

Tentative Rulings for March 25, 2026
Department 503

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.

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Tentative Ruling

Re: ***Emerzian Woodworking, Inc. v. Brown, et al.***
Superior Court Case No. 25CECG01893

Hearing Date: March 25, 2026 (Dept. 503)

Motion: (1) Citizens Business Bank's Demurrer to the First Amended Complaint
(2) Westamerica Bank's Motion for Judgment on the Pleadings
(3) American Express National Bank's Demurrer to the First Amended Complaint
(4) Kelly Brown's Demurrer and Motion to Strike the First Amended Complaint

If oral argument is timely requested, it will be entertained on Wednesday, April 15, 2026, at 3:30 p.m. in Department 503.

Tentative Ruling:

To sustain Citizens Business Bank's general demurrer to the eighth, ninth, tenth, and eleventh causes of action. (Code Civ. Proc. § 430.10, subd. (e).) Leave to amend is granted.

To sustain American Express National Bank's general demurrer to the eighth, ninth, tenth, and eleventh causes of action. (Code Civ. Proc. § 430.10, subd. (e).) To sustain the special demurrer for uncertainty to the eighth cause of action. (Code Civ. Proc. § 430.10, subd. (f).) To overrule the demurrer as to the court's subject matter jurisdiction. (Code Civ. Proc. §430.10, subd. (a).) Leave to amend is granted.

To grant Westamerica Bank's motion for judgment on the pleadings as to the eighth, ninth, tenth, and eleventh causes of action. (Code Civ. Proc. § 438, subd. (c)(1)(B)(ii).) Leave to amend is granted.

To take off calendar Kelly Brown's demurrer and motion to strike as the moving papers were not timely filed. (Code Civ. Proc. § 1005, subd. (b).)

Plaintiffs are granted 15 days' leave to file the Second Amended Complaint, which will run from service by the clerk of the minute order. New allegations/language must be set in **boldface** type.

Explanation:

Defendants Citizens Business Bank, American Express National Bank generally demur to the first amended complaint's eighth, ninth, tenth and eleventh causes of

action against them for failing to set forth facts sufficient to state a cause of action. Defendant American Express National Bank¹ additionally raises a special demurrer for uncertainty as to the cause of action alleged against it. Defendant Westamerica Bank moves for judgment on the pleadings as to the cause of action alleged against it in the first amended complaint. The three defendants, collectively referred to herein as "Bank Defendants," raise the same objections to the eighth, ninth, tenth and eleventh causes of action.

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.) On demurrer, 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.) A motion for judgment on the pleadings has the same function as a general demurrer but is made after the time for demurrer has expired, and so the rules governing demurrers apply. (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999.)

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.) It is error to sustain a demurrer where plaintiff "has stated a cause of action under any possible legal theory. In assessing the sufficiency of a demurrer, all material facts pleaded in the complaint and those which arise by reasonable implication are deemed true." (*Bush v. California Conservation Corps* (1982) 136 Cal.App.3d 194, 200.) A plaintiff is not required to plead evidentiary facts supporting the allegation of ultimate fact; the pleading is adequate if it apprises defendant of the factual basis for plaintiff's claim. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.)

Standing

Plaintiffs Emerzian Woodworking, Inc., Mouse Cart, LLC, Tom Emerzian and Gail Emerzian collectively bring the eleven causes of action in the first amended complaint. The Bank Defendant object that facts are not pled to establish the accounts belonged to all accounts to give them standing to challenge the alleged transactions. In their oppositions, plaintiffs concede that not all plaintiffs have standing to bring each of the causes of action alleged against the Bank Defendants and indicate the ability to amend the complaint to adequately allege standing. The court intends to sustain the objections to the first amended complaint on this basis.

Eighth and Tenth Causes of Action: "Negligence/Violations of UCC" and "Common Law Negligence"

Plaintiffs allege defendants Citizens Business Bank and Westamerica Bank breached duties owed to plaintiffs under the Uniform Commercial Code and California Government Code and breached those duties in allegedly negotiating checks written

¹ American Express National Bank's demurrer also indicates an objections to the causes of action citing Code of Civil Procedure section 430.10, subdivision (a), lack of subject matter jurisdiction. The memorandum does not clearly indicate the basis for this demurrer and it is overruled.

by defendant Kelly Brown without authorization (FAC, ¶¶ 92-97) and breached duties owed under “Know Your Customer” programs by failing to investigate the alleged fraudulent transactions initiated by defendant Brown (FAC, ¶¶ 98-103). Bank Defendants generally demur on the basis that the cause of action lacks facts to support a violation of the UCC and does not adequately plead timely notification of the unauthorized transactions to the Bank Defendants to state a claim.

The court intends to sustain the general demurrer to the eighth cause of action based on the failure to plead what provisions of the UCC were violated by what defendant. Plaintiffs’ generalized allegations appear to implicate certain provisions of the UCC but no specific statutory provisions are set forth as the basis of the cause of action. The generalized pleading is also a basis of American Express National Bank’s demurrer despite the cause of action itself not naming it as a defendant against whom this cause of action is pled. Without articulation of what Commercial Code provisions each defendant is alleged to have violated and what acts or omissions constitute the violation the cause of action does not adequately apprise the defendant of the factual basis of plaintiffs’ claims against it. The court does not expect specificity with respect to the individual checks or transactions at issue at this state of the proceedings. However, some factual basis for a stated statutory violation should be alleged.

Bank Defendants cite to the one year statute of repose in Uniform Commercial Code sections 11505 and 4406, subdivision (f), as barring plaintiffs’ claims. The FAC alleges plaintiffs learned of defendant Brown’s alleged fraudulent transactions in or around August 2024 and informed Citizens Business Bank of the alleged fraudulent payments and checks. (FAC, ¶¶ 42-44.) As the entire cause of action is not necessarily barred based on untimely notification as to some but not all of the challenged payments, the court is not inclined to sustain a demurrer on this basis.

Both the eighth and tenth causes of action purport to allege claims for negligence against the Bank Defendants. The tenth cause of action appears to be intended to plead common law negligence in the alternative to violations of the Commercial Code based on the same generalized duties to inspect checks found in the eighth cause of action. Bank Defendants generally demur to the tenth cause of action on the basis that any common law negligence claims are preempted by the Commercial Code. (*Zengen, Inc. v. Comerica Bank* (2007) 41 Cal.4th 239, 253-254.) As the factual basis pleaded appears to be the same check transactions alleged as the basis of the eighth cause of action alleging Violations of UCC the court intends to sustain the general demurrer to the tenth cause of action.

Ninth Cause of Action: “Unfair Competition CA Bus & Prof § 17200”

Statutory unfair competition is defined as “any unlawful, unfair, or fraudulent business act or practice.” (Bus. & Prof. Code § 17200.) The statute creates a right to sue for violations of other statutes even when those statutes do not themselves confer any standing for private actions or, perhaps, even when they create more limited standing for action. Business & Professions Code § 17204 grants standing in “actions for any relief pursuant to this chapter to any person acting for the interests of itself, its members or the general public.” The remedies under Business & Professions Code § 17203 include injunctive relief, the appointment of a receiver, or such orders or judgments “as may be

necessary to restore to any person in interest any money or property, real or personal, which may be acquired by means of such unfair competition." This provision does not create a private right of action for "damages," but it has been construed to allow for the remedy of "restitution." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 211.) When the action is brought for the "general public," restitution in favor of the general public is available. (*People v. Thomas Shelton Powers, M.D., Inc.* (1992) 2 Cal.App.4th 330, 339-344.)

Plaintiffs allege defendants converted and/or aided and abetted the embezzlement of funds, employed procedures allowing a check to be deposited without verification of the authority of the person depositing the check, and allowed fraudulent transactions to occur. (FAC, ¶¶ 110-112, 116.) The allegations within the cause of action as to defendants having aided and abetted Brown or having had knowledge of Brown's alleged fraud are conclusory and will not support the cause of action. (See *Casey v. Bank Nat. Assn.* (2005) 127 Cal.App.4th 1138, 1153-1154 [holding the complaint must allege bank's actual knowledge of the primary wrongdoing to state cause of action for aiding and abetting and related unfair business practices claims].) The allegations regarding the deposit procedures are not alleged to violate any statute or regulation to support the cause of action. Accordingly, the objections to the cause of action is sustained.

Eleventh Cause of Action: "Money Had & Received"

Plaintiffs allege all defendants received funds embezzled by Brown that belong to Plaintiffs and that because they maintain valid negligence claims the derivative claim for money had and received is valid. (FAC, ¶¶ 130-134.)

"If plaintiff is not entitled to recover under one count in a complaint wherein all the facts upon which his demand is based are specifically pleaded, it is proper to sustain a demurrer to a common count set forth in the complaint, the recovery under which is obviously based on the set of facts specifically pleaded in the other count." (*Jones v. Daly* (1981) 122 Cal.App.3d 500, 510.)

In light of the demurrer to the negligence causes of action being sustained, the objections to the derivative claim are likewise sustained.

Special Demurrer for Uncertainty by American Express National Bank

A demurrer for uncertainty will be sustained only where the complaint is so bad that the defendant cannot reasonably respond; i.e., he or she cannot reasonably determine what issues must be admitted or denied, or what counts or claims are directed against him or her. (*Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616.)

The allegations of the FAC identified as uncertain are allegations pled generally and using "and/or" conjunctions to allow the plaintiffs to plead alternatives. The memorandum also argues there are internal inconsistencies in the FAC with respect to the existence of a contract between the parties and other allegations that no valid contract existed due to Brown fraudulently opening the account. The demurrer is overruled with respect to all but the eighth cause of action. As discussed above with respect to the general demurrer, the cause of action does not specify what actions of a given

