Tentative Rulings for February 7, 2023
Department 501

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

20CECG02289 ***Jordan Yarnell v. Michael Cadillac, Inc*. is continued to Wednesday, February 8, 2023, 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

(40)

Tentative Ruling

Re: ***Moore-Newton Quality Hardwoods v. Sandcastle Development Enterprise***
Superior Court Case No. 22CECG00718

Hearing Date: February 7, 2023 (Dept. 501)

Motion: by Defendant to Strike Portions of the First Amended Complaint Pertaining to Punitive Damages

Tentative Ruling:

To grant the motion with leave to amend. If plaintiff chooses to further amend, it is allowed 20 days' leave to file a Second Amended Complaint. The time to file such pleading will run from service by the clerk of the minute order. All new allegations in the Second Amended Complaint are to be set in **boldface** type.

Explanation:

In relevant part, Code of Civil Procedure section 436 empowers the court to (a) strike out any irrelevant, false, or improper matter inserted in any pleading, and (b) strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state.

Civil Code section 3294 allows for the recovery of punitive damages if clear and convincing evidence proves defendant is guilty of oppression, fraud or malice. Oppression is "despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (Civ. Code § 3294, subd. (c)(2).) Malice includes "despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (Civ. Code § 3294, subd. (c)(1).) "Fraud" is "intentional misrepresentation, deceit or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person or property of legal rights or otherwise causing injury." (Civ. Code § 3294, subd. (c)(3).)

Defendant argues that the First Amended Complaint (the FAC) presents no factual allegations to support for the fraud claim and, by extension, the prayer for punitive damages. Rather, according to defendant, the FAC contains conclusory statements about a "scheme" to order products while "secretly" intending never to pay.

Plaintiff's opposition asserts fraud has been properly pled and recaps the allegations of the FAC. Yet plaintiff does not explain, for example, how it "knows" defendant intended never to pay, what defendant said, and when, regarding his financial solvency and his "intended" financial harm to plaintiff. (Opposition at pp. 3-4.)

Conclusory statements that a party has acted with oppression, fraud or malice are insufficient to plead fraud and state a prayer for punitive damages within the meaning

of Civil Code section 3294. (*Brousseau v. Jarrett* (1997) 73 Cal.App.3d 864, 872; *G.D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 32.)

The FAC is conclusory. It provides no facts about the loosely alleged scheme. It does not detail any behavior or statements by defendant that would constitute fraud. It fails to state, for example, who was allegedly involved, what the alleged "scheme" entailed, when the scheme began, or what defendant did in furtherance of the scheme (other than not pay the bills). It is not stated how plaintiff discovered defendant's "secret intent" not to pay, or any other actions by defendant that would constitute fraudulent conduct. Plaintiff has not met the burden to plead a cause of action for fraud.

In addition, it appears plaintiff is attempting to allege promissory fraud. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638). This requires *specific* factual circumstances from which a contemporaneous intent not to perform can be inferred. The FAC contains no information about, for example, the events that occurred at contract formation or as the parties began their transactions, which would support promissory fraud, i.e., that defendant never intended to pay. Instead, plaintiff alleges defendant represented it was solvent and could pay its bills as they became due. From the allegations, it appears defendant had indeed paid its bills on time for two years. There is no allegation defendant was not, in fact, insolvent at the time it represented that it was. No facts are pled to show, essentially, fraud in the inducement. (*Id.* at p. 639.)

Without pleading facts to show fraudulent intent, a fraud cause of action will not lie and punitive damages are unavailable. Thus, the FAC supports neither a fraud claim nor punitive damages.[1]

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 2/3/2023.
(Judge's initials) (Date)

[1] A motion to strike does not authorize an attack on an entire cause of action. (*Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 529.) While the defects noted above would have subjected the fraud cause of action to demurrer, defendant did not bring such a motion. Even so, the same aspects (as discussed above) which make the fraud cause of action deficient also render the allegations insufficient to support a claim for punitive damages.

(37)

Tentative Ruling

Re: ***In Re: J.G. Wentworth***
Superior Court Case No. 22CECG03880

Hearing Date: February 7, 2023 (Dept. 501)

Motion: by Petitioner J.G. Wentworth for Approval for Transfer of Payment Rights

Tentative Ruling:

To deny. (Ins. Code, § 10139.5.)

Explanation:

The Structured Settlement Protection Act governs transfers of structured settlement payments to factoring companies for immediate cash payments. (See Ins. Code, §§ 10134 et seq.) The Act's purpose is to "protect structured settlement payees from exploitation by factoring companies." (*RSL Funding, LLC v. Alford* (2015) 239 Cal.App.4th 741, 745.) The Act provides that a transfer of structured settlement payment rights is void unless the following conditions are met:

1) The transfer is fair and reasonable, and in the payee's best interest, taking into account the welfare and support of the payee's dependents (Ins. Code, § 10137, subd. (a)); and
2) The transfer complies with the requirements of the Act, will not contravene other applicable law, and the judge has reviewed and approved the transfer (Ins. Code, § 10137, subd. (b); Ins. Code, § 10139.5.).

To determine what is fair and reasonable, and in the payee's best interest, the court is to consider the totality of the circumstances and the factors listed in Insurance Code section 10139.5, subdivision (b), including the purpose of the transfer and the payee's financial and economic situation. (Ins. Code, § 10139.5.)

Here, petitioner J.G. Wentworth has not demonstrated how this transfer is in Mr. White's best interests. Petitioner has not demonstrated that the financial terms of the transfer are fair and reasonable where it is utilizing a discount rate of 22.63 percent and the amount Mr. White is to receive ($26,000) is less than half of the amount to which he would be entitled ($54,216.08). (Ins. Code, § 10139.5, subd. (b)(9).)

Additionally, while the court has received Mr. White's declaration and his signed waiver of independent legal or financial counsel, the court remains concerned as to why Mr. White is waiving such counsel. According to the Purchase Contract, petitioner agrees to pay the fees of Mr. White's independent counsel, accountant, or actuary up to $1,500 should he exercise his right to seek independent counsel. While Mr. White claims he is experiencing financial hardship, he did not indicate this is the only or most beneficial means by which he can obtain the necessary funds. If Mr. White were to exercise his right

to obtain independent legal or financial counsel, he might discover that he has alternatives.

Finally, this would be Mr. White's fourth transfer of payment rights. While this court was not petitioned regarding the first three transfers in 2012 and 2013, it is inclined to act cautiously where an individual has pursued such a transfer of payment rights on three additional occasions.

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 2/3/2023.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Jose Crestin Linaresserrano et al. v. General Motors LLC***
Superior Court Case No. 21CECG03628

Hearing Date: February 7, 2023 (Dept. 501)

Motion: by Plaintiffs for an Order Compelling Further Responses to Discovery

Tentative Ruling:

To grant and compel defendant General Motors to provide further verified responses to Request for Production, Set One, Nos. 7, 10, 16, 18 through 20, 34, and 58 through 62, inclusive, and produce all relevant documents, within 20 days of service of the order by the clerk.

Explanation:

Notwithstanding defendant's protestation, it appears that plaintiffs' counsel engaged in adequate and good faith meet and confer efforts prior to bring this motion. Plaintiffs' counsel exchanged multiple meet and confer letters with defense counsel about the disputed responses in May 2022 after receiving defendant's responses and objections to the subject discovery. Plaintiffs' counsel made several attempts to further confer with defendant's counsel in June, August and September 2022. On each occasion, defendant's counsel did not timely respond. When plaintiffs requested a pretrial discovery conference, defendant did not timely oppose. Thus, in each instance, though plaintiffs' counsel timely reached out to defendant's counsel, defendant's counsel did not timely respond. Thus, it appears that plaintiffs' counsel has adequately met and conferred with defendant's counsel. The court proceeds to the merits of the dispute.

Plaintiffs seek an order to compelling further responses to Requests for Production Nos. 7, 10, 16, 18 through 20, 34, and 58 through 62. The disputed requests seek documents generally in four categories: (1) the warranty policy and procedure manual for plaintiffs' vehicle that are provided to authorized repair facilities (Requests Nos. 7 and 10); (2) those documents relating to defendant's knowledge, internal investigations, analysis and publications of defects like the ones in plaintiffs' vehicle (Requests Nos. 16 and 18-20); (3) those documents relating to defendant's protocols for handling Song-Beverly Consumer Warranty Act requests (Request No. 34); and (4) those documents relating to specific technical service bulletins and/or recall notices (Request Nos. 58-62).

Requests Nos. 7 and 10: Request for Production Number 7 seeks the warranty policy and procedure manual that defendant provides to authorized repair facilities from 2020 to present. Request for Production Number 10 seeks a copy of the Workshop Manual specifying diagnosis and repair procedures for vehicles of the same year, make and model of plaintiffs' vehicle. Defendant has objected that the requests are overbroad, not relevant or reasonably calculated to lead to the discovery of admissible evidence,

and unduly burdensome. Defendant also raises privileges that the documents contain trade secret information, privileged attorney-client information, or work product.

Defendant has made no effort to justify the objections based on relevance or how the request is overbroad. Moreover, plaintiffs do not have to show that the information they seeks is *directly* relevant to their claims. They are entitled to discover the information as long as it is reasonably calculated to lead to the discovery of admissible evidence. (Code Civ. Proc. § 2017.010.)

"For discovery purposes, information is relevant if it 'might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement.' Admissibility is not the test and information, unless privileged, is discoverable if it might reasonably lead to admissible evidence. The phrase 'reasonably calculated to lead to the discovery of admissible evidence' makes it clear that the scope of discovery extends to any information that reasonably might lead to other evidence that would be admissible at trial. 'Thus, the scope of permissible discovery is one of reason, logic and common sense.' These rules are applied liberally in favor of discovery." (*Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1611–1612, internal citations and italics omitted.)

Here, it would appear that the guidance issued by defendant to authorized repair facilities for the subject vehicle is highly relevant to plaintiffs' claims, or at least likely to lead to the discovery of admissible evidence. Plaintiffs are alleging that defendant was unable to repair their defective vehicle and that defendant then refused to repurchase it in violation of the requirements of the Song-Beverly Consumer Warranty Act. As a result, plaintiffs have a strong interest in learning on what grounds any inspections, work performed, and denials to repurchase their vehicle, failed. The request also seeks specific information about a specific make and model, and is not overbroad.

Neither does defendant demonstrate why the request is unduly burdensome. It is defendant's burden as the responding party to justify its objections based on burden and oppression by pointing to evidence showing specifically how much work it would take to respond to the requests. Simply claiming that it would be burdensome and oppressive to respond is not enough. (*West Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 419.) The responding party must show that the burden of responding would be so great, and the benefit of the information sought would be so minimal, that it would defeat the ends of justice to require the party to answer. (*Columbia Broadcasting System, Inc. v. Superior Court* (1968) 263 Cal.App.2d 12, 19.)

Here, defendant has not presented any evidence regarding the amount of work it would take to respond to the document requests. Thus, defendant has failed to show that it would be excessively burdensome and oppressive to answer. Moreover, defendant confusingly both argues that responsive documents have since been produced (Major Decl., ¶ 3), while also standing by its original responses, which stated that no documents will be produced (*id*., ¶ 5). The opposition papers cite to counsel for defendant, Carey Wood's declaration, at Exhibit 6, which appears to be defendant's responses to the requests for production in question. However, defendant does not refute or otherwise contest counsel for defendant's statement attached to Exhibit 6, that the responses are unverified. (Wood Decl., ¶ 16, and Ex. 6.) Unsworn discovery responses are

tantamount to serving no responses at all. (*Appleton v. Superior Court* (1988) 206 Cal.App.3d 632, 636.)

Defendant's assertions of privilege are also without merit. For example, defendant has not produced a privilege log or made any attempt to show that the documents are protected by attorney-client privilege or work product doctrine. To the extent that defendant relies on trade secret protection, any trade secret information would be likely be adequately protected through the protective order that the parties have already agreed to.[1] Moreover, the only evidence that the documents might include trade secrets is contained in the declaration of defendant's counsel, which attaches a secondary declaration. (Major Decl., ¶ 10 and Ex. C thereto.) The secondary declaration, the Declaration of Huizhen Lu, is dated in October 2018, long before the filing of this case. The court sustains Plaintiffs' Objection No. 5 and disregard the evidence regarding trade secrets.[2]

As such, the court grants the motion to compel further responses to Request for Production Nos. 7 and 10.

Requests Nos. 16, 18 through 20: This group of requests seek documents regarding investigations, notices, letters, campaigns, warranty extensions, technical service bulletins, and recalls of the alleged defect in the same year, make and model of the subject vehicle, including complaints made of the same year, make and model of vehicle as the subject vehicle, and all documents relating to the failure rate of the alleged defect of the same year, make and model as the subject vehicle.

Defendant objected based on lack of specificity, vagueness, overbreadth, undue burden, and lack of relevance. Defendant also raised privileges based on trade secrets, the attorney-client privilege, and the work product doctrine. As to Request No. 18, defendant agreed to produce certain documents responsive to the request for documents of notices, letters, campaigns, warranty extensions, technical service bulletins, and recalls. As to the other responses, defendant refused to produce any documents.

Defendant's objections based on vagueness, relevance, undue burden, trade secrets, attorney-client privilege and work product doctrine are not supported and are overruled for the same reasons discussed above with regard to the other document requests.

With regard to the question of whether the document requests are overbroad and seek irrelevant information, the Court of Appeal has held in a similar "lemon law" case that evidence of non-warranty repairs to the plaintiff's vehicle was relevant and admissible, as it had a tendency to establish that the transmission problems were not repaired in conformity with the warranty. (*Donlen v. Ford Motor Co*. (2013) 217 Cal.App.4th 128, 148-149.) The Court of Appeal also found that the trial court did not err when it admitted evidence of other customers' vehicles of the same make and model

[1] A stipulated protective order was entered on May 23, 2022.

[2] Plaintiffs' Objection to the Declaration of Cameron Major are overruled as to Nos. 1 and 2, sustained as to Nos. 3 through 9.

with similar transmission problems.[3] While *Donlen* was not a Discovery Act case, its holding is nevertheless applicable to the issue of whether the same type of evidence that plaintiff seeks is relevant and admissible, which is more than enough to support an order compelling defendant to produce the requested documents. Also, the requests are not overbroad, since they are limited to complaints and problems about the same make, model and year of vehicle that plaintiff owns. To the extent that defendant maintains some production has already been made, defendant must verify the corresponding response to the production.

For the above reasons, the court grants the motion to compel further responses to Request for Production Nos. 16, and 18 through 20.

Request No. 34: This request seeks documents defendant uses to evaluate consumer requests for repurchases pursuant to the Song-Beverly Consumer Warranty Act.

Defendant objected based on overbreadth, undue burden, and lack of relevance. Defendant also raised privileges based on trade secrets, the attorney-client privilege, and the work product doctrine. Defendant refused to produce any documents. For the same reasons discussed above, defendant's objections are overruled. The court grants the motion to compel further responses to Request for Production No. 34.

Requests Nos. 58 through 62: These requests seek documents related to specific technical service bulletins and recall notices issued on the subject vehicle and the alleged defect.

As above, defendant objected based on lack of specificity, vagueness, overbreadth, undue burden, and lack of relevance. Defendant also raised privileges based on trade secrets, the attorney-client privilege, and the work product doctrine. Defendant refused to produce any documents. For the same reasons discussed above, defendant's objections are overruled. The court grants the motion to compel further responses to Request for Production Nos. 58 through 62.

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 2/6/2023.
(Judge's initials) (Date)

[3] "Hughes's 'other vehicle' testimony was not unduly prejudicial. It did not concern simply other vehicles. It was limited to the transmission model Ford installed in plaintiff's truck and other vehicles. Hughes described what Ford itself had done to notify dealers and technicians about problems with this transmission model. Thus, everything about which he testified that applied to other vehicles applied equally to plaintiff's vehicle. Such evidence certainly was probative and not unduly prejudicial." (*Donlen*, *supra*, 217 Cal.App.4th at p. 154.)