

Tentative Rulings for April 18, 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*

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

22CECG03888 *HC v. Pike* is continued to Thursday, May 2, 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

(24)

Tentative Ruling

Re: **Jaurique v. Thinda**
Superior Court Case No. 19CECG04627

Hearing Date: April 18, 2024 (Dept. 501)

Motion: by Plaintiff for Reconsideration of Ex Parte Order on October 19, 2023, and Judgment of Dismissal on October 24, 2023

Tentative Ruling:

To take both motions off calendar, for lack of jurisdiction.

Explanation:

Judgment of dismissal in this action was issued on October 24, 2023. Once judgment is entered, the court loses jurisdiction to rule on a motion for reconsideration. (*APRI Ins. Co. v. Superior Court* (1999) 76 Cal.App.4th 176, 181; *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 859, fn. 29; *Ten Eyck v. Industrial Forklifts Co.* (1989) 216 Cal.App.3d 540, 545.) An order of dismissal is a judgment. (Code Civ. Proc., § 581d.) Therefore, a motion for reconsideration does not lie after a judgment of dismissal. (*APRI Ins. Co. v. Superior Court, supra* at p. 181.)

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 4/15/2024.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: **Jones v. United Education Institute, et al.**
Superior Court Case No. 23CECG02897

Hearing Date: April 18, 2024 (Dept. 501)

Motion: Defendants' Demurrer to the Complaint

Tentative Ruling:

To sustain the demurrer to the fourth, sixth and seventh causes of action. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiffs are granted 10 days' leave to file a 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:

Defendants IEC Corporation and IEC/AAI Holdings, Inc. dba UEI College (hereinafter, together "UEI College") demur to the fourth, sixth and seventh causes of action alleging fraud, negligent misrepresentation and intentional misrepresentation on the ground that plaintiffs fail to state facts sufficient to state a cause of action.

The essential elements of a count for intentional misrepresentation are (1) a misrepresentation, (2) knowledge of falsity, (3) intent to induce reliance, (4) actual and justifiable reliance, and (5) resulting damage. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.) The essential elements of a count for negligent misrepresentation are the same except that it does not require knowledge of falsity but instead requires a misrepresentation of fact by a person who has no reasonable grounds for believing it to be true. (Civ. Code, § 1710, subd. (2); *Gagne v. Bertran* (1954) 43 Cal.2d 481, 488; *West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 792.) Each element of a fraud count must be pleaded with particularity so as to apprise the defendant of the specific grounds for the charge and enable the court to determine whether there is any basis for the cause of action, although less specificity is required if the defendant would likely have greater knowledge of the facts than the plaintiff. (*Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 158.)

To properly plead "any action sounding in fraud," a plaintiff must plead "facts which 'show how, when, where, to whom, and by what means the representations were tendered.'" (*Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 73, emphasis added.) To allege fraud by a corporation, a plaintiff must "allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written." (*Tarmann v. State Farm Mut. Auto. Ins. Co., supra*, 2 Cal.App.4th at p. 157.)

In the case at bench, UEI College challenges the Complaint's specificity as to the person allegedly making representations on behalf of UEI College and when the misrepresentations were made as to each of the eleven plaintiffs. The allegations

demonstrate each spoke to an admissions counselor who is alleged to have made misrepresentations regarding the program and career prospects following graduation. (Complaint, ¶¶ 26-27, 37.)

Plaintiffs argue the allegations are sufficient to apprise UEI College of the grounds for the charges against it and compare their allegations to those found sufficiently specific in *West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780 and *Boschma v. Home Loan Center, Inc.* (2011) 198 Cal.App.4th 230.

In *West*, the plaintiff borrower was able to allege the misrepresentation was found in a particular letter from the creditor attached to the complaint, alleging misrepresentations allegedly made by a supervisor in the loan modification department and another employee in that department during specified conferences, and alleging a specific phone call with a representative of creditor defendant advising her she could resubmit her information for re-evaluation. (*West v. JPMorgan Chase Bank, N.A.*, *supra*, 214 Cal.App.4th at pp. 793-794.) The allegations are similar in that no employees of UEI College were named, however there are specific communications referenced that would allow UEI College to determine who made the alleged misrepresentations on their behalf. There are no similar allegations in plaintiffs' Complaint narrowing the timeframe when the alleged misrepresentations were made which would, arguably, narrow which admissions counselor(s) made the statements to each plaintiff.

Similarly, in *Boschma*, plaintiffs attached the specific documents containing the alleged false information as well as the date and place of the alleged fraud. (*Boschma v. Home Loan Center, Inc.*, *supra*, 198 Cal.App.4th at p. 248.) The allegations in plaintiffs' Complaint do not contain any similar documentation or information with regard to date and place that would more specifically identify when and by whom the alleged misrepresentations were made to each plaintiff.

As to any allegations consisting of misrepresentations, the demurrer is sustained because plaintiffs fails to identify any misrepresentations with the required specificity. Plaintiffs' allegations fail to specify "how, where, when, to whom, and by what means" any alleged misrepresentations were made. Without such specificity, the Complaint fails to meet the heightened pleading standard for fraud-based causes of action. Leave to amend is granted to, possibly, cure the deficiency.

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 4/15/2024.
(Judge's initials) (Date)