Tentative Rulings for May 14, 2025
Department 403

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.

24CECG04502 ***Jordan v. Padilla*** **is continued to Thursday, May 15, 2025, at 3:30 p.m. in Department 403**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

Begin at the next page

(03)

Tentative Ruling

Re: ***Zupancic v. Gold***
Case No. 24CECG04902

Hearing Date: May 14, 2025 (Dept. 403)

Motion: Defendant's Demurrer to Complaint

If oral argument is timely requested, it will be entertained on Thursday, May 15, 2025, at 3:30 p.m. in Department 403.

Tentative Ruling:

To overrule the defendant's demurrer to the complaint. Defendant shall file and serve her answer within 10 days of the date of service of this order.

Explanation:

First of all, defendant's demurrer is procedurally defective, as she does not state in her notice of demurrer what the statutory basis for her demurrer is or which causes of action she is demurring to. Under Rule of Court 3.1320(a), each ground of demurrer must be in a separate paragraph and must state whether it applies to the entire complaint or to specified causes of action. Under Code of Civil Procedure section 430.10, there are multiple grounds for a demurrer, including failure to state facts sufficient to constitute a cause of action, uncertainty, another action pending between the parties, lack of jurisdiction, lack of legal capacity to sue, defect or misjoinder of parties, etc. (Code Civ. Proc., § 430.10, subds. (a)-(h).) "A demurrer shall distinctly specify the grounds upon which any of the objections to the complaint, cross-complaint, or answer are taken. Unless it does so, it may be disregarded." (Code Civ. Proc., § 430.60.)

In the present case, the notice of demurrer does not specify the grounds for demurrer, nor does it state whether it applies to the entire complaint or specific causes of action. Defendant simply states that she "will move the Court for an order sustaining this Demurrer without leave to amend." Therefore, the court has discretion to disregard the demurrer for lack of compliance with the requirement that the notice of demurrer specify the grounds on which the demurrer has been made.

In addition, defendant has not provided a declaration showing that she made a good faith effort to resolve the dispute by meeting and conferring with plaintiff by phone, videoconference, or in person before she brought the demurrer. (Code Civ. Proc., § 430.41, subd. (a)(3).) Therefore, the demurrer is defective for this reason as well.

Next, even if the court were to disregard the procedural defects, the court would still overrule the demurrer. While defendant has not stated what the grounds for her demurrer are, it appears that she is demurring to the entire complaint on the ground that it fails to state a cause of action because the allegations of the complaint show that it is barred by an affirmative defense. (Code Civ. Proc., § 430.10, subd. (e).) Defendant argues that "the Complaint itself discloses a defense that would bar recovery."

(Demurrer, p. 4, lines 5-6.) Defendant points out that the trial court in the malpractice action against Labiak ruled that the complaint was barred because the statute of limitations had passed, and that plaintiff now alleges that Gold was negligent in representing her in the first malpractice action because she failed to "argue a strong defense" against Labiak's summary judgment motion. (*Id*. at p. 4, lines 6-12.) "In truth, Gold made a good-faith effort to argue a plausible, persuasive case before the judge. Despite this, the court ruled that the statute of limitations had passed by the time Plaintiff filed suit." (*Id*. at p. 4, lines 12-14.) Therefore, defendant concludes that the court should sustain the demurrer without leave to amend. (*Id*. at p. 4, lines 16-17.)

It is unclear exactly which defense defendant contends bars plaintiff's complaint here. If she is arguing that the present complaint is barred by the statute of limitations, she has not made any showing that the allegations of the complaint clearly show that the complaint is barred by the statute. Where the dates alleged in the complaint show the cause of action is barred by the statute of limitations, a general demurrer lies. (*Saliter v. Pierce Bros. Mortuaries* (1978) 81 Cal.App.3d 292, 300, fn. 2.) However, the running of the statute must appear "clearly and affirmatively" from the face of the complaint. It is not enough that the complaint *might* be time-barred. (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42; *Stueve Bros. Farms, LLC v. Berger Kahn* (2013) 222 Cal.App.4th 303, 321.)

In the present case, the complaint's allegations do not clearly show that it was filed more than one year after plaintiff discovered, or should have discovered, the facts constituting the wrongful act or omission, or four years from the date of the wrongful act or omission. (Code Civ. Proc., §340.6.) Plaintiff has alleged that Gold was negligent in failing to argue in opposition to the summary judgment motion that Labiak had given her legal advice on December 7, 2018 when he gave her the settlement check, which resulted in the court granting summary judgment in favor of Labiak. (Complaint, ¶¶ 5, 6.) Gold also allegedly told plaintiff that she would file a motion for reconsideration of the court's order, which she then failed to do. (*Id*. at ¶ 7.) Plaintiff also urged Gold to file a motion under Code of Civil Procedure section 473, but Gold did not do. (*Id*. at ¶ 8.) Gold also failed to file an appeal despite request by plaintiff to do so. (*Id*. at ¶ 9.)

Plaintiff does not allege the dates for most of these events, but the date of the court's order granting summary judgment in favor of Labiak was November 15, 2023. (See Court's Minute Order dated November 15, 2023 in case no. 19CECG04425. The court will take judicial notice of the order under Evidence Code section 452(d) as a court record.) Thus, assuming that the negligent act or omission occurred when Gold failed to make the argument in opposition to the summary judgment motion, the statute started to run on November 15, 2023.[1] Plaintiff filed her complaint in the present case less than a year later, on November 12, 2024. As a result, the present complaint is timely filed, even

[1] It appears that the statute would also have been tolled, as the representation apparently continued for some time after the court granted summary judgment. (Code Civ. Proc., § 340.6, subd. (a)(2).) Again, it is not clear from the allegations of the complaint when the representation ended, which is reason to overrule the demurrer based on the statute of limitations by itself. However, even without taking into account the statutory tolling, the present complaint was still timely filed, as it was filed less than a year after the court granted summary judgment in favor of Labiak.

if the statute began to run at the time that the court granted the summary judgment motion.

On the other hand, if Gold is arguing that the complaint against her is barred because its allegations show that plaintiff had no valid claim against Labiak since the complaint against him was clearly time-barred, and thus Gold's alleged negligence did not harm plaintiff, Gold has still failed to show that the complaint fails to state a cause of action. As discussed above, plaintiff has alleged that she had told Gold that Labiak had given her legal advice on December 7, 2018 when they met and he gave her the settlement check. (Complaint, ¶¶ 4, 5.) She urged Gold to make the argument in opposition to the summary judgment motion that Labiak had given her legal advice on December 7, 2018, which meant that the statute had not yet run when she filed her complaint against Labiak on December 9, 2018. (*Ibid*.) However, plaintiff alleges that Gold failed to make this argument when she opposed the summary judgment motion, which resulted in the court granting summary judgment and dismissing the case. (*Id*. at ¶¶ 5, 6.)

Gold also failed to bring a motion for reconsideration despite promising to do so. (*Id*. at ¶ 7.) In addition, Gold did not file a motion under Code of Civil Procedure section 473 or file an appeal, even though plaintiff urged her to do so. (*Id*. at ¶¶ 8, 9.) Furthermore, plaintiff alleges that Gold failed to make any effort to settle the case against Labiak, even though plaintiff had stated to her that she wanted to settle if at all possible. (*Id*. at ¶ 10.)

Thus, plaintiff has adequately alleged that Gold negligently represented her by failing to raise a strong argument in opposition to summary judgment that resulted in the trial court granting the motion, and then failing to file a motion for reconsideration, a motion for relief under section 473, or an appeal of the court's decision. While Gold apparently contends that there was no chance of defeating the summary judgment motion because the case was clearly time-barred, plaintiff has alleged that she had a strong argument that the statute had not run based on the allegation that she received legal advice from Labiak on December 7, 2018, which would have tolled the running of the statute. Gold allegedly failed to even raise this contention when she opposed the summary judgment motion. If she had done so, then the court might have found that the statute had not run and denied the summary judgment motion. Therefore, plaintiff has sufficiently alleged facts indicating that the outcome of the case against Labiak would have been different if Gold had made the argument that plaintiff asked her to make.

Defendant appears to be arguing that plaintiff's allegation that she failed to make a "strong defense" is untrue, as "[i]n truth, Gold made a good-faith effort to argue a plausible, persuasive case before the judge. Despite this, the court ruled that the statute of limitations had passed by the time Plaintiff filed suit." (Demurrer, p. 4, lines 11-14.) However, the court is required to assume that all of plaintiff's properly pleaded allegations are true when ruling on a general demurrer. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) The question of whether an attorney breached the standard of care in their representation of the plaintiff in a legal malpractice action is generally an issue of fact rather than a question of law, and thus is not suitable for resolution on demurrer. (*Unigard Insurance Group v. O'Flaherty & Belgum* (1995) 38 Cal.App.4th 1229, 1237-1238.) Here, plaintiff has alleged facts that show that Gold did not make a specific argument in opposition to the summary judgment motion, and that the argument might have

changed the outcome of the case as it would have shown that the statute had not run when she filed her complaint. These allegations are sufficient to support her legal malpractice claim against Gold, as Gold was allegedly negligent in failing to make an argument that would have prevented the case against Labiak from being dismissed.

As a result, the court intends to find that plaintiff has stated a valid cause of action for legal malpractice, and it will overrule the demurrer to the 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: lmg on 5-12-25.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Betancourt v. Ciociolo***
Superior Court Case No. 24CECG00890

Hearing Date: May 14, 2025 (Dept. 403)

Motion: Petitions to Compromise Minors' Claims

If oral argument is timely requested, it will be entertained on Thursday, May 15, 2025, at 3:30 p.m. in Department 403.

Tentative Ruling:

To grant the petitions for Anthony Anguino Alcantar and Christopher Anguino Alcantar. The court intends to sign the proposed orders. No appearances are 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: lmg on 5-12-25.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Campos v. Hyundai Motor America***
Superior Court Case No. 21CECG01052

Hearing Date: May 14, 2025 (Dept. 403)

Motion: by Plaintiff for an Award of Attorney Fees and Costs

If oral argument is timely requested, it will be entertained on Thursday, May 15, 2025, at 3:30 p.m. in Department 403.

Tentative Ruling:

To grant the motion for an award of attorney fees and award $70,788.75 in fees in favor of plaintiff Maria Campos. To award costs in the amount of $11,489.80.

Explanation:

Plaintiff Maria Campos ("plaintiff") seeks an award of attorney fees under Civil Code section 1794, subdivision (d). Plaintiff submits an executed Offer to Compromise pursuant to Code of Civil Procedure section 998 authorizing plaintiff to seek fees and costs from defendant Hyundai Motor America ("defendant") by noticed motion. The court finds that plaintiff sufficiently states a basis upon which to seek an award of fees and costs. Plaintiff suggests that the settlement was for full restitution of the vehicle by way of repurchase. (See Baker Decl., ¶¶ 68-69.) The plaintiff's complaint alleges violations of the Song-Beverly Warranty Act as well as a cause of action for fraud by omission. The moving papers do not suggest whether the settlement contemplated any treatment of the fraud cause of action. The fee request is considered in light of this outcome.

The amount of attorney's fees awarded is a matter within the court's discretion. (*Clayton Development Co. v. Falvey* (1988) 206 Cal.App.3d 438, 447.) In determining the reasonable amount to award, "the court should consider ... 'the nature of the litigation, its difficulty, the amount involved, the skill required and the skill employed in handling the litigation, the attention given, the success of the attorney's efforts, his learning, his age, and his experience in the particular type of work demanded [citation]; the intricacies and importance of the litigation, the labor and necessity for skilled legal training and ability in trying the cause, and the time consumed.'" (*Ibid*.) An award of costs must be "reasonably necessary to the conduct of the litigation" and per (c)(3), shall be "reasonable" in amount. (Code Civ. Proc. § 1033.5(c)(2).) Plaintiff as the moving party bears the burden to prove the reasonableness of the number of hours devoted to this action. (*Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal.App.4th 1309, 1325.)

A trial court may not rubberstamp a request for attorney fees, and must determine the number of hours reasonably expended. (*Donahue v. Donahue* (2010) 182 Cal.App.4th 259, 271.) A court assessing attorney's fees begins with a touchstone or lodestar figure, based on the 'careful compilation of the time spent and reasonable hourly compensation of each attorney . . . involved in the presentation of the case."

(*Serrano v. Priest* (*Serrano III*) (1977) 20 Cal.3d 25, 48.) Lodestar refers to the "number of hours reasonably expended multiplied by the reasonable hourly rate" of an attorney. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096.)

Counsel for plaintiff seeks to set the lodestar at $71,511.00, excluding an additional $4,000 sought in connection with anticipated time for the reply and hearing for the motion at bench. Counsel submits a total of 144.1 hours of billed time across twenty-four timekeepers. Counsel exclusively practice in consumer protection claims, such as the present action. (Shahian Decl., ¶ 5.) As to the attorneys, counsel submits hourly rates ranging from $325 per hour for a law clerk to $635 for experienced civil litigator Angel Baker. These rates are all high for the Fresno area.

Reasonable hourly compensation is the "hourly prevailing rate for private attorneys in the community conducting noncontingent litigation of the same type" (*Ketchum v. Moses*, *supra*, 24 Cal.4th at p. 1133.) Ordinarily, "'the value of an attorney's time . . . is reflected in his normal billing rate.'" (*Mandel v. Lackner* (1979) 92 Cal.App.3d 747, 761.)

Where a party is seeking out-of-town rates, he or she is required to make a "sufficient showing…that hiring local counsel was impractical." (*Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1244.) Plaintiff has made no showing that local counsel practicing "Lemon Law" and Song-Beverly consumer litigation are not available. As a result, the court intends to award fees based on local rates.

Having reviewed the qualifications of each of the 24 timekeepers the court finds the reasonable value of services as follows:

For Angel Baker, an attorney admitted to the California Bar in 2003, who possesses substantial experience in consumer litigation and specializes in law and motion, a rate of $550 per hour.

For Ian McCallister, an attorney admitted to the California Bar in 1998, a rate of $525 per hour.

For Ivy Choderker, Elizabeth Larocque, and Oliver Tomas, attorneys admitted to the California Bar between 2000 and 2004, a rate of $500 per hour.

For Michael Tracy, an attorney admitted to the California Bar in 2005, a rate of $475 per hour.

For Scott Friedman and Regina Liou, attorneys admitted to the California Bar between 2007 and 2008, a rate of $425 per hour.

For Mani Arabi and Tionna Carvalho, attorneys admitted to the California Bar between 2012 and 2014, a rate of $400 per hour.

For Kareem Aref, Daniel Law, Maro Orte, and Matthew Pardo, attorneys admitted to the California Bar between 2015 and 2017, and Nino Sanaia, an attorney admitted to the Georgia Bar in 2015 and to the California Bar in 2022, a rate of $380 per hour.

For Jared Kaye and Rosy Stoliker, attorneys admitted to the California Bar in 2019, a rate of $350 per hour.

For Tara Mejia and Rabiya Tirmizi, attorneys admitted to the California Bar between 2021 and 2022, a rate of $325 per hour.

For law clerks Eve Canton, Aylana Dias, Camilo Fernandez, and Stephanie Maldonado, a rate of $150 per hour.

Following a careful review of the entries submitted, the court finds that the vast majority of entries appear reasonable for the task billed. However, the court will reduce time billed by Mani Arabi by 0.5 hours for two entries billed for the clerical task of calling the court clerk.

Plaintiff additionally requests an additional $4,000 in connection with the reply and appearance at the hearing for the motion at bench. The amount sought is not connected with any particular timekeeper and there was no timely opposition requiring a reply. The court finds it reasonable to award an additional 3 hours in connection with Ms. Baker's opposition to and appearance at the May 8, 2025 ex parte hearing.

With the reductions in hourly rates and adjustment to the hours billed, the lodestar is set at $56,631.00.

Plaintiff seeks the imposition of a multiplier of 1.35. As stated by the California Supreme Court regarding lodestar multipliers, sometimes referred to as fee enhancements:

> …the trial court is *not required* to include a fee enhancement to the basic lodestar figure for contingent risk, exceptional skill, or other factors, although it retains discretion to do so in the appropriate case; moreover, the party seeking a fee enhancement bears the burden of proof. In each case, the trial court should consider whether, and to what extent, the attorney and client have been able to mitigate the risk of nonpayment, e.g., because the client has agreed to pay some portion of the lodestar amount regardless of outcome. It should also consider the degree to which the relevant market compensates for contingency risk, extraordinary skill, or other factors under *Serrano III*. We emphasize that when determining the appropriate enhancement, a trial court should not consider these factors to the extent they are already encompassed within the lodestar. The factor of extraordinary skill, in particular, appears susceptible to improper double counting; for the most part, the difficulty of a legal question and the quality of representation are already encompassed in the lodestar. A more difficult legal question typically requires more attorney hours, and a more skillful and experienced attorney will command a higher hourly rate. (*See Margolin v. Regional Planning Com.* (1982) 134 Cal.App.3d 999, 1004, 185 Cal.Rptr. 145.) Indeed, the " 'reasonable hourly rate [used to calculate the lodestar] is the product of a multiplicity of factors ... the level of skill necessary, time limitations, the amount to be obtained in the litigation, the attorney's reputation, and the undesirability of the case.' " (*Ibid*.) Thus, a trial court

> should award a multiplier for exceptional representation only when the quality of representation far exceeds the quality of representation that would have been provided by an attorney of comparable skill and experience billing at the hourly rate used in the lodestar calculation. Otherwise, the fee award will result in unfair double counting and be unreasonable. Nor should a fee enhancement be imposed for the purpose of punishing the losing party. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138-1139 [emphasis original].)

Once a lodestar is fixed, the lodestar may be adjusted based on certain factors, including: (1) the novelty and difficulty of the questions involved; (2) the skill displayed in presenting them; (3) the extent to which the nature of the litigation precluded other employment by the attorneys; and (4) the contingent nature of the fee award. (*Id.* at p. 1132, *citing Serrano v. Priest (Serrano III)* (1977) 20 Cal.3d 25, 49.)

Here, plaintiff submits that counsel took the matter on contingency, and obtained an excellent result. Plaintiff further suggests that there was undue delay in settling this matter. The court acknowledges the contingent risk taken by counsel, and finds the settlement amounting to approximately four times the agreed value of the vehicle to be above average to the statutory relief afforded in these actions. Though plaintiff suggests undue delay, the timeline supports a finding that all parties treated the matter as proceeding to trial. The steady nature of the discovery conducted and law and motion practice suggests as much. This would not constitute a delay, much less undue delay. Moreover, plaintiff does not suggest that the delay precluded other employment. Over the roughly 43 months between the first engagement with the client to the date of settlement, the firm spent, on average, 3.4 hours per month on the matter. Such a time commitment does not support the conclusion that this action was so involved as to preclude commitment to other work. The court applies a multiplier of 1.25. The motion for an award of attorney fees is granted in the amount of $70,788.75.

Costs

Costs and expenses are sought via declaration in the amount of $11,525.55. (Shahian Decl., ¶ 26, Exh. 23, pp. 5-6.)

If the items on a verified statement appear to be proper charges, the statement is prima facie evidence of their propriety and the burden is on the party contesting them to show that they were not reasonable or necessary. (*See Hooked Media Group, Inc. v. Apple Inc.* (2020) 55 Cal.App.5th 323, 338.) The losing party does not meet this burden by arguing that the costs were not necessary or reasonable but must present evidence to prove that the costs are not recoverable. (*Litt v. Eisenhower Med. Ctr.* (2015) 237 Cal.App.4th 1217, 1224.) If the claimed items are not expressly allowed by statute and are objected to, the burden of proof is on the party claiming them as costs to show that the charges were reasonable and necessary. (*Foothill-De Anza Community College Dist. v. Emerich* (2007) 158 Cal.App.4th 11, 29.)

In Song-Beverly Act cases, Civil Code section 1794, subdivision (d), provides for an award of not only "costs", but also "expenses" to the prevailing buyer if the costs and expenses were reasonably incurred in the commencement and prosecution of the

action. Courts have interpreted the term "expenses" to mean that the trial court has discretion to award more than just the costs provided under section 1033.5, and that the court may grant other costs that were reasonably incurred by the buyer in connection with the commencement and prosecution of the action. (*Jensen v. BMW of North America, Inc*. (1995) 35 Cal.App.4th 112, 137-138, [finding trial court should not have denied plaintiff's request for expert witness fees simply because they were not permitted under section 1033.5]; disapproved on other grounds by *Rodriguez v. FCA US, LLC* (2024) 17 Cal.5th 189.)

Defendant has not submitted a timely opposition, however, certain charges on the face of the exhibit do not appear proper. On May 4, 2021 there are two charges of $35.75 for filing of proof of service of summons, one of which is noted as having been filed in "LASC," understood to be Los Angeles Superior Court. This entry in connection with a different court is not proper on its face and will not be allowed. Accordingly, costs are awarded in the total amount of $11,489.80.

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: lmg on 5-12-25.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Villegas v. Cervantes***
Superior Court Case No. 24CECG04742

Hearing Date: May 14, 2025 (Dept. 403)

Motion: By Cross-Complainant Robert Cervantes on Application for Writ of Possession

Tentative Ruling:

Hearing is set for May 15, 2025, 3:30 p.m. in Department 403, and the parties are directed to appear. (Code Civ. Proc. § 512.020, subd. (a).) The court intends to deny the application.

Explanation:

Cross-Complainant Robert Cervantes ("Cross-Complainant") applies for a writ of possession regarding certain property he alleges is in the possession of cross-defendant Isveth Sanchez Villegas ("Cross-Defendant").

On filing the complaint, a plaintiff may apply for a writ of possession under the claim and delivery statutes. (Code Civ. Proc. § 511.010 et seq.) The plaintiff must file a written application, executed under oath and must include: (1) a showing of the basis of the plaintiff's claim, that plaintiff is entitled to possession of the claimed property, and where the claim is based on a written instrument, a copy of that instrument must be attached; (2) a showing that the property is wrongfully detained, how defendant came into possession of the property, and the reason for the detention to the best of plaintiff's knowledge; (3) a detailed description of the property and statement of its value; (4) a statement of the property's location, with supporting facts; (5) where the property is in a private place that must be entered, plaintiff must also make a showing of probable cause to believe that the property is located here; and (6) the property was not taken for a tax, assessment, or fine under a statute, or seized under an execution against the plaintiff's property. (Code Civ. Proc. § 512.010, subd. (b).) This showing may be by affidavit and must be set forth with particularity. (*Id.*, § 512.010, subd. (c).) If the plaintiff has established the probable validity of its claim to possession of the property, and provides an undertaking, the writ may issue. (Code Civ. Proc. § 512.060, subd. (a).)

Here, Cross-Complainant seeks to possess a California Alcoholic Beverage Control license number 413202 (the "License"). Cross-Complainant submits that Cross-Defendant executed a promissory note to finance the purchase of, among other things, the License. (Cervantes Decl., ¶¶ 9-15.) Cross-Complainant submits that Cross-Defendant breached that promissory note by failing to make payments as promised. (*Id.*, ¶ 22.) Cross-Complainant submits that as a result of the failed payments, he is entitled to the License. (*Id.*, ¶ 23.) A demand has been made for the License, which has been refused. (*Id.*, ¶ 26.) Cross-Complainant concludes that the License at issue is wrongfully detained.

Cross-Complainant submits a description of the property at issue. (Cervantes Decl., ¶ 23.) The License is estimated to have a value of $50,000. (*Id.*, ¶ 17.) Cross-Complainant clarifies that the present application is purely to retrieve the License. (*Id.*, ¶ 32.) Cross-Complainant submits that the License was not taken for a tax, assessment, or fine. (*Id.*, ¶ 50.)

However, the application fails to state where the License is located. Neither does that application support, if the License is located in a private place, there is probable cause to believe that the License is located there. It appears that Cross-Complainant is now in possession the premises related to the License. (Cervantes Decl., ¶ 25.) So it is unclear where the License is physically located at this juncture. Accordingly, the application is procedurally defective.

Cross-Defendant opposes. Namely, Cross-Defendant argues that Cross-Complainant lacks any basis to seek possession of the License. No evidence was presented in support of the implied conclusion drawn that the License is named in favor of the business entity, and not Cross-Defendant. In other words, no evidence supports that Cross-Defendant "had, and has, no interest in the liquor license for Intimo, which belongs exclusively to Intimo Cocktail Lounge, Inc." Conversely, as Cross-Complainant notes on reply, the agreement entered to secure a loan on, among other things, the License, is by and through the individuals now party to this action. (Application, Ex. 4.) Specifically, the tangible personal property, as well as intangibles, cash and noncash, of the business are separately listed from the License itself. (*Ibid.*)

Cross-Defendant further submits that she is owed a balance based on the dispute between the parties. This does not, on its own, refute that Cross-Complainant may have a superior interest in the License. At best, these arguments go to the issue of a bond, or a counter-bond as the case may be.

For the above reasons, the court intends to deny the application due to a failure to indicate where the License is located, and if necessary, to show probable cause that the License is located in a private place.[1] Should this issue be remedied at hearing, the court intends to find that the application is otherwise sufficiently supported. As no evidence was submitted to refute the representation that the License has an estimated value of $50,000, should the matter proceed, the court would intend to set Cross-Complainant's bond at the full estimated value of $50,000.

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: lmg on 5-13-25.
(Judge's initials) (Date)

[1] Cross-Complainant's Request for Judicial Notice is denied evidence improperly submitted on reply. For the same reason, the court does not consider the declaration submitted in support of the reply brief.

(35)

Tentative Ruling

Re: ***Marez v. Pacific Gas and Electric Company***
Superior Court Case No. 24CECG04801

Hearing Date: May 14, 2025 (Dept. 403)

Motion: By Defendant Pacific Gas and Electric Company on Demurrer

Tentative Ruling:

To sustain as to the second cause of action for sex discrimination; third cause of action for retaliation; sixth cause of action for defamation; and seventh cause of action for whistleblower retaliation; based on failure to state sufficient facts, with leave to amend. (Code Civ. Proc. § 430.10, subd. (e).) To overrule on all other grounds. (Code Civ. Proc. § 430.10, subd. (e).) Plaintiff Arthur Marez shall serve and file an amended complaint within 10 days of the date of service of this minute order by the clerk. All new allegations shall be in **boldface**.

If oral argument is timely requested, it will be entertained on Thursday, May 15, 2025, at 3:30 p.m. in Department 403.

Explanation:

On November 5, 2024, plaintiff Arthur Marez ("Plaintiff") filed suit against defendant Pacific Gas and Electric Company ("Defendant"). The Complaint states seven causes of action for: (1) hostile work environment; (2) sex discrimination; (3) retaliation; (4) failure to take steps necessary to prevent sexual harassment or retaliation; (5) intentional infliction of emotional distress; (6) defamation; and (7) whistleblower retaliation. Defendant demurs to the entirety of the Complaint.

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 Univ. of Cal.* (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.)

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.) Stated another way, a plaintiff is required only to set forth the essential facts of his case with reasonable precision and with particularity sufficient to acquaint a defendant with the nature, source, and extent of his cause of action. (*Youngman v. Nevada Irrigation Dist.* (1969) 70 Cal.2d 240, 245.) The particularity required in pleading facts depends on the extent to which the defendant in fairness needs detailed information that can be conveniently provided by the plaintiff; less particularity is required where the defendant may be assumed to have knowledge of the facts equal to that possessed by the plaintiff. (*Jackson v. Pasadena City School Dist.* (1963) 59 Cal.2d 876, 879; *see also Foster v. Sexton* (2021) 61 Cal.App.5th 998, 1028 [finding that "less specificity is required in pleading matters of which the defendant has superior knowledge."]) When the complaint is defective, great liberality should be exercised in permitting a plaintiff to amend the complaint if there is a reasonable possibility that the defect can be cured by amendment. (*Scott v. City of Indian Wells* (1972) 6 Cal.3d 541, 549.)

Timeliness

Defendant submits as a threshold issue that the Complaint in its entirety is time-barred due to certain bankruptcy proceedings. Specifically, Defendant argues that it filed a bankruptcy petition, for which a federal bankruptcy court issued an order pertaining to claims arising prior to January, 2019. Defendant submits that some of the allegations of the Complaint predate this bankruptcy order, and therefore are barred.

Defendant's Request for Judicial Notice is granted only to the extent that such documents exist. (*Steed v. Dept. of Consumer Affairs* (2012) 204 Cal.App.4th 112, 120-121.) The truths of the matters asserted therein are not subject to judicial notice. (*Ibid.*) None of the documents submitted support Defendant's conclusion that Plaintiff's claims are time-barred as a matter of law. It is, as Plaintiff suggests in opposition, a factual inquiry otherwise to determine the intended scope of the bankruptcy order, and whether Plaintiff's claims specifically fall within that defined scope. Moreover, Defendant generally gestures to nearly 370 pages submitted for judicial notice as demonstrative that somewhere within those pages, there is a definitive statement as a matter of law precluding Plaintiff's claims. (*E.g.*, Defendant's Request for Judicial Notice, Ex. A-D.) On a general review, the documents do not support the conclusion that Defendant specifically draws, that Plaintiff did not file a claim with the bankruptcy court, timely or otherwise. Nor is it plain on the face of the Complaint of such a time bar. The demurrer to the entirety of the Complaint is overruled as to the grounds of timeliness.

Exhaustion

Defendant next submits that the Complaint in its entirety is subject to exhaustion of administrative remedies. Defendant correctly notes that actions arising out of the Fair Employment and Housing Act ("FEHA") must exhaust the administrative remedies provided by statute. (*Kuigoua v. Dept. of Veteran Affairs* (2024) 101 Cal.App.5th 499, 507.) The administrative process is a mandatory prerequisite to filing in court. (*Guzman v. NBA Automotive, Inc.* (2021) 68 Cal.App.5th 1109, 1117.) In opposition, Plaintiff does not contest that the Complaint is subject to exhaustion of administrative remedies. Rather,

Plaintiff submits evidence of compliance. Evidence extrinsic to the Complaint and not subject to judicial notice is inappropriate on demurrer. Nevertheless, on the face of the Complaint, Plaintiff alleges having submitted the matter to the Department of Fair Employment and Housing, and obtained a Right to Sue letter. (*E.g.*, Complaint, ¶ 47.) Accordingly, sufficient facts are alleged that Plaintiff exhausted his administrative remedies. The demurrer to the entirety of the Complaint is overruled as to the grounds of failure to exhaust administrative remedies.

Sufficiency of Facts

Defendant next submits that each cause of action fails to state sufficient facts upon which relief may be granted.

Hostile Work Environment

To establish a prima facie case of a hostile work environment, the plaintiff must show that (1) plaintiff is a member of a protected class; (2) plaintiff was subjected to unwelcome harassment; (3) the harassment was based on plaintiff's protected status; (4) the harassment interfered with plaintiff's work performance by creating an intimidating, hostile, or offensive work environment; and (5) defendants are liable for the harassment. (*Ortiz v. Dameron Hospital Assn.* (2019) 37 Cal.App.5th 568, 581.)

Here, the Complaint appears to rely on the protected class of sex. (Complaint, ¶ 47.) The Complaint further alleges that Plaintiff was subjected to untoward comments on the basis of sex. (*Id.*, ¶¶ 12, 13.) The Complaint alleges that Plaintiff complied with these actions out of fear of disciplinary action. (*Id.*, ¶¶ 17, 18.) The Complaint alleges that Defendant is proximately liable for such acts. (*Id.*, ¶ 49.) The demurrer to the first cause of action for hostile work environment is overruled as to the grounds of sufficiency of facts.

Sex Discrimination

The specific elements of a prima facie case of disparate treatment may vary depending on the particular facts. (*Guz v. Bechtel Nat'l, Inc.* (2000) 24 Cal.4th 317, 355.) For a claim for disparate treatment, a plaintiff must generally show that (1) he was a member of a protected class; (2) was performing competently in the position he held; (3) suffered an adverse employment action; (4) and there were circumstances suggesting that the employer acted with a discriminatory motive. (*Ibid.*)

As above, the Complaint appears to rely on the protected class of sex. (Complaint, ¶¶ 12, 13, 56.) The Complaint alleges that Plaintiff was performing competently in the position held. (*Id.*, ¶ 10.) However, it is unclear what the Complaint alleges as Plaintiff suffering an adverse employment action. At most, the Complaint alleges, that while not terminated, Plaintiff has suffered serious reputational harm and works in fear of further retaliation. (*Id.*, ¶ 39.) However, this allegation alone does not appear to be an adverse employment action. Plaintiff in opposition suggests that Plaintiff suffered an adverse employment action when he was denied an injury accommodation. As Defendant argues on reply, the allegation of denial of an injury accommodation would not appear to be circumstances that the employer acted with a sex-based

discriminatory motive. The demurrer to the second cause of action for sex discrimination is sustained, with leave to amend.

Retaliation

To state a cause of action for retaliation, a plaintiff must show that (1) he engaged in a protected activity; (2) the employer subjected the employee to an adverse employment action; and (3) a causal link existed between the protected activity and the employer's action. (*Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1042.)

Here, the Complaint fails to identify what protected activity Plaintiff engaged in. The Complaint does not allege that Plaintiff opposed a forbidden practice, or filed a complaint, testified or assisted in a proceeding. (Gov. Code § 12940, subd. (h).) At most, the Complaint indicates that a third party instructed Plaintiff not to report or oppose the alleged harassment. (Complaint, ¶ 20.) The Complaint does not clearly state that Plaintiff himself engaged in a protected activity. Further, as with the second cause of action, the third cause of action fails to allege facts sufficient to demonstrate a causal link. The demurrer to the third cause of action for retaliation is sustained, with leave to amend.

Failure to Prevent

To state a cause of action for failure to prevent harassment, discrimination, and retaliation, a plaintiff must show that (1) he was subjected to harassment, discrimination or retaliation; (2) the defendant failed to take all reasonable steps to prevent the harassment, discrimination or retaliation; and (3) the failure to do so caused plaintiff to suffer injury, damage, loss or harm. (*Caldera v. Dept. of Corrections and Rehabilitation* (2018) 25 Cal.App.5th 31, 43-44.)

Here, the Complaint alleges sufficient facts regarding harassment, as alleged in the first cause of action. The Complaint further alleges that the individual alleged to have made the untoward comments was directed not to communicate with Plaintiff. (Complaint, ¶ 21.) The instruction is alleged to have been immediately disobeyed with no consequence. (*Id.*, ¶¶ 22, 23.) The Complaint alleges that Plaintiff consequently suffered injury. (*Id.*, ¶ 69.) The demurrer to the fourth cause of action for failure to prevent harassment is overruled.

Intentional Infliction of Emotional Distress

Defendant initial demurs to this cause of action based on worker's compensation exclusivity. An employee's emotional distress injuries, arising in the normal course of the employment relationship, are the exclusive remedy of worker's compensation. (*Milkosy v. Regents of the Univ. of Cal.*, *supra*, 44 Cal.4th at p. 902.) Plaintiff submits in opposition that the exclusive remedy does not reach acts that are fundamentally against public policy, relying on FEHA. (*See Gibbs v. Am. Airlines, Inc.* (1999) 74 Cal.App.4th 1, 10.) Based on the above, at least some of the acts described appear to arise out of FEHA causes of action. The demurrer to the fifth cause of action is overruled as to the issue of exclusivity.

To state a cause of action for intentional infliction of emotional distress, the plaintiff must allege that there is (1) extreme and outrageous conduct by the defendant with the

intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering of severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct. (*Hughes v. Pair* (2009) 46 Cal.4th 1035, 1050-1051.)

Here, the Complaint alleges, as under FEHA, that Plaintiff was subjected to untoward comments on the basis of sex. (Complaint, ¶¶ 12, 13.) These acts are alleged to be outrageous, done with the intent to cause emotional distress, which Plaintiff suffered. (*Id.*, ¶¶ 73, 74, 76, 77.) The demurrer to the sixth cause of action for intentional infliction of emotional distress as to sufficiency of facts is overruled.

Defamation

Defamation is either libel or slander. (Civ. Code § 44.) Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation. (*Id.*, § 45.) Libel through innuendo has an additional requirement of demonstrating special proximate damages, which are damages suffered in respect to his property, business, trade, profession or occupation. (*Id.*, §§ 45a, 48a, subd. (d)(2).) Slander is a false and unprivileged publication, orally uttered, and also communications by radio or any other mechanical or other means which: (1) charges any person with crime, or with having been indicted, convicted, or punished; (2) imputes the present existence of an infectious, contagious, or loathsome disease; (3) tends directly to injure him in respect to his office, profession, trade or business; (4) imputes to him impotence or a want of chastity; or (5) which, by natural consequences, causes actual damages. (*Id.*, § 46.)

Here, the Complaint makes no reference as to whether the defamatory statements are written or orally uttered. (*See* Complaint, ¶¶ 34-36.) Consequently, the Complaint fails to support either basis for defamation. Plaintiff's opposition does not address this cause of action. The demurrer to the sixth cause of action for defamation is sustained, with leave to amend.

Whistleblower Retaliation

In a civil action or administrative proceeding brought pursuant to Labor Code Section 1102.5, a plaintiff needs to demonstrate that an activity proscribed by Labor Code Section 1102.5 was a contributing factor in an alleged prohibited action against the employee. (*Zirpel v. Alki David Productions, Inc.* (2023) 93 Cal.App.5th 563, 573.)

As with the second and third causes of action, the Complaint fails to clearly allege an adverse employment action, against which Defendant engaged, based on a Labor Code section 1102.5 action. The Complaint fails to clearly allege which of the provisions of Labor Code section 1102.5 apply as protected activity. Reporting statutory violations internally does not, by itself, fall under one of the categories. (Complaint, ¶ 88; *see also*

Lab. Code § 1102.5, subd. (a)-(e).) The demurrer to the seventh cause of action for defamation is sustained, 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: lmg on 5-13-25.
(Judge's initials) (Date)