Tentative Rulings for September 16, 2026
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.***

25CECG01155 ***Carlos Garcia Romero v. Nachhater Singh***

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

(03)

Tentative Ruling

Re:	***MFRG Contractors, Inc. v. David A. Bush, Inc.*** Superior Court Case No. 23CECG00897
Hearing Date:	September 16, 2026 (Dept. 501)
Motion:	Plaintiff's Motion for Summary Judgment, or in the Alternative Summary Adjudication of the Individual Causes of Action in the Complaint and Cross-Complaint

Tentative Ruling:

To deny plaintiff's motion for summary judgment of the entire complaint and cross-complaint. To deny summary adjudication of the individual claims in the plaintiff's complaint. To grant summary adjudication as to the first and second cross-claims for intentional and negligent misrepresentation, as well as the prayer for punitive damages. To deny the motion for summary adjudication of the third cross-claim for breach of contract. (Code Civ. Proc., § 437c.)

Explanation:

Plaintiff MFRG moves for summary judgment of its entire complaint, or in the alternative summary adjudication of each of its claims, contending that there are no disputed facts with regard to whether it is entitled to payment for its work and materials supplied on the subcontract. MFRG also contends that, because the subject project was a public works project, it is entitled to enforce the stop payment notice and recovery on the public works payment bond. Furthermore, MFRG contends that defendants cannot prevail on their cross-complaint, which alleges claims for fraud, breach of contract, and punitive damages, because defendants did not rely on any misrepresentations by plaintiffs and did not incur any damages as a result of any reliance.

First, with regard to plaintiff's motion for summary adjudication of its own affirmative claims for payment based on the breach of the subcontract, common counts, stop payment notice, and payment bond, there does not appear to be any real dispute that MFRG entered into a subcontract with defendants for provision of materials and services to the project, and that MFRG did in fact provide materials and services under the contract. (Plaintiff's Undisputed Fact Nos. 1-3.)[1] However, there is a dispute about whether MFRG's invoices are accurate and whether it is entitled to the full amount that it has requested. Defendants contend that plaintiff failed to provide necessary contract documents and that its invoices included charges for untimely, unapproved, and overstated change orders. (Michael R. Johnson decl., ¶¶ 10-32; Bush decl., ¶ 4.)

[1] Defendants object to the format of the plaintiff's separate statement, contending that it does not comply with the mandatory two-column format under Rule of Court 3.1350, as it is divided into three columns rather than two. The court intends to overrule the objection, as the separate statement is substantially compliant with the Rules of Court even if is technically not formatted correctly.

Defendants concede that they owe about $330,000 on the subcontract (Opposition, p. 2:28), but dispute that they owe the full requested amount of $598,000. Therefore, since there are disputed issues of material fact with regard to the amounts owed on the subcontract, the court intends to deny the plaintiff's motion for summary judgment as to the entire complaint, as well as the motion for summary adjudication of plaintiff's individual affirmative claims for payment.

On the other hand, the court intends to grant summary adjudication of defendants' cross-claims based on intentional fraud and negligent misrepresentation. Plaintiff argues that defendants cannot prove their fraud claims because defendants clearly did not rely on any representations by plaintiff and they were not damaged as a result of such reliance. Plaintiff points out that the fraud claims are based on several change order requests (CORs) that plaintiff submitted. However, defendants did not accept the CORs. Instead, they disputed them and refused to pay them. (Plaintiff's UMF Nos. 13-15, 20-22, 43-47.) Therefore, plaintiff concludes that defendants cannot prove that they relied on the CORs and that they were damaged by them, so they cannot prevail on their fraud claims.

"'The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or "scienter"); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.'" (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638, internal citations omitted.) Likewise, "[t]he elements of negligent misrepresentation are '(1) the misrepresentation of a past or existing material fact, (2) without reasonable ground for believing it to be true, (3) with intent to induce another's reliance on the fact misrepresented, (4) justifiable reliance on the misrepresentation, and (5) resulting damage.'" (*National Union Fire Ins. Co. of Pittsburgh, PA v. Cambridge Integrated Services Group, Inc.* (2009) 171 Cal.App.4th 35, 50, citation omitted.)

Here, defendants cannot show that they justifiably relied on plaintiff's CORs or that they suffered damage as a result of their reliance, because they disputed the change orders and refused to pay them. (UMF Nos. 15, 20-22, 27-38.) Thus, defendants cannot prove the essential elements of their fraud claims, as they never relied on plaintiff's representations in the change orders and they did not pay plaintiff any money based on the CORs. Consequently, plaintiff has shown that it is entitled to summary adjudication of the intentional fraud and negligent misrepresentation cross-claims.

While defendants argue that they were damaged by plaintiff's allegedly false and fraudulent requests for payment because the project has been delayed, their reputation suffered, and defendants had to engage in litigation, these damages were not caused by defendants' reliance on plaintiff's statements in the CORs. In fact, defendants do not dispute that they challenged the validity of the CORs or that they refused to pay them. Their refusal to pay the CORs led to project delays and litigation, but any such damage was not caused by reliance on plaintiff's CORs, so it is not a basis for a fraud claim. Likewise, any harm to defendants' reputation was not a result of their reliance on plaintiff's allegedly false CORs. Therefore, the court intends to grant summary adjudication of the cross-claims for intentional and negligent misrepresentation in favor of plaintiff.

Next, plaintiff moves for summary adjudication of the cross-claim for breach of contract, again arguing that defendants cannot prevail on their claim because they cannot show that they were damaged by the plaintiff's CORs because they never paid plaintiff for its materials and services. In fact, plaintiff points out that defendants have alleged in their cross-complaint that they refused to pay the CORs because they were untimely or included improper and inflated amounts. (UMF Nos. 42, 51.) Plaintiff contends that submission of the change orders was not, in itself, a breach of the subcontract. Nor was plaintiff's alleged refusal to provide lien releases and closeout paperwork necessarily a breach. Therefore, plaintiff concludes that defendants cannot prove the essential elements of breach and damages, so the court should grant summary adjudication of the breach of contract cross-claim.

However, defendants have raised triable issues of material fact with regard to whether plaintiff breached the subcontract by submitting untimely change order requests and failed to notify the agency of any delays within five days. (Michael R. Johnson decl., ¶¶ 12, 14, and Exhibits 9 and 11 thereto.) According to defendants, under the terms of the subcontract, plaintiff had to provide written notice of any delays within five days of identifying the delay, and also had to provide written notice of any proposed change orders within seven days of discovery of the facts giving rise to the request. (Subcontract, ADD 5, Articles 47(c) and 52(b).) Plaintiff was also required to submit a final waiver of lien for its work, as well as releases of liens from all subcontractors and materialmen before being paid. (ADD 5, Article 50(h).) Defendants contend that plaintiff failed to provide final lien releases, so it was not entitled to payment. (Michael Johnson decl., ¶¶ 22, 23, 27, 28, and Exhibits 19, 20, 24, 25 thereto.) Defendants also claim to have been damaged by plaintiff's refusal to provide lien releases and other closing documents, which have forced defendants to keep the project open until the disputes are resolved. (Bush decl., ¶¶ 4, 5.)

Therefore, there are triable issues of fact with regard to whether plaintiff breached the subcontract by submitting late change orders and refusing to provide lien releases as required under the agreement, which resulted in project delays and related damages to defendants. As a result, the court intends to deny summary adjudication of the breach of contract cross-claim.

Plaintiff also seeks summary adjudication of the fraud and punitive damage claims to the extent that they are alleged against Jerry Mikolajcyzk individually, contending that there is no evidence to show that defendants relied on any of the allegedly false representations or that Mikolajcyzk is guilty of fraud, malice, or oppression necessary to support a punitive damage claim. (Civil Code, § 3294.) As discussed above, the undisputed facts show that defendants did not rely on any false statements made by plaintiff or Mikolajcyzk or pay any money to them as a result of the statements. While defendants vigorously contend that Mikolajcyzk made false representations to them when he submitted the change orders, they do not deny that they questioned the change orders and refused to pay them, so they did not rely on the CORs and they were not injured by any reliance. Therefore, plaintiff has shown that it is entitled to summary adjudication of the fraud claims alleged against Mikolajcyzk, as well as the prayer for punitive damages against him.

Finally, the court intends to grant the motion for summary adjudication of the prayer for punitive damages against plaintiff MFRG, as the undisputed facts show that defendants did not rely on plaintiff's alleged misrepresentations or suffer damages from their reliance on the representations. Without evidence that plaintiff acted with fraud, oppression, or malice, defendants cannot prevail on their punitive damage prayer. (Civil

Code, § 3294.) Therefore, the court intends to grant summary adjudication of the prayer for punitive damages in the cross-complaint.

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: KCK on 09/15/26.
(Judge's initials) (Date)

(48)

<u>Tentative Ruling</u>

Re: ***Erlinda Nadora v. Valley Dental & Orthodontics***
Superior Court Case No. 25CECG04546

Hearing Date: September 16, 2026 (Dept. 501)

Motion: By Plaintiff for Leave to File a First Amended Complaint

Tentative Ruling:

To grant plaintiff Erlinda Nadora's motion for leave to file a first amended complaint. (Code Civ. Proc., § 473.) Plaintiff shall file their first amended complaint within 10 days of the date of service of this order.

Explanation:

"The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading . . . ." (Code Civ. Proc. § 473, subd. (a)(1).) "While a motion to permit an amendment to a pleading to be filed is one addressed to the discretion of the court, the exercise of this discretion must be sound and reasonable and not arbitrary or capricious. And it is a rare case in which 'a court will be justified in refusing a party leave to amend his pleadings so that he may properly present his case.' If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion." (*Morgan v. Superior Court of Cal. In and For Los Angeles County* (1959) 172 Cal.App.2d 527, 530, internal citations omitted.)

Plaintiff Erlinda Nadora moves the court for an order granting her leave to file a First Amended Complaint. The proposed First Amended Complaint amends the first cause of action and adds a second cause of action to include additional allegations against Jasbir Cheema Dental Corporation and Jasbir S. Cheema, DDS. The amendments are intended to ensure the pleading includes all claims plaintiff seeks to litigate against the parties. The amendments do not appear to prejudice defendants. Defendants have not opposed the motion. Accordingly, the court grants plaintiff's motion for leave to file the First Amended Complaint.

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: <u>KCK</u> on <u>09/15/26</u>.
(Judge's initials) (Date)

(49)

Tentative Ruling

Re:	***Natalie Morgan v. FCA US LLC*** Superior Court Case No. 25CECG05990
Hearing Date:	September 16, 2026 (Dept. 501)
Motion:	By Defendant FCA US LLC on Demurrer to the Sixth Count of the Complaint

Tentative Ruling:

To sustain defendant FCA US LLC's general demurrer to the sixth count of the complaint with leave to amend. (Code Civ. Proc., § 430.10, subd. (e) and (f).) Plaintiff is granted 10 days leave to file the First Amended Complaint, which will run from service by the clerk of the minute order. New allegations/language must be set in **boldface** type.

Explanation:

Defendant FCA US LLC ("Defendant") demurs to the sixth count of the complaint of plaintiff Natalie Morgan ("Plaintiff").

Meet and Confer

The demurring party must meet with the opposing party, in person, by telephone, or by video conference prior to filing a demurrer and file and serve with the motion a declaration detailing the meet-and-confer efforts. (Code Civ. Proc., § 430.41, subd. (a).) Defendant attempted to call Plaintiff's counsel multiple times but was unable to reach them or receive any response from Plaintiff's counsel. (Turner Decl., ¶¶ 7-8.) Defendant has met the meet and confer requirement.

Failure to State Facts Sufficient to Constitute 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 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; see also *Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1168 [actual reliance in support of a fraud claim reasonably inferable from the plaintiff's complaint]; Code Civ. Proc., 452 ["In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties."].)

A general demurrer, "admits the truth of all material factual allegations in the complaint;" the plaintiff's "ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court …." (*Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 496; *Stella v. Asset Management Consultants, Inc.* (2017) 8 Cal.App.5th 181, 190 ["We assume the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded and matters of which judicial notice has been taken."].)

Plaintiff's sixth count of the complaint alleges that Defendant committed fraudulent concealment. The required elements for fraudulent concealment claim are:

> (1) concealment or suppression of a material fact; (2) by a defendant with a duty to disclose the fact; (3) the defendant intended to defraud the plaintiff by intentionally concealing or suppressing the fact; (4) the plaintiff was unaware of the fact and would have acted differently if the concealed or suppressed fact was known; and (5) plaintiff sustained damage as a result of the concealment or suppression of the material fact.

(*Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1, 40.) Defendant contends Plaintiff's complaint fails because she has failed to plead facts required to meet the second element, a duty to disclose, of a fraudulent concealment claim.

Analysis of Duty to Disclose

"Fraud must be pled specifically; general and conclusory allegations do not suffice." (*Lazar v. Superior Co*urt (1996) 12 Cal.4th 631, 645.) A duty to disclose can arise from five possible circumstances:

> (1) it is imposed by statute; (2) the defendant is acting as plaintiff's fiduciary or is in some other confidential relationship with plaintiff that imposes a disclosure duty under the circumstances; (3) the material facts are known or accessible only to defendant, and defendant knows those facts are not known or reasonably discoverable by plaintiff (i.e., exclusive knowledge); (4) the defendant makes representations but fails to disclose other facts that materially qualify the facts disclosed or render the disclosure misleading (i.e., partial concealment); or (5) defendant actively conceals discovery of material fact from plaintiff…Circumstances (3), (4), and (5) presuppose a preexisting relationship between the parties, such as "between seller and buyer, employer and prospective employee, doctor and patient, or parties entering into any kind of contractual agreement.

(*Rattagan v. Uber Technologies, Inc*., *supra*, 17 Cal.5th at. 40.)

Defendant contends that no preexisting relationship between Defendant and Plaintiff is raised within the complaint. The complaint only discusses the warranty relationship between Plaintiff and Defendant and the warranty relationship would only have occurred after Plaintiff purchased the vehicle. Plaintiff points to the analogous case of *Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828 ("*Dhital*") and argues Plaintiff has pled sufficient facts. However, the facts in *Dhital* are different. In *Dhital*, the complaint contained allegations that indicated the authorized dealership that sold the car were agents of Nissan for the purposes of sale of vehicles to consumers. (*Id*., at 844.) The complaint here contains no such allegations. Further, the complaint contains no information that discusses any preexisting relationship between Plaintiff and Defendant.

Therefore, Plaintiff has not adequately pled a preexisting relationship between Plaintiff and Defendant for Plaintiff's fraudulent concealment claim.

Defendant additionally raises that Plaintiff was not specific enough with regards to the issues with the engine and Defendant's source of information. However, Plaintiff pled the issue about the engine to the same specificity as was accepted in *Dhital*. (*Dhital v. Nissan North America, Inc.*, *supra*, 84 Cal.App.5th at 844.) Therefore, with regards to the issues with the engine, Plaintiff's fraudulent concealment complaint was adequately pled.

Plaintiff has failed to state facts sufficient to state a cause of action for fraudulent concealment. However, additional facts about the nature of the preexisting relationship that could give rise to a duty to disclose can be added. Accordingly, the demurrer to the sixth count of fraudulent concealment is sustained with ten days 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: KCK on 09/15/26 .
(Judge's initials) (Date)

(46)

Tentative Ruling

Re:	***In re: Missael Fregoso*** Superior Court Case No. 26CU02367
Hearing Date:	September 16, 2026 (Dept. 501)
Motion:	Petition to Approve Compromise of Disputed Claim of Minor

Tentative Ruling:

To grant the petition, as the issues identified in the Intended Ruling issued August 27, 2026 have been addressed and resolved. The court intends to sign the proposed orders. No appearances are necessary.

Pursuant to Superior Court of Fresno County, Local Rules, Rule 2.8.4, the court sets a **Status Conference on Thursday, December 10, 2026, at 3:30 p.m. in Department 501** for confirmation of deposit of the minors' funds into a blocked account. If petitioner files the Acknowledgments of Receipt of Order and Funds for Deposit in Blocked Account (MC-356) at least ten (10) 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: KCK on 09/15/26 .
(Judge's initials) (Date)