantial period of time of the beneficial enjoyment or use of the premises.' [Citation.] Abandonment of premises by the tenant within a reasonable time after the wrongful act of the landlord is essential to enable the tenant to claim a constructive eviction. [Citation.] Failure to repair and keep the premises in a condition suitable for the purposes for which they were leased has been held to constitute eviction. [Citation.]" (*Stoiber v. Honeychuck* (1980) 101 Cal.App.3d 903, 925–926, citations omitted.)

Defendant contends that the Complaint fails to allege that plaintiff vacated the property within a reasonable time after discovery of defendant's wrongful acts. Indeed, there are no allegations indicating that plaintiff vacated the property within a reasonable time. In fact, there are no allegations pertaining to time in the Complaint. Therefore, the demurrer to the third cause of action is sustained, with leave to amend.

Fourth Cause of Action – Intentional Infliction of Emotional Distress

"The elements of the tort for intentional infliction of mental distress are: (1) outrageous conduct by the defendant, (2) intention to cause or reckless disregard of the probability of causing emotional distress, (3) severe emotional suffering and (4) actual and proximate causation of emotional distress. . . [Citation.] " (*Stoiber v. Honeychuck, supra,* 101 Cal.App.3d at p. 921, citation omitted.)

Here, there are no allegations establishing that defendant's conduct was outrageous or that plaintiff's emotional suffering was severe. The Complaint seems to be drafted from a template and plaintiff has neglected to fill in the portion of the template pertaining to the element of outrageousness. The Complaint reads as follows: "Defendant's conduct in failing to repair dangerous and defective conditions on the premises. . . was extreme and outrageous in that *[specify, such as: defendant knew that defendant's failure to act in this regard would cause plaintiff mental torment and grief]*." (Compl., ¶ 29, italics in original.) Accordingly, the demurrer to the fourth cause of action is sustained, with leave to amend.

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 8/1/2025.
(Judge's initials) (Date)