Tentative Rulings for May 15, 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.***

20CECG02232 ***Paredes v. Daniels, et al.***
24CECG04502 ***Jordan v. Padilla, et al.***

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

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

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(20) **Tentative Ruling**

Re: ***P.C. v. Fresno Unified School District, et al.***
Superior Court Case No. 24CECG04090

Hearing Date: May 15, 2025 (Dept. 403)

Motion: Demurrer by Fresno Unified School District to First and Second Causes of Action of Complaint

Tentative Ruling:

To sustain the demurrers to the first and second causes of action as to defendant Fresno Unified School District ("FUSD") only. (Code Civ. Proc., § 430.10, subd. (e).) FUSD shall file its answer to the Complaint within 10 days of service of the order by the clerk.

Explanation:

The Complaint alleges that plaintiff P.C., a 15-year-old special needs student, was the victim of an assault and battery on 12/14/2023, at Sunnyside High School. There was a documented history of P.C. being bullied by some other students at the school, but not apparently the alleged perpetrator of this attack. On 12/14/2023 defendant Jeremiah Ruiz, a 16-year-old student with boxing training, was "being monitored in the Sunnyside High School Yale Office for behavioral issues that involved another altercation that day, when he left the office without permission. Jeremiah went to the south campus men's restroom of the Sunnyside High School Campus. Once in the restroom, Jeremiah climbed over the top opening of the bathroom stall and began attacking P.C." Ruiz hit P.C.'s head, back, and smashed him up against the side of the bathroom stall wall. A letter to the parent of P.C. from Sunnyside High School's Student Health Services dated 12/14/2023, states, "Your child bumped his/her head at school today. We wish to inform you of this visit to the school health office."

The Complaint alleges four causes of action against all defendants (Ruiz and FUSD): (1) Violation of the Bane Act, Civil Code §52.1; (2) Violation of the Ralph Act, Civil Code §51.7; (3) Negligence; and (4) Assault and Battery. FUSD now demurs to the first and second causes of action only.

First Cause of Action – Bane Act

Civil Code section 52.1, subdivision (a), provides that if a person interferes, or attempts to interfere, by **threats, intimidation, or coercion**, with the exercise or enjoyment of the constitutional or statutory rights of "any individual or individuals," the Attorney General, or any district or city attorney, may bring a civil action for equitable or injunctive relief. Subdivision (b) allows "[a]ny individual" so interfered with to sue for damages. Subdivision (g) states that an action brought under section 52.1 is "independent of any other action, remedy, or procedure that may be available to an aggrieved individual under any other provision of law," including Civil Code section 51.7.

"The essence of a Bane Act claim is that the defendant, by the specified improper means (i.e., 'threats, intimidation or coercion'), tried to or did prevent the plaintiff from doing something that he or she had the right to do under the law or to force the plaintiff to do something that he or she was not required to do under the law." (*Austin B. v. Escondido Union Sch. Dist.* (2007) 149 Cal.App.4th 860, 883.) The necessary elements for a Bane Act claim are "(1) intentional interference or attempted interference with a state or federal constitutional or legal right, and (2) the interference or attempted interference was by threats, intimidation or coercion." (*Lawrence v. City and Cnty. of San Francisco* (N.D. Cal. 2017) 258 F.Supp.3d 977, 994-95, citing *Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 67.)

FUSD first contends that it is not a "person" for purposes of the Bane Act. There is no need to reach that issue, however, as the Complaint simply alleges no acts of threats, intimidation or coercion on the part of FUSD or its staff. Plaintiff seeks to hold FUSD liable, not for the acts of any FUSD agent, but for the alleged criminal act of a student. The Bane Act simply does not provide for such liability. At most the Complaint states a claim for negligence – negligent supervision or negligent hiring or retention. There are no allegations that FUSD, by the specified improper means (i.e., "threats, intimidation or coercion"), tried to or did prevent the plaintiff from doing something that he had the right to do under the law or to force P.C. to do something that he was not required to do under the law. (*Austin B. V. Escondido Union Sch. Dist.* (2007) 149 Cal.App.4th 860, 883.) "The statutory framework of section 52.1 indicates that the Legislature meant the statute to address interference with constitutional rights involving more egregious conduct than mere negligence." (*Shoyoye v. County of Los Angeles* (2012) 203 Cal.App.4th 947, 958.) The Bane Act simply does not apply to the conduct or inaction alleged.

The court notes that plaintiff relies on the non-binding federal district court decision in *M.H. v. County of Alameda* (N.D. Cal. 2013) 90 F.Supp.3d 889, for the proposition that a Bane Act claim can be based on a claim of "a deliberate indifference." There, the court held that a prisoner who successfully proves that prison officials acted or failed to act with deliberate indifference to his medical needs in violation of his constitutional rights adequately states a claim for relief under the Bane Act. Aside from the fact that there is apparently no California case law providing such a result, even *M.H.* recognizes that "deliberate indifference" has been a substantially higher standard than negligence, and has been associated with affirmatively culpable conduct. (*Id.* at p. 898.) Because such conduct is not alleged here.

Second Cause of Action – Ralph Act

Civil Code section 51.7, a separate and independent enactment referred to in section 52.1, declares that all persons have the right to be free from **violence or intimidation** because of their race, color, religion, ancestry, national origin, political affiliation, sex, sexual orientation, age, disability, or position in a labor dispute, or because they are perceived by another to have any of these characteristics. Section 52, subdivision (b), makes persons who violate section 51.7 liable for actual and exemplary damages and penalties.

For the same reason, the demurrer to this cause of action should be sustained as well. There simply are no allegations of acts of violence or intimidation on the part of FUSD

or its personnel. Plaintiff's counsel's various arguments are unavailing, and fail to cite to applicable authority. For example, the opposition claims, "Courts have emphasized that school districts have a duty to prevent foreseeable harms including harm caused by bullying and harassment. (*Victor Valley Union High School Dist. v. Superior Court* (2023) 91 Cal. App. 5th 1121.)." While that may be true, *Victor* is not a Ralph Act case. The issue in *Victor* was spoliation of evidence in a sexual assault case.

The opposition also argues, "Schools can be liable under the Ralph Act as it extends to entities that enable permit or fail to prevent discriminatory violence. (*Ventura v. ABM Industries*, (2012) 212 Cal.App.4th 258, 271.)." There was a claim under the Ralph Act in *Ventura*. However, the case involved sexual harassment of an employee of a company by her supervisor, with allegations and evidence of ratification of acts of violence by the employer. This case is not at all supportive of finding a plausible Ralph Act violation occurred here.

Plaintiff contends, "The Plaintiff's complaint alleges that Jeremiah Smith Ruiz's attack on P.C. was motivated by P.C.'s disability, as evidence by the derogatory comment 'there's a SPED kid in here!' made just before the assault. FUSD failed to prevent the attack despite knowing P.C. had been repeatedly bullied for this disability. FUSD's lack of action, despite its knowledge of the risk, allowed the attack to occur, thereby creating an environment of intimidation and discrimination against P.C. due to his disability." Plaintiff cites to no authority that negligent failure to prevent bullying or an assault rises to the level of a Ralph Act violation.

Plaintiff argues, "Defendant argues that FUSD did not directly engage in violence against P.C.. However, a school district's failure to act in the face of known discrimination constitutes indirect intimidation under the Ralph Act. (*Doe v. Lawndale Elementary School Dist.,* (2022) 72 Cal. App. 5th 113.)." Again, there was no Ralph Act claim in this case.

The opposition admits that "[t]o state a claim, Plaintiff must allege that **the defendant** engaged in violent conduct or threats of violence, the conduct was motivated by a protected characteristic, and the conduct harmed the plaintiff." (Oppo. 7:3-5, emphasis added.) There are simply no allegations of such conduct in the Complaint. Given the detailed nature of the allegations regarding P.C.'s history of bullying, it does not appear that plaintiff can allege such facts.

Normally, even if a demurrer is sustained, leave to amend is routinely granted, where a fair opportunity to correct any defect has not been given. (*Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1227.) In the case of an original complaint, unless the complaint shows on its face that it is incapable of amendment, denial of leave to amend is an abuse of discretion, irrespective of whether leave to amend was requested or not. (*McDonald v. Superior Court* (1986) 180 Cal.App.3d 297, 303-304.) Even so, absent a request for leave to amend, no abuse of discretion will be found unless a potentially effective amendment is both apparent and consistent with plaintiff's theory of the case. (*Camsi IV v. Hunter Technology Corp.* (1991) 230 Cal.App.3d 1525, 1542.) But the burden is on the plaintiff to show in what manner he or she can amend the complaint, and how that amendment will change the legal effect of the pleading. (*Hendy v. Losse* (1991) 54 Cal.3d 723, 742.)

Plaintiff requests leave to amend, contending that the Complaint can be amended to allege "a precise timeline and records of documents bullying; FUSD's supervisory failure and breakdown in enforcing safety protocols; the foreseeability of harm based on the accumulated reports, IEP details, and administrative awareness; and/or any failure to implement or follow anti-bullying or disability accommodations required by California Education Code § 234.1." However, such allegations still would not rise to the level of "threats, intimidation, or coercion" or "violence or intimidation" on the part of FUSD or its agents. As plaintff has not demonstrated that the first and second causes of action could be effectively amended to state a cause of action, no leave to amend will be granted.

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)

(03)

Tentative Ruling

Re: ***Zabalza v. General Motors, LLC***
Case No. 22CECG00482

Hearing Date: May 15, 2025 (Dept. 403)

Motion: Plaintiff's Motion for Attorney's Fees

Defendant's Motion to Strike or Tax Costs

Tentative Ruling:

To grant plaintiff's motion for attorney's fees, in the total amount of $32,588.52, which includes a lodestar of $27,157.10 and a multiplier of 1.2.

To deny defendant's motion to strike the memo of costs. To grant the motion to tax costs, in part. The court intends to tax Item 1, Filing Fees, in the amount of $113.75, and Item 16, Other, in the amount of $1,923.00. The court intends to deny the rest of the motion to tax costs. Thus, the total cost award will be $1,701.63.

Explanation:

Plaintiff's Motion for Attorney's Fees: First, since she is the prevailing plaintiff in litigation under the Song-Beverly Act, plaintiff is entitled to an award of her reasonable attorney's fees, expenses, and costs incurred in litigating the action. (Civil Code, § 1794, subd. (d).) Here, plaintiff settled with defendant for $80,000, plus reasonable fees, expenses and costs to be determined by noticed motion. Therefore, plaintiff is the prevailing party and she is entitled to an award of her attorney's fees actually and reasonably incurred in prosecuting the action. Defendant does not dispute that plaintiff is entitled to an award or her reasonable attorney's fees, and in fact the settlement agreement expressly contemplates that she will seek an award of fees. Therefore, the only real issue is the amount of fees that plaintiff should receive.

Calculating the Fees

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.) Here, plaintiff seeks a lodestar of $30,969.00, a 1.35 multiplier, $4,629.03 in costs and expenses[1], and an additional $4,500.00 for preparing the reply to the instant fee motion, for a total of $54,437.18.

As our Supreme Court has repeatedly made clear, the lodestar consists of "the number of hours *reasonably expended* multiplied by the *reasonable* hourly rate…" (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095, italics added; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1134.) The California Supreme Court has noted that anchoring the

[1] The request for costs and expenses is also the subject of a separate motion to strike or tax costs. (See analysis below.)

calculation of attorney fees to the lodestar adjustment method '"is the only way of approaching the problem that can claim objectivity, a claim which is obviously vital to the prestige of the bar and the courts.' " (*Serrano III*, *supra*, 20 Cal.3d at p. 48, fn. 23.)

1. Number of Hours Reasonably Expended

While the fee awards should be fully compensatory, the trial court's role is not to simply rubber stamp the defendant's request. (*Ketchum v. Moses*, *supra*, 24 Cal.4th at p. 1133; *Robertson v. Rodriguez* (1995) 36 Cal.App.4th 347, 361.) Rather, the court must ascertain whether the amount sought is reasonable. (*Robertson v. Rodriguez*, *supra*, 36 Cal.App.4th at p. 361.) However, while an attorney fee award should ordinarily include compensation for all hours reasonably spent, inefficient or duplicative efforts will not be compensated. (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1321.) The constitutional requirement of just compensation, "cannot be interpreted as giving the [prevailing party] carte blanche authority to 'run up the bill.' " (*Aetna Life & Casualty Co. v. City of Los Angeles* (1985) 170 Cal.App.3d 865, 880.) The person seeking an award of attorney's fees "is not necessarily entitled to compensation for the value of attorney services according to [his] own notion or to the full extent claimed by [him]. [Citations.]" (*Salton Bay Marina, Inc. v. Imperial Irrigation Dist*. (1985) 172 Cal.App.3d 914, 950.)

Fees Requested

Here, plaintiff seeks lodestar fees of $30,969.00 for 69.0 hours of work by 14 attorneys and one law clerk. Plaintiff further requests an additional anticipated $4,500 to compensate for the attorney hours to be spent reviewing defendant's opposition, preparing a reply, and attending the hearing. The basis for the trial court's calculation must be the actual hours counsel has devoted to the case, less those that result from inefficient or duplicative use of time. (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 395, citing *Ketchum v. Moses*, supra, 24 Cal.4th at p. 1133.)

A review of each billing entry and shows that the time billed by the attorney timekeepers is not excessive. Counsel billed only 69.0 hours for over two years of work on the case. The amounts of time spent on each task also seem to be reasonable. While defendant complains that plaintiff's counsel uses the same template pleadings and documents in each case, and that counsel should not be compensated over and over again for the same work in every case, plaintiff is entitled to recover her fees for the time actually and reasonably incurred in prosecuting the action. (Civil Code, § 1794, subd. (d).) Defendant has not shown that plaintiff's counsel did not actually incur the claimed hours, or that the time spent was excessive and unreasonable. To the extent that plaintiff's counsel uses templates to prepare documents, the use of such templates is not inherently unreasonable. Indeed, using templates can lead to greater efficiency and save time and money, as the attorneys do not have to "reinvent the wheel" every time they draft a pleading or discovery response.

Also, the fact that 15 separate timekeepers worked on the case is not necessarily evidence that the fees were excessive or unreasonable. The time records do not reflect any duplicative or unreasonable work on the case, so the fact that plaintiff used several attorneys to work on the case is not a reason to reduce the requested hours. Therefore, the court will not make any deductions to the time sought for the attorneys' work on this matter.

2. Reasonable Hourly Compensation

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.)

The "experienced trial judge is the best judge of the value of professional services rendered in his court." (*Thayer v. Wells Fargo Bank* (2001) 92 Cal.App.4th 819, 832.) Based on a consideration of various factors, the trial court may rely on its own expertise and knowledge to calculate reasonable attorney fees. (*Niederer v. Ferreira* (1987) 189 Cal. App. 3d 1485, 1507.) "When the trial court is informed of the extent and nature of the services rendered, it may rely on its own experience and knowledge in determining their reasonable value." (*In re Marriage of Cueva* (1978) 86 Cal. App. 3d 290, 300.) The court is not limited to the affidavits submitted by the attorney. (*Melnyk v. Robledo* (1976) 64 Cal. App. 3d 618, 625.)

Here, plaintiff's counsel seeks hourly rates of between $360 to $625. These rates are all high for the Fresno area.

"[I]n the 'unusual circumstance' that local counsel is unavailable," a trial court may award an out-of-town counsel's higher rates. (*Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 399.) In such rare cases, the justification for awarding the higher rate is that out-of-town rates are needed "to attract attorneys who are sufficient to the cause." (*Ibid*.) At a minimum, therefore, the party seeking out-of-town rates is required to make a "sufficient showing ... that hiring local counsel was impracticable," and the exception is accordingly inapplicable where "no effort was made to retain local counsel." (*Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1244.)

Here, plaintiff has not provided a declaration stating what efforts she made to retain local counsel, or that she was unable to find a local attorney with experience in lemon law to represent her, such that she had to resort to hiring an out-of-town law firm that charges higher rates. In fact, she has not provided any evidence at all on the issue of whether she attempted to retain local counsel before hiring a Los Angeles firm. This is unlike the situation in *Horsford*, where plaintiff presented declarations from multiple attorneys with whom plaintiff had spoken and who declined to represent him. (*Horsford, supra*, at pp. 398-399.) Accordingly, the court intends to award fees based on local rates.

The court finds that the reasonable value of the services of Alisa Adams, an attorney admitted to the Ohio Bar in 2011 and the California Bar in 2019, who possesses substantial experience litigating lemon law matters, is $400 per hour.

The court finds that the reasonable value of the services of James Carroll, who was admitted to the California Bar in 2006 and who has substantial experience in lemon law, is $450 per hour.

The court finds that the reasonable value of the services of Tionna Carvalho, who was admitted to the California Bar in 2014 and who has substantial experience in lemon law, is $400 per hour.

The court finds that the reasonable value of the services of Mark Gibson, who was admitted to the California Bar in 2008, and who has substantial experience in lemon law, is $425 per hour.

The court finds that the reasonable value of the services of Daniel Law, who was admitted to the California Bar in 2016 and who has substantial experience in lemon law, is $380 per hour.

The court finds that the reasonable value of the services of Regina Liou, who was admitted to the California Bar in 2007 and who has substantial experience in lemon law, is $425 per hour.

The court finds that the reasonable value of the services of Ian McCallister, who was admitted to the California Bar in 1998 and who has substantial experience in lemon law, is $525 per hour.

The court finds that the reasonable value of the services of Deborah Rabieian, who was admitted to the California Bar in 2017 and who has substantial experience in lemon law, is $360 per hour.

The court finds that the reasonable value of the services of Ebony Randolph, who was admitted to the California Bar in 2021 and who has substantial experience in lemon law, is $325 per hour.

The court finds that the reasonable value of the services of Nino Sanaia, who was admitted to the Georgia Bar in 2015 and to the California Bar in 2022, and who has substantial experience in lemon law, is $380 per hour.

The court finds that the reasonable value of the services of Hannah Theophil, who was admitted to the California Bar in 2019, and who has substantial experience in lemon law, is $350 per hour.

The court finds that the reasonable value of the services of Nadia Thomas, who was admitted to the California Bar in 2012, and who has substantial experience in lemon law, is $410 per hour.

The court finds that the reasonable value of the services of Rabia Tirmizi, who was admitted to the California Bar in 2021 and who has substantial experience in lemon law, is $325 per hour.

The court finds that the reasonable value of the services of Ellen Zakharian, who was admitted to the California Bar in 2024 and who has substantial experience in lemon law, is $300 per hour.

Finally, the court finds that the reasonable value of the services of Yenok Tantanyan, who is a law clerk who graduated from law school in 2019, is $150 per hour.

Accordingly, the court sets the lodestar fees at $24,957.10 for the work done on the case up to the filing of the attorney's fees motion.

Counsel also seeks another $4,500 for fees incurred in reviewing the opposition to the fees motion, preparing a reply, and appearing at the hearing. Plaintiff submits the declaration of Angel Baker in support of the request for fees in connection with the reply and appearance at the hearing, in which she claims that she has spent 7.9 hours on the

reply and declaration, billed at $635 per hour. (Baker decl., ¶ 6.) Ms. Baker was admitted to the Bar in 2003. (*Ibid*.) She thus claims that she has incurred $5,016.50 in fees, which does not include time to attend the hearing on the motion. (*Id*. at ¶ 7.) Counsel only requests reimbursement of $4,500 to prepare the reply and attend the hearing, however.

The request for $4,500 for the cost of preparing the reply brief and appearing at the hearing is excessive and will be reduced. The court will award $2,200 in fees based on four hours of time billed at $550 per hour.

Thus, total lodestar fees including the cost of the reply and appearance at the hearing will be $27,157.10.

3. Multiplier

Plaintiff seeks a multiplier of 1.35 to apply to the lodestar. A multiplier enhancement to the lodestar "is primarily to compensate the attorney for the prevailing party at a rate reflecting the risk of nonpayment in contingency cases as a class." (*Ketchum*, *supra*, 24 Cal.4th at p. 1138.) A multiplier may also be applied where the attorney has shown extraordinary skill, resulting in exceptional results. (*Ibid*.; *Graham*, *supra*, 34 Cal.4th at p. 582.) Courts have substantial discretion to select the factors they deem relevant to their multiplier analysis. (*Lealao v. Beneficial California, Inc*. (2000) 82 Cal.App.4th 19, 40–41.) The factors include: (1) the novelty and difficulty of the questions involved and the skill displayed in presenting them; (2) the extent to which the nature of the litigation precluded other employment by the attorneys; and (3) the contingent nature of the fee award, based on the uncertainty of prevailing on the merits and of establishing eligibility for the award. (*Robertson v. Fleetwood Travel Trailers of California, Inc*. (2006) 144 Cal.App.4th 785, 819.)

- *Novelty and Complexity of the Issues*

In *Blum v. Stenson* (1984) 465 U.S. 886, the Supreme Court discussed what might be a basis for an upward adjustment to the lodestar. (*Blum*, *supra*, 465 U.S. at p. 886.) The Court noted that certain suggested bases for an upward adjustment were not warranted because they were already reflected in the lodestar. (*Id*. at p. 898.) Specifically, "[t]he novelty and complexity of the issues presumably were fully reflected in the number of billable hours recorded by counsel and thus do not warrant an upward adjustment in a fee based on the number of billable hours times reasonable hourly rates." (*Ibid.*)

Here, the present case was a straightforward lemon law action that settled after two years of litigation and did not go to trial. Counsel was appropriately compensated through their time billed.

- *The Skill Displayed*

In general, "special skill and experience of counsel should be reflected in the reasonableness of the hourly rates." (*Blum*, *supra*, 465 U.S. at p. 889.) As our Supreme Court has observed, "[t]he factor of extraordinary skill, in particular, appears susceptible to improper double counting; … a more skillful and experienced attorney will command a higher hourly rate. (*Ketchum*, *supra*, 24 Cal.4th at p. 1138-1139.) "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." (*Id*. at p. 1139.)

Here, based on a reading of the pleadings filed in this case, the skill displayed by plaintiff's counsel was good, but not extraordinary. Counsel's hourly rates are adequate compensation.

- *The Contingent Nature of the Case*

This is the most important factor in awarding a multiplier. Our Supreme Court has explained: "[The multiplier] for contingent risk [brings] the financial incentives for attorneys enforcing important constitutional rights . . . into line with incentives they have to undertake claims for which they are paid on a fee-for-services basis." (*Ketchum*, *supra*, 24 Cal.4th at p. 1138.) The court further noted that applying a fee enhancement does not inevitably result in a windfall to attorneys: "Under our precedents, the unadorned lodestar reflects the general local hourly rate for a fee-bearing case; it does not include any compensation for contingent risk … The adjustment to the lodestar figure, *e.g.*, to provide a fee enhancement reflecting the risk that the attorney will not receive payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is neither unexpected nor fortuitous. Rather, it is intended to approximate market-level compensation for such services, which typically includes a premium for the risk of nonpayment or delay in payment of attorney fees." (*Ibid*; see also *Horsford v. Board of Trustees*, *supra*, 132 Cal. App. 4th at pp. 399-400.)

Here, the risk of recovering nothing if plaintiff did not prevail and the three-year delay in obtaining payment weighs in favor of a multiplier.

- *Results Obtained*

Plaintiff's counsel obtained a good, but not outstanding, result for their client, as they were able to obtain a settlement of $80,000 after defendant initially refused to replace or repurchase plaintiff's car, which was originally purchased for about $49,000. This factor weighs in favor of a multiplier.

- *Preclusion of Other Work*

Plaintiff's counsel practices in a large firm, so the work on this case did not necessarily preclude the firm from taking other cases as well. In fact, according to defendant, plaintiff's counsel has hundreds of lemon law cases pending against GM and probably other car manufacturers as well. Also, the total number of staff and attorney hours reasonably devoted to this matter (69 hours in about two and a half years) did not substantially preclude other work.

Considering all of the lodestar factors, the court intends to impose a multiplier in favor of plaintiff in the amount of 1.2, which compensates counsel for the risk of taking the case on a contingent fee basis, the need to advance costs, the delay in payment, and the good results achieved, but also takes into account the fact that the case was not unusually legally or factually complex and it did not preclude counsel from taking other cases.

Applying a 1.2 multiplier results in additional fees of $5,431.42.

Total Attorney's Fees Awarded

Lodestar fees of $27,157.10 times a 1.2 enhancement results in total fees of $32,588.52.

Motion to Strike or Tax Costs: First, to the extent that defendant moves to strike the entire cost bill as untimely, the court intends to deny the motion to strike. Defendant argues that the plaintiff waited about nine months after entering into the settlement agreement before filing her memo of costs, so the memo of costs is untimely and should be stricken. Defendant claims that a settlement under Code of Civil Procedure section 998 is equivalent to a judgment, and therefore the time to file the memo of costs started to run from the date of the settlement. (*Madrigal v. Hyundai Motor America* (2023) 90 Cal.App.5th 385, 401-406.)

Under Rule of Court 3.1700(a)(1), "A prevailing party who claims costs must serve and file a memorandum of costs within 15 days after the date of service of the notice of entry of judgment or dismissal by the clerk under Code of Civil Procedure section 664.5 or the date of service of written notice of entry of judgment or dismissal, or within 180 days after entry of judgment, whichever is first." (Cal. Rules of Court, rule 3.1700(a)(1).)

Here, no judgment has been entered in the case, nor has a dismissal been filed. Therefore, the time to file a memo of costs has not yet started to run, much less expired. Consequently, plaintiff's memo of costs was not untimely.

Defendant has argued that, since the parties entered into a settlement under section 998, therefore their settlement agreement was a "judgment" for purposes of starting the 15-day time to file a memo of costs. Defendant cites to *Madrigal v. Hyundai America, supra*, 90 Cal.App.5th 385 in support of its position. However, while *Madrigal* held that a settlement under section 998 is the equivalent of a judgment for the purposes of triggering section 998's cost-shifting provision, it said nothing about whether the time to file a memo of costs starts to run as soon as the settlement is signed by the parties. (*Madrigal, supra*, at pp. 401-06.) Cases are not authority for propositions they did not consider. (*McConnell v. Advantest America, Inc.* (2023) 92 Cal.App.5th 596, 611.) Therefore, the court will not conclude that the time to file a memo of costs began as soon as the parties signed the settlement here, and the court finds that the memo of costs was not untimely. As a result, the court intends to deny the motion to strike the memo of costs.

Next, defendant has moved to tax several individual items on the memo of costs. "The right to recover costs of suit is statutory. [Code of Civil Procedure] Section 1032, subdivision (b) 'guarantees prevailing parties in civil litigation awards of the costs expended in the litigation.'" (*Rozanova v. Uribe* (2021) 68 Cal.App.5th 392, 399, citations omitted.)

Code of Civil Procedure Section 1033.5 sets forth a list of allowable costs, as well as a number of costs that are not allowed. The court also has discretion to award other costs not specifically listed under section 1033.5 if it determines that they are reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation. (Code Civ. Proc. § 1033.5, subd. (c)(2).) "Finally, section 1033.5 requires that the costs awarded, whether expressly allowed under subdivision (a) or awardable in the court's discretion under subdivision (c), must be 'reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation' (§ 1033.5, subd. (c)(2)) and also be 'reasonable in amount.' (*Rozanova v. Uribe*, supra, at p. 399, citations omitted.)

"If the items appearing in a cost bill appear to be proper charges, the burden is on the party seeking to tax costs to show that they were not reasonable or necessary. On the other hand, if the items are properly objected to, they are put in issue and the burden of proof is on the party claiming them as costs. Whether a cost item was reasonably necessary to the litigation presents a question of fact for the trial court and its decision is reviewed for abuse of discretion. However, because the right to costs is governed strictly by statute a court has no discretion to award costs not statutorily authorized." (*Ladas v. California State Auto. Assn*. (1993) 19 Cal.App.4th 761, 774, internal citations omitted.) Expenses that are "merely convenient or beneficial" to preparation for litigation are not recoverable. (*Id.* at p. 775.)

"We agree the mere filing of a motion to tax costs may be a 'proper objection' to an item, the necessity of which appears doubtful, or which does not appear to be proper on its face. However, '[i]f the items appear to be proper charges the verified memorandum is prima facie evidence that the costs, expenses and services therein listed were necessarily incurred by the defendant [citations], and the burden of showing that an item is not properly chargeable or is unreasonable is upon the [objecting party].'" (*Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 131, citations omitted.)

However, 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.)

Here, defendant has objected to several items of costs in plaintiff's memo, contending that they were not reasonable or necessary to the litigation of plaintiff's case and they are not authorized under section 1033.5. However, as discussed above, since plaintiff is the prevailing party under her Song-Beverly claims, she is entitled to not only the costs allowed under section 1033.5, but also her "expenses" reasonably incurred in the commencement and prosecution of the action. (Civil Code, § 1794, subd. (d).) Such expenses may include items that are not allowed under section 1033.5, as long as they are otherwise reasonably incurred in the litigation. (*Jensen, supra*, at pp. 137-138.) Therefore, defendant's objections are misplaced to the extent that it contends that the costs should be disallowed because they are not authorized under section 1033.5.

Item 1, Fling Fees for Joint Stipulation on March 12, 2024: Defendant objects to the filing fees incurred to have First Legal file a "Joint Stipulation" on March 12, 2024, in the amount of $432.50. Defendant contends that this cost is unreasonably high, as it is five to ten times higher than other filing fees charged by First Legal and includes charges for "wait" and "advance." Defendant contends that plaintiff has not explained why this cost is so much higher than other filing fees, so this cost should be taxed.

However, plaintiff contends that this cost was reasonably and necessarily incurred for the purpose of filing the joint stipulation before the trial readiness conference on

March 15, 2024. The trial was set for March 18, 2024, and the parties had just stipulated to continue the trial date. Plaintiff contends that stipulation was necessary and benefitted defendant as well as plaintiff. Also, the filing fee was higher because it was filed at the last minute on an urgent basis.

Plaintiff has adequately justified the higher cost of filing the joint stipulation to continue the trial date, which was reasonably and necessarily incurred in order to have the stipulation filed on an urgent basis before the trial readiness conference a few days later. Therefore, the court will not tax the cost of filing the stipulation.

Item 1, Filing Fees for Notice of Continuance on October 22, 2024: Defendant also objects to the $29.50 cost of filing a Notice of Continuance with the court on October 22, 2024. Defendant contends that these costs relate to the continuance of the dismissal hearing, which it contends would not have been necessary but for plaintiff's counsel's decision to wait to file their fee motion until just before the 180-day deadline for such motions. Defendant contends that it should not have to pay for this cost, which was incurred solely due to plaintiff's counsel's delay in filing the fee motion.

Plaintiff contends that this cost was necessary because the case had not yet resolved, and plaintiff needed to give notice to defendant of the continuance of the dismissal hearing.

Plaintiff has shown that the notice of continuance was necessary to the litigation, as the case was still ongoing and she needed to give defendant notice of the continuance of the dismissal hearing. The fact that plaintiff waited until just before the statutory deadline ran for the attorney's fee motion does not make the cost of filing the notice unnecessary or unreasonable. Therefore, the court will not tax this cost.

Item 1, Filing Fee for Amended Notice of Fee Motion and Amended Index of Exhibits: GM contends that it should not have to pay the cost of filing an amended fee motion and amended index of exhibits, which were only filed because plaintiff's counsel did not file the correct motion and exhibits the first time. GM argues that it should not have to pay for the cost of plaintiff's counsel's mistakes.

Plaintiff argues that the amended notice of motion and amended index of exhibits were necessary due to defendant's tactics in refusing to informally resolve the fees and costs.

However, plaintiff has not shown why defendant should have to pay for the cost of amending the notice of motion, which plaintiff's counsel only filed because the original notice of motion and index of exhibits included various mistakes. Therefore, the court will tax this cost in the amount of $113.75.

Item 2, Jury Fees: GM objects to the $150 cost for jury fees, contending that the cost was not reasonably or necessarily incurred because the case did not go to trial.

However, jury fees are expressly recoverable under section 1033.5(a)(1). As plaintiff correctly notes, she needed to pay jury fees in order to preserve her right to a jury trial. The fact that the case settled on the eve of trial does not make the payment of jury fees unreasonable or unnecessary. Therefore, the court will not tax this cost.

Item 16, Other, Expert Vehicle Inspection: GM objects to the $1,923 cost incurred for an expert inspection of the vehicle, contending that the cost was not incurred in this

case, or if it was, then plaintiff failed to give GM notice of the inspection and a chance to attend it. Nor was GM ever provided with a report from the inspection.

Plaintiff's counsel concedes that they inadvertently included $1,923.00 in costs for an expert inspection of the vehicle, which was incurred in a different case. Therefore, plaintiff has withdrawn this cost. As a result, the court will tax this cost from the cost bill, in the amount of $1,923.00.

Item 16, Other, FedEx Delivery to Client: GM objects to the $57.63 cost of delivering a package to plaintiff via FedEx four months after the settlement, contending that this was just a non-recoverable overhead cost for "wrapping up" the case.

However, as discussed above, Civil Code section 1794(d) gives the court discretion to award a broader array of costs than section 1033.5. Here, the cost of sending a package to the client via FedEx appears to be reasonably incurred in the litigation, which was still ongoing even if the case had settled. Therefore, the court will not tax this cost.

Item 16, Other, $44.50 in Costs for First Legal: Defendant objects to these costs, contending that they are duplicative of the other filing fees that are listed in Item 1, and that plaintiff has not provided enough information to justify these costs or show that they were reasonable and necessary to the litigation.

It is somewhat unclear which costs GM objects to here, as there is no single entry for $44.50 in costs in Attachment 16 to the memo of costs. Apparently, GM is objecting to multiple entries, most of which are for $4.50 to $5.00, as well as one entry for $15.00. Most of these items are clearly labeled as "eService" and are reasonably and necessarily incurred to prosecute the case, as they appear to be fees for electronically serving various documents related to the case. The only one that is not labeled clearly is a $5.00 fee for a "document." Plaintiff explains that it was a fee for service of the expert designation, which defendant could have easily determined by checking its own records or asking plaintiff's counsel. Therefore, plaintiff has adequately explained the costs listed in this item, and the court will deny the motion to tax the item.

Summary: The court intends to tax Item 1, Filing Fees, in the amount of $113.75, and Item 16, Other, in the amount of $1,923.00. The court intends to deny the rest of the motion to tax costs, as well as the motion to strike the memo of costs. Thus, the total cost award will be $1,701.63.

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)

(20) **Tentative Ruling**

Re: ***Lira v. Mighty Mart, Inc., et al.***
Superior Court Case No. 24CECG00529

Hearing Date: May 15, 2025 (Dept. 403)

Motion: By Plaintiff to Compel Further Responses at Deposition of Karla Alonso as PMK for Mighty Mart, Inc., and for Sanctions

Tentative Ruling:

To grant and order Mighty Mart, Inc. to produce Karla Alonso to sit for further deposition and answer all questions set forth below. (Code Civ. Proc., § 2025.480.) To impose sanctions jointly and severally against Mighty Mart, Inc., and its counsel of record, Erik R. Overlid of Resnick & Louis, P.C., to be paid to plaintiff's counsel within 30 days of service of the order by the clerk. (Code Civ. Proc., § 2025.480, subd. (j).)

Explanation:

This is a slip and fall case. Plaintiff noticed and took the deposition of Karla Alonso as the person most knowledgeable about the incident for defendant Mighty Mart, Inc. At the deposition defense counsel instructed Ms. Alonso not to answer various questions on attorney work product grounds. The questions pertained to the conclusions, conversations and investigation by Ms. Alonso regarding the accident as an employee of Mighty Mart. These are the questions at issue:

> Q: Did you believe that the store was liable for his injuries?
> A: Wait. Objection. Calls for a legal conclusion. Work product. I am going to instruct her not to answer.
>
> Q: In your opinion, did Mighty Mart do anything wrong in order to cause Mr. Lira's injuries?
> A: Objection. Calls for a legal opinion and seeks information protected by the work-product doctrine. I am going to instruct you not to answer.
>
> Q: Okay. After you had that conversation with him, did you do anything else in relationship to this case?
> A: Objection. Calls for information protected by the work-product privilege and I am going to instruct not to answer.
>
> Q: Did you do anything else in relationship to this case prior to speaking to the attorneys representing you in this case?
> A: Objection. Seeks information protected by the work product doctrine. I am going to instruct not to answer.

Q: All right. After that conversation you had with Mr. Lira where he told you about his attorney, have you done anything else to investigate this incident?
A: Objection. Seeks information protected by the work product doctrine. I instruct her not to answer.

Q: Have you independently outside of your attorneys done anything since that conversation with Mr. Lira to investigate this incident?
A: Objection. Seeks information protected by the work-product doctrine and instruct her not to answer.

Q: Have you had any conversations with Mr. Heidari since your last conversation with Mr. Lira?
A: Objection. Calls for information protected by the work-product doctrine and instruct her not to answer.

Q: Ms. Alonso, as a result of your investigation into Mr. Lira's fall, did you ever determine what was the root cause of his fall?
A: Objection. Calls for expert opinion and seeks information protected by the work-product doctrine and instruct her not to answer.

Q: And other than the conversations we've already talked about, have you had any other conversations with Mr. Heidari outside of the presence of your attorneys?
A: Objection. Calls for information protected by the work-product doctrine and I'll instruct her not to answer. Go ahead and tell him about any conversations you had prior to Mr. Lira telling you he had retained counsel. Anything after that, I am going to [say is] in anticipation of litigation.

The opposition contends that Ms. Alonso was instructed not to answer the above questions solely on the basis of the attorney work product doctrine, though other objections were made. Accordingly, the court considers all other objections abandoned. "A deponent who has objected to a question and refused to answer bears the burden of justifying such refusal on the motion to compel." (Weil & Brown, *Cal. Prac. Guide Civ. Pro. Before Trial* (TRG 2024) ¶ 8:814.) The court will determine only whether the work product objection justifies the instruction not to answer the above questions.

> (a) A writing that reflects **an attorney's** impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances.
> (b) The work product of **an attorney**, other than a writing described in subdivision (a), is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice.

(Code Civ. Proc., § 2018.030, emphasis added.)

> Section 2018.020 sets forth the purpose of the doctrine:
> It is the policy of the state to do both of the following:
> (a) Preserve the rights of **attorneys** to prepare cases for trial with that degree of privacy necessary to encourage them to prepare their cases thoroughly and to investigate not only the favorable but the unfavorable aspects of those cases;

(b) Prevent attorneys from taking undue advantage of their adversary's industry and efforts.

(Code Civ. Proc., § 2018.020, emphasis added.)

By its terms the doctrine only applies to work product of attorneys. The Discovery Act refers only to the "work product" of attorneys acting on a client's behalf. (Code Civ. Proc., § 2018.010 et seq.) However, the doctrine has been extended to pro per litigants. (*Dowden v. Superior Court* (1999) 73 Cal.App.4th 126, 136 [result supported by policy of promoting diligence by each party in preparing its own case rather than relying on adversary's efforts].) Additionally, the "work product" of an attorney's employees or agents (investigators, researchers, etc.) is treated as the "work product" of the attorney. (See *Rodriguez v. McDonnell Douglas Corp.* (1978) 87 Cal.App.3d 626, 647-648.) But a party's or insurer's consultations with an expert before hiring counsel are not protected as "attorney work product." Nor can an attorney later "by retroactive adoption, convert the independent work of another, already performed, into his own." (*Jasper Const., Inc. v. Foothill Junior College Dist. of Santa Clara County* (1979) 91 Cal.App.3d 1, 16, internal quotes omitted, disapproved on other grounds by *Los Angeles Unified School Dist. v. Great American Ins. Co.* (2010) 49 Cal.4th 739, 753.)

Mighty Mart relies solely on *Dowden v. Superior Court* (1999) 73 Cal.App.4th 126, to justify the instructions not to answer. The *Dowden* court held that "the policy rationale for [former] section 2018 supports interpreting the statute as protecting the work product of an unrepresented litigant." (*Id.* at p. 135.) The court found that "the work product privilege is intended for the protection of litigants, not just attorneys." (*Id.* at p. 134, citing *Fellows v. Superior Court* (1980) 108 Cal.App.3d 55, 64.) However, the opposition includes no discussion of the case, just notes it's holding that the privilege applies to unrepresented litigants.

Dowden involved efforts by the plaintiff to compel a self-represented defendant, an individual, to produce a diary he kept. Though the defendant was represented by attorneys in his capacity as a defendant in the action, he represented himself in connection with his cross-complaint against the plaintiff. His attorney allegedly advised him to keep a diary in anticipation of litigating his claims against real party in interest. (*Id.* at p. 128.) The court noted that the purpose of the privilege is to "limit[] discovery so that 'the stupid or lazy practitioner may not take undue advantage of his adversary's efforts ....' " (Pruitt, *Lawyers' Work Product, supra,* 37 State Bar J. at pp. 240-241.) Such a policy is important not only for attorneys, but also for litigants acting in propria persona. A litigant needs the same opportunity to research relevant law and to prepare his or her case without then having to give that research to an adversary making a discovery request." (*Id.* at p. 133.) The court emphasized that in *Dowden*, "the litigant is not asserting the privilege as a client, but rather as one performing the functions of an attorney." (*Id.* at p. 134.)

The court's holding did not mean that the diary was protected from disclosure. The court of appeal ordered in camera review of the diary to determine whether it contained work product. (*Dowden, supra,* at p. 136.)

The opposition does not discuss what is protected from disclosure when it comes to the questions at issue. There is no analysis of any of the questions. "Work product"

protection may not be available where the client hires an attorney to perform nonlegal services—for example, attorneys hired solely to investigate or adjust a claim, or to negotiate a contract, rather than to provide legal advice. (See *Aetna Cas. & Sur. Co. v. Superior Court* (1984) 153 Cal.App.3d 467, 475-476.) And if the attorney was hired both to investigate and to advise the client, the court may have to review the attorney's file in camera to determine which documents reflect investigative work and which reflect the rendering of legal advice. (*Id.* at pp. 475-476.) Even if the work product doctrine applied (the court holds it does not in this case), the information sought is entirely factual and not protected from disclosure.

Defendants produce no authority supporting their position that an entity defendant is entitled to attorney work product protection as to any and all communications, investigations, or opinions about liability that arose after plaintiff informed defendants that she had retained legal counsel. Nor is there any authority showing that *Dowden* would apply equally to an entity defendant's employee. Mighty Mart's status as a corporation, and not an individual, is significant because corporations cannot represent themselves in propria persona. They can only act in litigation through an attorney. (*CLD Construction, Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1145, quoting *Caressa Camille, Inc. v. Alcoholic Beverage Control Appeals Bd.* (2002) 99 Cal.App.4th 1094, 1101–1103.)

Moreover, *Dowden* involved a writing, which may be subject to absolute protection. Code of Civil Procedure section 2018.030, subdivision (a), provides for an absolute protection from disclosure for "[a] **writing** that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances." (Emphasis added.) There are no writings at issue here (even assuming the work product doctrine extended to Might Mart), and therefore no absolute privilege. Subdivision (b) provides for a qualified protection from disclosure: "The work product of an attorney, other than a writing described in subdivision (a), is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice." (See *Coito v. Superior Court* (2012) 54 Cal.4th 480, 488.) Plaintiff would face unfair prejudice and injustice if defendants are permitted to withhold the factual information sought.

Having reviewed the deposition questions at issue, none of them would appear to require disclosure of attorney work product, or the work product of a pro se litigant. The words "I hired a lawyer" uttered by a potential opponent does not render everything from that moment forward protected under the work product doctrine. The court intends to grant the motion.

Plaintiff requests $3,910 in sanctions against defendant Mighty Mart Inc. and its counsel jointly and severally. "The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel an answer or production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (See Code Civ. Proc., § 2025.480, subd. (j).) The time put into the motion is detailed in the declaration of counsel (Nikfarjam Decl., ¶ 11) and is reasonable. The court intends to sanction Mighty Mart and

its counsel Erik R. Overlid of Resnick & Louis, P.C. Sanctions against counsel are warranted because the discovery dispute is entirely of counsel's creation.

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)

(34)

Tentative Ruling

Re: ***Cal. Dept. of Transportation v. J.C. Forkner Fig Gardens, Inc., et al.***
Superior Court Case No. 22CECG02991

Hearing Date: May 15, 2025 (Dept. 403)

Motion: by Plaintiff for Entry of Judgment

Tentative Ruling:

To grant. The court intends to sign the proposed court judgment. 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 5-13-25.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Biechler v. FCA US, LLC***
Superior Court Case No. 24CECG04442

Hearing Date: May 15, 2025 (Dept. 403)

Motion: Demurrer to Complaint

Tentative Ruling:

To sustain the demurrer to the third and fifth causes of action, with leave to amend. (Code Civ. Proc., § 430.010, subd. (e).)

Plaintiff is granted 20 days' leave to file the First Amended Complaint. The time in which the complaint can be amended will run from service by the clerk of the minute order. All new allegations in the First Amended Complaint are to be set in **boldface** type.

Explanation:

Third Cause of Action – Violation of Civil Code Section 1793.2, subdivision (a)(3)

Defendant demurs to the third cause of action for violation of Civil Code section 1793.2, subdivision (a)(3), on the ground that the complaint fails to state facts sufficient to state a claim.

The relevant provisions of Civil Code section 1793.2, subdivision (a)(3) provides:

> (a) Every manufacturer of consumer goods sold in this state and for which the manufacturer has made an express warranty shall: …
> (3) Make available to authorized service and repair facilities sufficient service literature and replacement parts to effect repairs during the express warranty period.

(Civ. Code, § 1793.2, subd. (a)(3).)

Here, plaintiff alleges "Defendant FCA failed to make available to its authorized service and repair facilities sufficient service literature and replacement parts to effect repairs during the express warranty period." (Compl., ¶ 63.) However, plaintiff does not plead any facts to support this conclusory allegation. Where statutory remedies are invoked, the cause of action "must be pleaded with particularity." (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 410, citations omitted.)

In opposition, plaintiff argues that further particularity cannot be pled, as the information is known only to defendant. However, this does not excuse the lacks factual allegations relating to this cause of action that would apprise the defendant of the nature of the claim beyond the recitation of the statute. The complaint alleges only that "engine defects, electrical defects; among other defects and non-conformities" arose

during the warranty period without identifying what specific problems or symptoms the vehicle experienced as a result of the alleged defects. (Compl. ¶15.) Accordingly, the demurrer to the third cause of action is sustained.

Fifth Cause of Action – Fraudulent Concealment

Next, defendant demurs to the fifth cause of action, for fraudulent concealment. Plaintiff opposes 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 relies 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 complaint alleges that the "Engine Defect" exists in numerous vehicles, including the one plaintiff leased; defendant knew of the defects and the hazards they posed; defendant had exclusive knowledge of the defects but intentionally concealed and failed to disclose that information; plaintiff would not have purchased the vehicle if he had known of the defects; and plaintiff suffered damages in the form of money paid to lease the vehicle. (*E.g.*, Compl. ¶¶ 59-66.) Notably, however, the complaint does not allege who plaintiff leased the car from, whether the lessor was Defendant's agent, or other allegations found in *Dhital* that would support the transactional relationship giving rise to a duty to disclose the alleged defect to plaintiff.

The complaint also is lacking allegations to support that the plaintiff's vehicle experienced any of the manifestations of the Engine Defect. The Complaint alleges the defect can cause a vehicle to lose power, stall, cause the engine to run rough, cause

engine misfires, cause engine failure, suddenly affect the driver's ability to control the vehicle, or cause a non-collision vehicle fire. (Compl., ¶¶ 19-20.) There are no allegations as to which of the many possible symptoms of the Engine Defect plaintiff experienced to support the allegations that the vehicle was leased to her with the alleged Engine Defect.

Therefore, the demurrer is sustained to the fifth cause of action. Leave to amend is granted.

Defendant additionally argues the claim is barred under the economic loss rule, as the injury causing conduct alleged is not independent of the warranty contract alleged. (*Rattagan v. Uber Technologies, Inc*. (2024) 17 Cal.5th 1, 20-21.) In *Rattagan*, the Court examined whether, "[u]nder California law, a plaintiff may assert a cause of action for fraudulent concealment based on conduct *occurring in the course of a contractual relationship*." (*Id*. at p.45, emphasis added.) The fraudulent conduct here is alleged to occur before the contract is formed to induce the party to enter into the contract and is separate from the later breach of the contract. (*Dhital*, *supra*, 84 Cal.App.5th at p. 841.) The demurrer on this basis is overruled.

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)

(37)

Tentative Ruling

Re: ***Axiom Masonry, Inc. v. RCH Construction***
Superior Court Case No. 24CECG04720

Hearing Date: May 15, 2025 (Dept. 403)

Motion: Defendant's Demurrer to the Complaint

Tentative Ruling:

To continue the matter to Tuesday, June 17, 2025 at 3:30 p.m. in Department 403 in order to allow Defendant to meet and confer in person or by telephone, as required. Defendant shall file a declaration on or before June 3, 2025, stating, with detail, the efforts made.

The court also sets the matter to include a motion to reclassify this matter to a limited civil case on Tuesday, June 17, 2025 at 3:30 p.m. in Department 403. The demurrer shall trail the motion to reclassify.

The parties may file briefing addressing whether the court should reclassify this matter from unlimited to limited. Any briefing regarding reclassification is to be filed and served no later than June 3, 2025 and shall not exceed 10 pages.

Explanation:

Demurrer

Code of Civil Procedure section 430.41 makes it clear that meet and confer must be conducted "in person or by telephone." (*Id.*, subd. (a).) The moving party is not excused from this requirement unless they show that the plaintiff failed to respond to the meet and confer request or otherwise failed to meet and confer in good faith. (*Id.*, subd. (a)(3)(B).) While counsel indicates he sent both email and letter correspondence, this does not comply with the requirement that meet and confer occur either in person or by telephone. The parties must engage in good faith meet and confer, in person or by telephone, as set forth in the statute.

Reclassify

The court has power to reclassify a case as limited where it involves less than $35,000 in damages. (Code Civ. Proc., § 403.040, subd. (a).) In the Complaint, plaintiff seeks damages in the amount of $22,682.50. As such, the court is inclined to reclassify this to a limited civil matter.

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)

(36)

Tentative Ruling

Re: ***Akande, et al. v. State Center Community College District, et al.***
Superior Court Case No. 23CECG00212

Hearing Date: May 15, 2025 (Dept. 403)

Motion: by Defendants Demurring to the First Amended Complaint

Tentative Ruling:

To continue the matter to Tuesday, June 3, 2025, at 3:30 p.m., in Department 403, to allow defendants an opportunity to submit supplemental briefing. All paperwork is limited to the issue of equitable tolling on the statute of limitations and must be submitted no later than on Tuesday, May 27, 2025.

Explanation:

"All papers opposing a motion so noticed shall be filed with the court and a copy served on each party at least nine court days […] before the hearing." (Code Civ. Proc., § 1005, subd. (b).)" However, defense counsel asserts that the opposition was never properly served, as it appears that plaintiffs' counsel inadvertently served the papers to an incorrect email address. (Kibinian Decl., ¶ 4, Exs. A-B.) As a result, defense counsel indicates that it was forced to put together an untimely reply under shortened time and requests an opportunity for supplemental briefing. Accordingly, the matter is continued to accommodate this request.

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)