Tentative Rulings for May 6, 2025
Department 502

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.***

24CECG02225 ***Denita Caglia v. Gerald Seagraves, II***

24CECG01006 ***Hedrick Ranch, a Sole Proprietorship v. Doris Dickens*** ***(See Tentative Ruling below for further instructions)***

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

24CECG01486 ***NICBYTE, LLC v. Community West Bank*** **is continued to Wednesday, June 11, 2025 at 3:30 p.m. in Department 502.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

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Tentative Ruling

Re: ***Samcha LLC v. City of Fresno***
Superior Court Case No. 24CECG03168

Hearing Date: May 6, 2025 (Dept. 502)

Motion: Demurrer to First Amended Complaint

If oral argument is timely requested, it will be entertained on Tuesday, May 6, 2025, at 9:00 a.m. in Department 502.

Tentative Ruling:

To sustain the general demurrer to the fourth cause of action. (Code Civ. Proc. § 430.10, subd. (e).) Plaintiff is granted 15 days leave to file the Second Amended Complaint. The time in which the complaint may be amended will run from service of the order by the clerk.

Explanation:

Defendant City of Fresno generally demurs to the fourth cause of action of the first amended complaint alleging trespass. The plaintiff alleges the City is vicariously liable under Government Code[1] section 815.2 for the acts of its employees causing surface and ground water to invade plaintiff's property. (FAC, ¶¶ 55, 58-60.)

Section 815.2 subdivision (a) states:

> A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative.

The trespass of water onto the plaintiff's property is alleged to have occurred as a result of the acts or omissions of Does 1-10, who are City employees. City employees "were involved in some manner in the use, maintenance, design, development, construction, repair, maintenance, installation, manufacture, and/or supplying of components of the subject Property. Said activities were done in an improper fashion resulting in damage to the Property." (FAC, ¶ 16.) These allegations also form the basis of plaintiff's claim that the City is liable for the dangerous condition of its "abutting sidewalks, sidewalks located above the Property, the subject sidewalk located adjacent to the Property, water supply lines, sewer lines, storm drains, fire hydrants, curbs and rain gutters were repaired and/or maintained in a manner that allowed excess water (ground and surface) to enter the Property, causing damage." (FAC, ¶ 24.)

[1] All statutory references are to the Government Code.

Defendant argues a claim for vicarious liability of the City based on property defects, as alleged here, is controlled by sections 830-835.4 pertaining to dangerous conditions of public property. (*Longfellow v. County of San Luis Obispo* (1983) 144 Cal.App.3d 379, 383; *Van Kempen v. Hayward Area Park, Recreation and Park District* (1972) 23 Cal.App.3d 822, 825.) The negligent acts or omissions of City employees, as alleged, were performed within the scope of their employment with the City and as such the employees are immune section 840. Where the employee is immune, there is no cause of action against the City for vicarious liability. (Gov. Code § 815.2.)

"Section 840 makes it explicit that except as provided in article 3 (§§ 840-840.6) a public employee is not liable for injury caused by a condition of public property where such condition exists because of any act or omission of such employee within the scope of his employment. … Since the public entity's liability is a vicarious one, it cannot be held liable for an employee's act or omission where the employee himself would be or is immune (Gov. Code, § 815.2, subd. (b))." (*Van Kempen v. Hayward Area Park etc. District*, *supra*, 23 Cal.App.3d at p. 825.)

Plaintiff argues cause of action for trespass can be stated against the City under Government Code section 821.8 based upon the negligent acts of its employees. Section 821.8 states, "A public employee is not liable for an injury *arising out of his entry upon any property* where such entry is expressly or impliedly authorized by law. Nothing in this section exonerates a public employee from liability from an injury proximately caused by his own negligent or wrongful act or omission." (Emphasis added.)

Here, there are no allegations that a City employee or City contractor entered onto plaintiff's property. The plaintiff alleges a City employee's negligent act or omission caused the condition of the City's property to allow water to enter the plaintiff's property. (FAC, ¶¶ 16, 24, 55.) Although plaintiff argues the employee is liable for his negligent act under section 821.8, there is no allegation that a City employee entered onto plaintiff's property to state a claim under section 821.8. The allegations of the first amended complaint are not sufficient to state a claim for trespass under section 821.8.

Accordingly, the court intends to sustain the demurrer to the fourth cause of action 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: KCK on 05/01/25.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Hedrick Ranch, a Sole Proprietorship v. Doris Dickens***
Superior Court Case No. 24CECG01006

Hearing Date: May 6, 2025 (Dept. 502)

Motion: Plaintiff Hedrick Ranch's Default Prove-Up

Parties are to appear as the hearing will go forward on this matter on May 6, 2025 at 9:00 AM in Dept 502.

Explanation:

Plaintiff must dismiss the Doe Defendants prior to the court entering judgment. Additionally, Plaintiff must amend the Proposed Judgment to include the names of each of the 14 horses at issue in this request. Plaintiff shall file the Dismissal of the Doe Defendants and an Amended Proposed Judgment by noon on the day of the hearing.

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 05/01/25.
(Judge's initials) (Date)

(20)

Tentative Ruling

Re: ***Benito Hernandez, Jr. v. Kelvin Higa, M.D.***
Superior Court Case No. 23CECG03405

Hearing Date: May 6, 2025 (Dept. 502)

Motion: By Defendant Kelvin D. Higa, M.D., for Summary Judgment

If oral argument is timely requested, it will be entertained on Tuesday, May 6, 2025, at 9:00 a.m. in Department 502.

Tentative Ruling:

To grant. (Code Civ. Proc., § 437c, subd. (c).) Within seven days of service of the order by the clerk, Dr. Higa shall submit a proposed judgment dismissing the action as to him.

Explanation:

In this medical malpractice action, plaintiff Benito Hernandez, Jr. alleges that in August of 2020 Dr. Kelvin Higa performed laparoscopic gastric sleeve surgery on plaintiff. Dr. Higa left a "glue" resembling mass in plaintiff's body, which was discovered two years later during a CT scan. On 9/9/2022 plaintiff had to undergo a surgical procedure to remove the mass. The surgery was performed by cardiothoracic surgeon John Lin.

Dr. Higa now moves for summary judgment. As the moving party, a defendant bears the initial burden of proof to show that plaintiff cannot establish one or more elements of their causes of action or to show that there is a complete defense. (Code Civ. Proc., § 437c, subd. (p)(2).) Only after the moving party has carried this burden of proof does the burden of proof shift to the other party to show that a triable issue of one or more material facts exists – and this must be shown via specific facts and not mere allegations. (*Id*.)

> "California courts have incorporated the expert evidence requirement into their standard for summary judgment in medical malpractice cases. When a defendant moves for summary judgment and supports his motion with expert declarations that his conduct fell within the community standard of care, he is entitled to summary judgment unless the plaintiff comes forward with conflicting expert evidence."

(*Munro v. Regents of Univ. of Calif*. (1989) 215 Cal.App.3d 977, 984-85.)

Where the moving party produces competent expert opinion declarations showing that there is no triable issue of fact on an essential element of the opposing party's claim (e.g. that a medical defendant's treatment fell within the applicable standard of care), the opposing party's burden is to produce competent expert opinion declarations to the contrary. (Weil & Brown, *Cal. Practice Guide: Civil Procedure Before*

Trial (TRG 2024) ¶ 10:205.5, citing *Ochoa v. Pacific Gas & Elec. Co.* (1998) 61 Cal.App.4th 1480, 1487.)

To establish that a physician's care was negligent, a plaintiff must provide expert testimony establishing that the treatment fell below the applicable standard, unless the medical process at issue is matter of common knowledge and thus susceptible to comprehension by a lay juror. (*Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 1001.)

The motion is supported by a declaration from expert general surgeon in Jonathan Carter, M.D., who opines that Dr. Higa complied with the standard of care in his treatment and care of plaintiff as it pertains to his performance of the laparoscopic sleeve gastrectomy on 8/7/2020. (UMF 3.) He also opines that no action or inaction on the part of Dr. Higa caused, contributed to, or was a substantial factor in causing plaintiff's claimed injuries. (UMF 5.) This is sufficient to negate the elements of breach and causation, and shift the burden to plaintiff.

Plaintiff opposes the motion, relying on the deposition testimony of Dr. Lin, the doctor who performed the surgery to remove the mass. Plaintiff contends that Dr. Lin's testimony establishes that it is "probable" that Dr. Higa performed the surgery in such a way that fluid built up in plaintiff's lungs, and caused him injury and the need for subsequent surgical intervention. (Response to UMF 3, 5.)

Dr. Lin only testified that it is "definitely a possibility" that the fluid buildup in plaintiff's chest was connected to Dr. Higa's surgery (Lin Depo. 9:23-10:15), that there is a possibility that the mass Dr. Lin removed was a result of was as a result of the prior operations of August 2020 (Lim Depo. 11:10-16). Later in the deposition, Dr. Lin was asked, "So in the absence of anything else between 2020 until your surgery of 2022, you have no evidence that anything else could have caused this other than the 2022 surgery; is that correct? Of the 2020 surgery; is that correct?" Dr. Lin answered, "I think I told you guys everything I know, which is, you know, we don't see that fluid in 2020. We do see it in 2022, and how we can, you know, come down the middle or one way to the other, I think you can pull other expert witnesses and get their opinions. [¶] I -- **to me, it's probable, it's possible**, but I can't tell you 100 percent for sure, for sure. How is that?" (Lin Depo. 23:8-21, emphasis added.)

The opposition relies entirely on the word Dr. Lin's use of the word "probable," though his testimony was very much equivocal. His testimony hardly provides evidence that Dr. Higa breached the standard of care or caused plaintiff injury. Dr. Lin never opined that Dr. Higa breached the standard of care, and in fact the standard of care was never discussed or brought up in his deposition. Dr. Lin never opined that Dr. Hida breached the standard of care, but instead merely said it is possible that or even probable that the mass Dr. Lin removed was the result of the 2020 surgery.

Causation must be proven within a reasonable medical probability based upon competent expert testimony. (*Bromme v. Pavitt* (1992) 5 Cal.App.4th 1487, 1498.) Dr. Lin did not provide such testimony. This is insufficient to raise a triable issue as to either breach or causation. In fact, plaintiff's characterization of the evidence, focusing solely on the word "probable" at page 23 of the transcript, is rather misleading. When the attorneys

tried to pin him down, and explained the distinction between "possible" (less than 50% chance) and "probable" (greater than 50% chance), Dr. Lin's final statement was that he did not have an opinion on whether the mass was more likely than not related to Dr. Higa's surgeries. (Lin Depo. 25:24-26:7.)

Plaintiff fails to submit evidence sufficient to raise a triable issue of fact as to breach of the standard of care or causation. Accordingly, the court intends to grant the motion.

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 05/01/25.
(Judge's initials) (Date)

(20)

Tentative Ruling

Re: ***Miguel Maldonado Contreras, Trustee v. George Bessette***
Superior Court Case No. 24CECG03266

Hearing Date: May 6, 2025 (Dept. 502)

Motion: By Plaintiffs to Compel Deposition of Defendant George Bessette

If oral argument is timely requested, it will be entertained on Tuesday, May 6, 2025, at 9:00 a.m. in Department 502.

Tentative Ruling:

To deny without prejudice.

Explanation:

Plaintiffs move to compel George Bessette to appear for deposition. His deposition was noticed twice, but he has refused to sit for deposition. The court would grant the motion, but it is unopposed and plaintiffs have not filed proof of service of the moving papers. The court cannot presume the motion was served where there is no proof of service or opposition. Proof of service must be filed within five calendar days of the hearing, or by April 29. (Cal. Rules of Court, rule 3.1300(c).) The only proof of service filed by plaintiffs is of the reply brief.

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 05/01/25 .
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Creditors Adjustment Bureau, Inc. v. United AG Source, Inc.***
Superior Court Case No. 22CECG02966

Hearing Date: May 6, 2025 (Dept. 502)

Motion: Defendant's Counsel's Motion to Withdraw

If oral argument is timely requested, it will be entertained on Tuesday, May 6, 2025, at 9:00 a.m. in Department 502.

Tentative Ruling:

To take the matter off calendar as no papers were filed. (See Cal. Rules of Court, rule 3.1362.)

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 05/02/25.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Xia Xiong v. General Motors, LLC***
Superior Court Case No. 23CECG00845

Hearing Date: May 6, 2025 (Dept. 502)

Motions (x2): by Defendant for Judgment on the Pleadings and to Strike

If oral argument is timely requested, it will be entertained on Tuesday, May 6, 2025, at 9:00 a.m. in Department 502.

Tentative Ruling:

To deny both motions.

Explanation:

Motion for Judgment on the Pleadings

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.)

As in demurrers, grounds for the motion must appear on the face of the challenged pleading or on facts which the court may judicially notice. (*Saltarelli & Steponovich v. Douglas* (1995) 40 Cal.App.4th 1, 5.)

When reviewing a pleading, a demurrer or motion for judgment on the pleadings admits the truth of all material allegations and a Court will "give the complaint a reasonable interpretation by reading it as a whole and all its parts in their context." (*People ex re. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 300.) The standard of pleading is very liberal and a plaintiff need only plead "ultimate facts." (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) However, a plaintiff must still plead facts giving some indication of the nature, source, and extent of the cause of action. (*Semole v. Sansoucie* (1972) 28 Cal.App.3d 714, 719.)

Defendant moves for judgment on the pleadings as to the fifth cause of action in the First Amended Complaint ("FAC") on four bases: (1) the claim is time barred by the application statute of limitations; (2) the FAC fails to allege facts with sufficient specificity to state a cause of action for fraud; (3) the FAC fails to allege a transactional relationship giving rise to a duty to disclose; and (4) the claim is barred by the economic loss rule. For the reasons set forth below, none of these contentions support a judgment on the pleading in defendant's favor as to the fifth cause of action.

Statute of Limitations

A cause of action for fraud must be brought within three years. (Code Civ. Proc., § 338, subd. (d); see also Civ. Code, § 1783 [three year limitations period for actions brought under the California Consumer Legal Remedies Act ("CLRA") for unfair or deceptive acts listed in Civ. Code, § 1770].) However, the cause of action does not accrue "until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake." (*Ibid*.) The delay discovery exception also applies to the CLRA. (*Franco v. Ford Motor Co.* (2022) 644 F.Supp.3d 672, 682.)

"The provision tolling operation of the statute until discovery of the fraud has long been treated as an exception and, accordingly, this court has held that if an action is brought more than three years after commission of the fraud, plaintiff has the burden of pleading and proving that he did not make the discovery until within three years prior to the filing of his complaint. [Citations.]" (*Hobart v. Hobart Estate Co.* (1945) 26 Cal.2d 412, 437, citations omitted.) The "plaintiff must affirmatively excuse his failure to discover the fraud within three years after it took place, by establishing facts showing that he was not negligent in failing to make the discovery sooner and that he had no actual or presumptive knowledge of facts sufficient to put him on inquiry." (*Ibid*., citations omitted.) "The statute commences to run only after one has knowledge of facts sufficient to make a reasonably prudent person suspicious of fraud, thus putting him on inquiry." (*Ibid*.)

Here, plaintiffs allege that they purchased a 2014 Chevrolet Cruze vehicle on or about November 16, 2013 and this action was not filed until March 7, 2023. Defendant contends the FAC fails to allege facts justifying the late filing and thus, the attempt to invoke the delayed discovery rule is insufficiently plead, as plaintiffs has failed to plead "facts showing [t]he[y] [were] not negligent in failing to make the discovery sooner and that [plaintiffs] had no actual or presumptive knowledge of facts sufficient to put [plaintiffs] on inquiry. (*Hobart v. Hobart Estate Co., supra,* 26 Cal.2d at p. 437.) Based on the allegations that defects and nonconformities manifested themselves during the express warranty period, defendant asserts plaintiff cannot demonstrate that he could not with reasonable diligence have discovered the action giving rise to his claim within the limitations period. (FAC, ¶ 15.) By defendant's interpretation, the allegation that the vehicle was delivered to plaintiffs with defects means they should reasonably have been able to discover the defects as of the date of purchase. This argument is not supported when the complaint is interpreted in a reasonable manner and the allegations read in context.

Plaintiffs allege that they first presented the vehicle to an authorized dealership with complaints for various concerns, including engine concerns on November 25, 2014 and continued to present the vehicle for repairs related to engine, electrical, brake, transmission, emissions, engine cooling system and various other concerns and was advised the vehicle had been repaired. (FAC, ¶ 47-56.) Plaintiffs allege it was not until shortly before the filing of the complaint that they became suspicious of the concealment of latent defects and defendant's inability to repair the vehicle. (FAC, ¶ 58.) Additionally, plaintiffs allege defendant having issued service bulletins and recalls

purporting to fix the symptoms of the defect made discovery of the defect more difficult. (FAC, ¶ 57.) Taking these allegations as true on a motion for judgment on the pleadings, the plaintiffs have sufficiently pled facts supporting application of the delayed discovery rule.

Facts Sufficient to State a Cause of Action (Specificity Requirement for Fraud and Transactional Relationship)

Defendant additionally moves on the basis that the fifth cause of action fails to state facts sufficient to constitute a cause of action for fraud because plaintiffs have failed to plead specific facts identifying the individuals who concealed material facts or made the misrepresentations, their authority to speak, defendant's knowledge of the alleged defects in plaintiffs' vehicle at the time of purchase, interactions between plaintiffs and defendants, and defendant's intent to induce reliance by plaintiffs to purchase the vehicle at issue. Likewise, defendant contends that it cannot be held liable for fraudulent concealment because it had no duty to disclose any facts about the vehicle to plaintiff, as it did not sell the vehicle directly to him and it had no "transactional relationship" with him. (*Bigler-Engler v. Breg, Inc*. (2017) 7 Cal.App.5th 276, 311.)

Plaintiffs oppose the demurrer by contending that the specificity requirement is unnecessary to state a cause of action for fraudulent concealment where there exists a duty to disclose, and that a duty to disclose may arise from a buyer-seller relationship. Plaintiffs rely primarily on *Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828.

" 'As with all fraud claims, the necessary elements of a concealment/suppression claim consist of " '(1) misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity (scienter); (3) intent to defraud (i.e., to induce reliance); (4) justifiable reliance; and (5) resulting damage.' " ' [Citation.]" (*Dhital v. Nissan North America, Inc.*, *supra,* 84 Cal.App.5th at p. 843.)

"Fraud, including concealment, must be pleaded with specificity. [Citation.]" (*Dhital v. Nissan North America, Inc., supra,* 84 Cal.App.5th at p. 843-844.) "Suppression of a material fact is actionable when there is a duty of disclosure, which may arise from a relationship between the parties, such as a buyer-seller relationship. [Citation.]" (*Id*., at p. 843.) The First District Court of Appeal in *Dhital* determined a cause of action for fraudulent concealment was sufficiently pled, where the "plaintiffs alleged the CVT transmissions installed in numerous Nissan vehicles (including the one plaintiffs purchased) were defective; Nissan knew of the defects and the hazards they posed; Nissan had exclusive knowledge of the defects but intentionally concealed and failed to disclose that information; Nissan intended to deceive plaintiffs by concealing known transmission problems; plaintiffs would not have purchased the car if they had known of the defects; and plaintiffs suffered damages in the form of money paid to purchase the car." (*Id*., at p. 844.) It was held that the plaintiffs sufficiently alleged the existence of a buyer-seller relationship between the parties by alleging that "they bought the car from a Nissan dealership, that Nissan backed the car with an express warranty, and that Nissan's authorized dealerships are its agents for purposes of the sale of Nissan vehicles to consumers." (*Ibid*.)

Here, just as in *Dhital*, the FAC alleges that the cooling engine defect exists in numerous vehicles, including the one plaintiffs purchased; defendant knew of the defects and that hazards they posed; defendant had exclusive knowledge of the defects but intentionally concealed and failed to disclose that information; plaintiffs would not have purchased the vehicle if they had known of the defects; and plaintiffs suffered damages in the form of money paid to purchase the vehicle. (*E.g.,* FAC, ¶¶ 90-102.) Also, the FAC alleges that plaintiff purchased the vehicle from a General Motor authorized dealership and that defendant backed the bar with an express warranty (FAC, ¶ 6.) Accordingly, plaintiffs have stated adequate facts to support their claim for fraudulent concealment and inducement.

Economic Loss Rule

The economic loss rule provides: where a purchaser's expectations in a sale are frustrated because the product he bought is not working properly, his remedy is said to be in contract alone, for he has suffered only economic losses. (*Robinson Helicopter Co., Inc. v. Dana Corp*. (2004) 34 Cal.4th 979, 988.) Quite simply, the economic loss rule prevents the law of contract and the law of tort from dissolving one into the other. (*Food Safety Net Services v. Eco Safe Systems USA, Inc.* (2012) 209 Cal.App.4th 1118, 1130 [citing *Robinson Helicopter, supra,* 34 Cal.4th at 988].) "[E]conomic loss consists of damages for inadequate value, costs of repair and replacement of the defective product or consequent loss of profits—without any claim of personal injury or damages to other property." (*Id*. at 1130, fn. 4 [citing *Robinson Helicopter v. Dana Corp., supra,* 34 Cal.4th at p. 988].)

In *Robinson Helicopter*, The California Supreme Court carved out a narrow and limited circumstance where "a party alleging fraud or deceit in connection with a contract" can recover in tort if he can "establish tortious conduct independent of a breach of the contract itself, that is, violation of 'some independent duty arising from tort law.'" (*Food Safety v. Eco Safe Systems USA, Inc, supra,* 209 Cal.App.4th at p. 1130 [citing *Robinson Helicopter v. Dana Corp., supra*, 34 Cal.4th at p. 990].) This particular ruling was limited to a defendant's affirmative misrepresentations on which a plaintiff relied and which expose a plaintiff to liability for personal damages independent of the plaintiff's economic loss. (*Robinson Helicopter v. Dana Corp., supra,* 34 Cal.4th at p. 993.) But the ruling was not preclusive, as the Court specifically cited to several other instances where tort damages were permitted in contract cases. (*Id.* at pp. 989-990.)

In *Dhital v. Nissan North America, Inc*., the First District Court of Appeal confirmed that a claim for fraudulent inducement by concealment falls within the exception to the economic loss rule as articulated in *Robinson Helicoper*. (*Dhital v. Nissan North America, Inc., supra,* 84 Cal.App.5th at p. 839.)

As previously explained, plaintiffs have pled the fifth cause of action in a manner that is consistent with that found in *Dhital* and therefore, it is not barred by the economic loss rule.

Accordingly, the motion for judgment on the pleadings is denied.

Motion to Strike

Defendant also moves to strike the prayer for punitive damages from the FAC. Defendant contends that plaintiffs have not alleged any facts to support the fraud claim, and there are no facts supporting the allegation that defendant acted with malice or oppression, so the prayer for punitive damages is improper and should be stricken. (Civil Code § 3294.)

However, as discussed above with regard to the motion for judgment on the pleadings, plaintiffs have sufficiently alleged their claim for fraudulent concealment and inducement. The same facts that support the fraud claim also support the prayer for punitive damages, as they tend to show that defendant fraudulently concealed or failed to disclose the cooling engine defect from plaintiffs, and that plaintiffs were induced to purchase the vehicle as a result of the concealment. Consequently, the motion to strike the prayer for punitive damages is denied.

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 05/02/25.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Creditors Adjustment Bureau, Inc. v. Barry Halajian***
Superior Court Case No. 22CECG00386

Hearing Date: May 6, 2025 (Dept. 502)

Motion: by defendant Barry Halajian to Vacate the Default Judgment

If oral argument is timely requested, it will be entertained on Tuesday, May 6, 2025, at 9:00 a.m. in Department 502.

Tentative Ruling:

To deny. (Code Civ. Proc. § 473 subd. (b).)

Explanation:

Application for relief from a judgment or court order must be filed timely (within six months of the judgment or order) and must be accompanied by a copy of the answer or other proposed pleading to be filed. (Code Civ. Proc., § 473 subd. (b).)

Here, judgment was entered against defendant on January 13, 2025. As this motion was filed less than six months following the entry of judgment, it is timely. Defendant states he attached a proposed answer as Exhibit 2 to his motion (Motion, ¶ 26) but there is none attached. On this procedural basis, the motion can be denied.

Even presuming that defendant can remedy his failure to attach a copy of his proposed answer, defendant also has not met the requirements necessary to set aside a default judgment. Code of Civil Procedure section 473, subdivision (b) provides for relief from a judgment which is taken as a result of mistake, inadvertence, surprise, or excusable neglect. (Code Civ. Proc., § 473, subd. (b).)

Defendant argues that the default judgment should be set aside because plaintiff deliberately failed to mail him a copy of the application for default judgment and without such notice he could not oppose it. Pursuant to Code of Civil Procedure section 1010, no notice or paper, other than amendments to the pleadings or an amended pleading, need be served upon any party whose default has been duly entered. After entry of default, the defaulted party is no longer an active party in the litigation and is not entitled to further notices. (*Rios v. Singh* (2021) 65 Cal.App.5th 871, 886.) This court has affirmed defendant's default and denied his reconsideration, thus his default is not in question. With no other arguments presented for mistake, inadvertence, surprise, or excusable neglect, the court cannot offer relief under this statute.

"Aside from section 473, subdivision (b), 'courts have the inherent authority to vacate a default and default judgment on equitable grounds such as extrinsic fraud or extrinsic mistake.'" (*Kramer v. Traditional Escrow, Inc.* (2020) 56 Cal.App.5th 13, 29.) A party who seeks to set aside a default judgment pursuant to the court's equity power

must make a substantially stronger showing of the excusable nature of his or her neglect than is necessary to obtain relief. (*Ibid*.) To set aside a judgment based on the court's equitable powers, the moving party must show (1) he has a meritorious case, (2) a satisfactory excuse for not presenting a defense to the original action, and (3) diligence in seeking to set aside the default once it is discovered. (*Ibid*.) Central here are the first and second prong, as the diligence prong may be satisfied by defendant's numerous attempts to set aside default.

Defendant argues that plaintiff's claims of a debt owed are "speculative assertions" and the amount claimed is not a true value. He claims the original creditor was paid in full for the contracted for insurance services. Defendant does not support his arguments with sufficient evidence that supports finding he has a meritorious case. Even if his argument of payment were substantiated and potentially meritorious, he cannot satisfy the remaining prong of the stringent test for setting aside the default judgment.

Defendant has not provided any additional information as to why he did not respond to plaintiff's original lawsuit. A satisfactory excuse would be a showing of extrinsic fraud or extrinsic mistake occurred. (*Kramer v. Traditional Escrow, Inc., supra,* 56 Cal.App.5th at p. 29.) The court previously found that defendant failed to meet the standard of "mistake, inadvertence, surprise, or excusable neglect" for his failure to respond to the original lawsuit, and nothing presented here contradicts that finding.

Default and default judgment are separate procedures, so the latter may be set aside without disturbing the former. However, where the motion is filed more than six months after entry of default, but less than six months after default judgment, setting aside the default judgment alone would be an idle act. (*Kramer v. Traditional Escrow, Inc.* (2020) 56 Cal.App.5th 13, 39.) Defendant's default was taken in 2022, substantially exceeding the timelines statutorily set. Additionally, the court has already denied with prejudice defendant's previous attempts to set aside his default, thus setting aside the default judgment alone would be an idle act.

The court finds that defendant's motion fails to meet the standard required to vacate the default judgment. The motion is denied.

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 05/02/25.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***In re Eleny Martinez***
Superior Court Case No. 25CECG01645

Hearing Date: May 6, 2025 (Dept. 502)

Motion: Petition to Compromise the Claim of Minor

If oral argument is timely requested, it will be entertained on Tuesday, May 6, 2025, at 9:00 a.m. in Department 502.

Tentative Ruling:

To grant the petition. Order Signed. No appearances necessary.

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 05/05/25.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Rosa Hernandez v. Jeronimo Lopez Jr.***
Superior Court Case No. 21CECG03186

Hearing Date: May 6, 2025 (Dept. 502)

Motion: (1) By Plaintiff Rosa Hernandez for an Order Awarding Attorney Fees in Unlawful Detainer Action
(2) By Plaintiff Rosa Hernandez for Entry of Final Judgment and Request for Attorney Fees

If oral argument is timely requested, it will be entertained on Tuesday, May 6, 2025, at 9:00 a.m. in Department 502.

Tentative Ruling:

To grant the motion for an award of attorney fees from the unlawful detainer action in the amount of $8,802.40. This amount is to be charged against defendant Jeronimo Lopez, Jr. in favor of plaintiff Rosa Hernandez in the final judgment on partition by sale.

To grant and enter final judgment in the amounts of $89,030.44 to plaintiff Rosa Hernandez, $76,227.22 to defendant Jeronimo Lopez, Jr. and $8,802.40 to William McComas on award of attorney fees from the unlawful detainer action. To grant the request for attorney fees in the amount sought of $15,675.00, and costs in the amount sought of $2,450.05.

Explanation:

Attorney Fees in Unlawful Detainer Action

On July 5, 2023, plaintiff Rosa Hernandez ("Plaintiff") filed a First Amended Complaint seeking to partition certain real property. On January 24, 2024, the court entered an interlocutory judgment of partition by sale. On June 7, 2024, Plaintiff, through the aid of counsel, filed an unlawful detainer action against defendant there, and defendant here, Jeronimo Lopez, Jr. ("Defendant"). On August 6, 2024, the action, 24CECL06506, went to stipulated judgment, with the understanding that Defendant would vacate the premises by October 6, 2024. Defendant failed to timely vacate, and Plaintiff sought enforcement by the Fresno Sheriff Department. In February 2025, the subject real property sold, and the balance of $192,185.11 deposited with the court.[1] Plaintiff now seeks to recover attorney fees related to the unlawful detainer action under Code of Civil Procedure section 874.010.

Code of Civil Procedure section 874.010 provides that costs of partition include reasonable attorney fees incurred or paid by a party for the common benefit. (Code Civ.

[1] Plaintiff's Request for Judicial Notice is granted.

Proc. § 874.010, subd. (a).) Plaintiff submits that the eviction of Defendant was a necessary expense in order for the real property to be sold. As Defendant refused to cooperate, Plaintiff further submits that the legal expenses should be debited only from Defendant's share. The court agrees. Following review of the hours submitted, the court grants the motion, and awards $8,802.40 as sought in favor of plaintiff Rosa Hernandez and against defendant Jeronimo Lopez, Jr.

Entry of Final Judgment and Request for Attorney Fees

Plaintiff further seeks entry of final judgment and a separate award of attorney fees specific to the partition action. Plaintiff submits that she paid off a delinquent property tax assessment in the amount of $1,379.45; and regularly assessed property taxes in the amount of $2,621.37. (Rosa Decl., ¶¶ 21-23, 25.) Plaintiff therefore seeks a credit of $4,000.82. (*Id.*, ¶ 29.) However, Plaintiff acknowledges that she is a 50 percent interest owner. (*Id.*, ¶ 19.) Accordingly, Plaintiff herself had an obligation of half of the property taxes assessed and paid. The court credits Plaintiff $2,000.41.

Plaintiff further seeks to charge the common fund for the legal fees incurred in obtaining a partition by sale. As above, Plaintiff cites to Code of Civil Procedure section 874.010. Counsel submits 9.7 hours of attorney time, and 85.1 hours of paralegal time, billed at $300 and $150 per hour, respectively. The court finds the hourly rates are reasonable and approves them. Following general review of the time entries submitted, the court approves the amount sought of $15,675.00. Counsel further submits costs in the amount of $2,450.05. The court finds the costs as reasonable and approves them.

Based on the above, this amount will be paid from the $192,185.11 balance deposited with the court. After common fund fees and costs, the balance totals $174,060.06. Each of Plaintiff and Defendant therefore start with $87,030.03. Plaintiff is thereafter credited $2,000.41 and debited from Defendant. Accordingly, Plaintiff will receive $89,030.44. From above, Defendant's portion is further debited for the attorney fees related to the unlawful detainer action. Defendant will receive $76,227.22. Plaintiff is directed to submit a proposed judgment.

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 05/05/25.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Matthew Graham v. Omni Land Development, LLC***
Superior Court Case No. 24CECG05066

Hearing Date: May 6, 2025 (Dept. 502)

Motion: By Plaintiff Matthew D. Graham for Writ of Attachment x4

Tentative Ruling:

Hearing is set for May 6, 2025, 9:00 a.m., Department 502, and the parties are directed to appear. (Code Civ. Proc. § 484.040.) The court intends to deny the applications as to defendants Luis Mota, Samer Sabbah, and SBM Holdings and Investments, Inc. The court intends to grant the application as to defendant Omni Land Development, LLC. and to set the mandatory undertaking at $10,000.

Explanation:

On October 18, 2022, plaintiff Matthew D. Graham ("Plaintiff") entered into a written agreement for the loan of $1.5 million to defendant Omni Land Development, LLC ("Omni").[2] Thereafter, Plaintiff alleges that Omni breached the terms of the loan, and filed the instant action. Plaintiff now seeks to attach certain real and personal property of not only Omni, but also of defendants Luis Mota, Samer Sabbah, and SBM Holdings, and Investments, Inc. (collectively "Alter Ego Defendants").

Attachment law is subject to strict construction; unless specifically provided for by law, no attachment procedure may be ordered by the court. (*Pac. Decisions Sciences Corp. v. Superior Court* (2004) 121 Cal.App.4th 1100, 1106.) Attachment may issue only where there is a sufficient showing that (1) the claim upon which the attachment is based is one upon which attachment may be issued; (2) the plaintiff has established a probable validity of the claim upon which the attachment is based; (3) the attachment is not sought for a purpose other than the recovery on the claim upon which the attachment is based; and (4) the amount to be secured by the attachment is greater than zero. (Code Civ. Proc. § 484.090, subd. (a).)

Plaintiff fail to demonstrate sufficient grounds to attach his claims to the identified property of the Alter Ego Defendants. While the Alter Ego Defendants opposed, there is no general dispute that Plaintiff entered into a loan arrangement with only Omni. Neither is there a general dispute that none of the Alter Ego Defendants guaranteed the loan. In sum, Plaintiff submits no bases to attach liability on the loan from Omni to the Alter Ego Defendants. Only on information and belief, Plaintiff submits generally conclusory statements that: (1) Omni was a mere shell and sham without capital, assets, stock, or true stockholders; (2) the Alter Ego Defendants completely controlled, dominated, managed, and operated Omni, and intermingled assets; (3) Omni was just a shell to carry out the Alter Ego Defendants' business; (4) Omni was inadequately capitalized; and (5)

[2] Plaintiff's Request for Judicial Notice is granted.

Omni was used to avoid creditors. (Graham Decl., ¶ 10.) These conclusory statements have no factual statements in support. (*See generally* Graham Decl.)

Moreover, in opposition, the Alter Ego Defendants submit several countervailing facts: (1) Omni was a legitimate business; (2) Omni was adequately capitalized; (3) Omni maintained its own separate bank accounts not commingled with personal or the funds of any other defendant in this action; (4) Omni maintains its own books and records; (5) Sabbah, as president of Omni, has not used the funds for personal benefit, or diverted assets from Omni to avoid payment of its obligations; and (6) Sabbah has operated Omni based on Omni's operating agreement and with input from its other members and managers. (Sabbah Decl., ¶¶ 3-13.) Luis Mota of the Alter Ego Defendants submits the same on his behalf and on behalf of SBM Holdings and Investments, Inc. (Mota Decl., ¶¶ 4-14.)

For the above reasons, Plaintiff fails to demonstrate that he has a probable validity of his claim against the Alter Ego Defendants, and the court intends to deny the applications for Right to Attach Orders as to the Alter Ego Defendants. Hearing remains on calendar, and the parties are directed to appear.

As to Omni, however, no opposition was filed. Plaintiff submits a written agreement for a loan; that Omni has failed to make payments as required of it under the terms of the loan; that the claim is readily ascertainable; and that the loan was of a commercial nature, not subject to any bankruptcy proceeding. (Graham Decl., ¶¶ 4-7, 12-14.) The property sought for attachment are permitted under the Code of Civil Procedure, as general business property. (Code Civ. Proc. § 487.010, subd. (b); Graham Decl., ¶ 14, subd. (f).)

For these reasons, the court intends to grant the application for a right to attach order as to Omni. However, an undertaking is mandatory for the issuance of the order. (Code Civ. Proc. § 489.210.) The statutory minimum is $10,000 and may only increase. (*Id.*, § 489.220.) Plaintiff is directed to submit a new proposed order reflecting the imposition of mandatory undertaking in the amount of $10,000 prior to any issuance of a writ. Hearing remains on calendar, and the parties are directed to appear.

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 05/05/25.
(Judge's initials) (Date)