Tentative Rulings for May 21, 2025
Department 503

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) ***The above rule also applies to cases listed in this "must appear" section.***

24CECG02584 ***Richard Gallardo v. Sky Barragan***

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 503

Begin at the next page

(03)

Tentative Ruling

Re: ***Wheeler v. Kerr***
Case No. 23CECG01394

Hearing Date: May 21, 2025 (Dept. 503)

Motion: Plaintiff's Motion for Leave to File Third Amended Complaint

Tentative Ruling:

To deny plaintiff's motion for leave to file a third amended complaint.

Explanation:

"'Code of Civil Procedure section 473, which gives the courts power to permit amendments in furtherance of justice, has received a very liberal interpretation by the courts of this state.... In spite of this policy of liberality, a court may deny a good amendment in proper form where there is unwarranted delay in presenting it.... On the other hand, where there is no prejudice to the adverse party, it may be an abuse of discretion to deny leave to amend.' 'In the furtherance of justice, trial courts may allow amendments to pleadings and if necessary, postpone trial.... Motions to amend are appropriately granted as late as the first day of trial ... or even during trial ... if the defendant is alerted to the charges by the factual allegations, no matter how framed ... and the defendant will not be prejudiced.'" (*Rickley v. Goodfriend* (2013) 212 Cal.App.4th 1136, 1159, citations omitted.)

On the other hand, a lengthy, unexplained delay in seeking leave to amend the complaint may justify denial of the motion to amend. (*Roemer v. Retail Credit Co.* (1975) 44 Cal.App.3d 926, 939–940; see also *Record v. Reason* (1999) 73 Cal.App.4th 472, 486 [unwarranted delay in seeking leave to amend shown where motion was filed three years after the plaintiff was aware of the circumstances on which he based his amended allegations]; *Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 486 [proper exercise of discretion to deny leave to amend where the plaintiff offered no explanation for omitting new claims from the original complaint or bringing the request to amend nearly two years after the original complaint was filed]; *Young v. Berry Equipment Rentals, Inc.* (1976) 55 Cal.App.3d 35, 39.) In addition, the court may properly deny leave to amend where it is clear that the proposed amended complaint would not state a valid cause of action. (*Saks v. Damn Raike & Co.* (1992) 7 Cal.App.4th 419, 426.)

Also, under Rule of Court 3.1324(b), "A separate declaration must accompany the motion [to amend] and must specify: (1) The effect of the amendment; (2) Why the amendment is necessary and proper; (3) When the facts giving rise to the amended allegations were discovered; and (4) The reasons why the request for amendment was not made earlier." (Cal. Rules of Court, rule 3.1324(b), paragraph breaks omitted.)

In the present case, plaintiff seeks leave to file a third amended complaint to add two new plaintiffs, Kelly Martin, individually and as the Trustee of the Norman O. Wheeler and Barbara Wheeler Revocable Trust, and Mario Martin, as an individual. Kelly is the

daughter of the original plaintiff, Barbara Wheeler, and Mario is Barbara's son-in-law. Plaintiff's counsel alleges that Kelly and Mario have a "vested interest" in the subject real property, and that the plaintiffs all purchased the house together and thus have an interest in the property. The proposed TAC alleges that Kelly Martin is the Trustee of the Trust, but also alleges in contradictory fashion that she is the beneficiary of the Trust. (See Proposed TAC, ¶¶ 2, 23.) Plaintiffs allege that they decided to purchase a home together, and that they entered into an agreement in which Barbara would pay for the property and Kelly and Martin would pay for all other costs and living expenses from thereon out. (*Id*. at ¶¶ 19-21.) The plaintiffs reviewed all documents together and purchased the property as a shared residence. (*Id*. at ¶ 22.) "Kelly and Martin have a shared interest in the Property." (*Id*. at ¶ 24.) "The Plaintiffs each sold their personal residence to purchase the Property and move in together, with the Martin's [sic] son." (*Id*. at ¶ 25.)

However, plaintiff has not offered an adequate explanation for the lengthy delay in seeking leave to amend the complaint. As discussed above, the party seeking leave to amend must provide a declaration that explains not only the effect of the proposed amendment, but also when the facts underlying the amendment were discovered and why they did not seek to amend the complaint earlier. (Cal. Rules of Court, rule 3.1324(b).) A lengthy unexplained failure to seek leave to amend is in itself reason to deny the requested amendment. (*Roemer v. Retail Credit Co., supra*, 44 Cal.App.3d at pp. 939–940; *Record v. Reason*, *supra*, 73 Cal.App.4th at p. 486.)

Here, plaintiff Barbara Wheeler originally filed her complaint in April 13, 2023, over two years ago. At that time, she was the sole plaintiff, and alleged claims for breach of contract, rescission, and fraud against the Kerrs based on the alleged fact that they concealed or misrepresented the condition of the subject real property when they sold it to her. She has since amended her complaint twice and added several new causes of action and defendants. The second amended complaint was filed on October 11, 2023, about a year and a half ago. None of the previous complaints indicated that Kelly and Mario Martin had any ownership interest in the real property, that they were involved in the purchase of the property, that they were parties to the purchase agreement, or that they might have standing to sue any of the defendants. In fact, it was clear from the allegations of the previous complaints that Barbara Wheeler was the sole purchaser of the property.

Now, plaintiff's counsel has asserted in his declaration in support of the motion to file the third amended complaint that he identified that "facts pleaded in the Second Amended Complaint supported additional Plaintiffs in the action", and that he "took action almost immediately after identifying" the facts that supported adding the new plaintiffs to the complaint. (Cuttone decl., ¶ 5.) Yet counsel's explanation makes no sense. Plaintiff's counsel was the person who drafted, signed, and filed the second amended complaint, so he was apparently aware of the facts alleged in the SAC since before it was filed. If he knew of the facts underlying the amendment before he filed the SAC, then he should have sought to add the new plaintiffs at the time he filed the prior amended complaint.

Nor is it clear what facts counsel "identified" that support adding the new plaintiffs to the action. Presumably, his client explained to him the circumstances surrounding the purchase of the property when he filed the previous amended complaint. It is not clear why he was not aware of Kelly and Mario's alleged interest in the property at that time.

Also, even assuming that counsel only became aware of the facts to support the addition of the new plaintiffs when the SAC was filed, he has not explained why he waited a year and a half before seeking to amend the complaint to add the new plaintiffs. Such a lengthy, unexplained delay in seeking leave to amend is enough in itself to justify denying leave to amend.

If counsel learned some other facts after filing the SAC that would justify adding new plaintiffs, he has not stated what those facts are, when he learned them, or why he did not immediately seek to leave to amend the complaint after learning them. Counsel's vague statement that he "took action almost immediately" after learning of the facts does not show that he was diligent in seeking leave to amend, especially since he has not stated exactly when he learned of the new facts or what those new facts are. Therefore, plaintiff's counsel has not provided a sufficient explanation for the delay in seeking leave to amend, nor has he shown that he was diligent in bringing the motion to amend.

In addition, even if plaintiff had not engaged in unexplained delay in seeking leave to amend, the newly added plaintiffs have not shown that they have standing to allege any valid claims. Kelly and Mario Martin are alleged to have an interest in the subject real property as co-purchasers of the property with their mother, Barbara Wheeler. However, the allegations of the prior complaints all indicate that Barbara was the only purchaser of the property. The SAC stated claims for rescission of the real property purchase contract, breach of contract, fraud, elder abuse, and negligence against the defendants based on the fact that they allegedly misrepresented the condition of the property and the need to perform extensive repairs on it when they sold the property to Barbara. The SAC and the prior complaints also included several attachments, including the purchase agreement and various disclosure forms and letters. (See Complaint, First Amended Complaint, and Second Amended Complaint, Exhibits A-E. The court intends to take judicial notice of the complaints as court records under Evidence Code section 452(d).) The purchase agreement and other documents state that Barbara was the sole purchaser of the property. There is no mention of Kelly or Mario in the purchase or disclosure documents, and the prior complaints made no mention of them as being purchasers or having any other interest in the property. Thus, it does not appear that Kelly or Mario can state claims for breach of the purchase agreement, rescission of the contract, fraud, negligence, or elder abuse here, as they were not parties to the purchase agreement and the prior complaints and their attachments make it clear that Barbara was the sole purchaser of the property.

Also, to the extent that plaintiffs allege that Kelly and Mario had an agreement with Barbara to pay the expenses for the property after Barbara purchased it, they have not alleged that Kelly and Mario ever actually paid the property expenses after the purchase. In any event, it is not clear how Kelly and Mario would have standing to state claims for breach of contract, rescission, fraud, negligence, or elder abuse against the defendants even if they had spent money on maintaining the property after Barbara purchased it, as they were not parties to the sales transaction where all of the defendants' misrepresentations and misconduct allegedly took place.

Since Kelly and Mario were not parties to the purchase agreement and they are not the purchasers or owners of the real property, they are not real parties in interest with regard to the claims based on the purchase of the property. (Cal. Code Civ. Proc. § 367; *Cloud v. Northrop Grumman Corp*. (1998) 67 Cal.App.4th 995, 1004.) "Generally, the real

party in interest is the person who has the right to sue under the substantive law. It is the person who owns or holds title to the claim or property involved, as opposed to others who may be interested or benefited by the litigation. [¶] Real party in interest issues are often discussed in terms of plaintiff's 'standing to sue.'" (*O'Flaherty v. Belgum* (2004) 115 Cal.App.4th 1044, 1094, citations omitted.) "Someone who is not a party to the contract has no standing to enforce the contract or to recover extra-contract damages for wrongful withholding of benefits to the contracting party." (*Hatchwell v. Blue Shield of California* (1988) 198 Cal.App.3d 1027, 1034.) Here, Kelly and Mario lack standing to bring the claims alleged in the proposed TAC, as the allegations of the prior complaints and the attachments thereto show that they were not parties to the purchase agreement for the property, and they are not the title holders, purchasers, or owners of the property that is the subject of the action. As a result, the court will not grant leave to amend the complaint to add them as plaintiffs.[1]

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: JS on 5/14/2025.
(Judge's initials) (Date)

[1] Defendants also argue that the motion to amend was untimely served, and therefore the court should deny it on that basis as well. However, while the motion was not timely served under Code of Civil Procedure section 1005(b), defendants have not shown that they suffered any prejudice from the delay in service. Also, they have raised substantive arguments in opposition to the motion, and thus they have waived any contention based on untimely service. (*Arambula v. Union Carbide Corp*. (2005) 128 Cal.App.4th 333, 342.)

(20) **Tentative Ruling**

Re: ***Marquez v. Consultingwhiz, LLC***
Superior Court Case No. 24CECG05114

Hearing Date: May 21, 2025 (Dept. 503)

Motion: Demurrer to Answer

Tentative Ruling:

To take off calendar for failure to serve current counsel for defendant.

Explanation:

The answer under attack was filed on 1/29/25 on behalf of defendant by Ramond Takhsh and Jonathan Chan of CTK Law Group. On 2/10/25 plaintiff's counsel filed a meet and confer declaration, stating that he sent letters to CTK Law Group on 1/30/25 and 2/4/25, requesting to set a meeting but never heard back. This is likely because defendant was in the process of changing counsel. On 2/11/25 defendant filed a substitution of attorney, notifying plaintiff that defendant was at that point represented by Nicole C. Barilla of Hawkins Parnell & Young, LLP. The substitution of attorney was served on plaintiff's counsel by email and mail on 2/11/25.

Despite having been given notice of the change of counsel, on 2/25/25 plaintiff filed a demurrer to the answer, purporting to have served defendant (by serving CTK Law Group) 15 days earlier on 2/10/25. Even if the demurrer was in fact served on CTK Law Group on 2/10/25, since it was not filed for another 15 days, counsel should have re-served it on current counsel for defendant.

Plaintiff's counsel is also directed, before refiling the demurrer, to meet and confer in person or by telephone with defendant's current counsel. (See Code Civ. Proc., § 430.41.) Hopefully the parties will resolve plaintiff's concerns about the demurrer, as the court generally considers demurrers to answers to be a waste of time.

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: JS on 5/15/2025 .
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Jimenez v. Wade, et al.***
Superior Court Case No. 23CECG03274

Hearing Date: May 21, 2025 (Dept. 503)

Motion: Defendants' Demurrer to the Second Amended Complaint

Tentative Ruling:

To overrule the demurrer to the first and second cause of action of the Second Amended Complaint. (Code Civ. Proc., § 430.10, subd. (e).)

Each request for judicial notice is granted. (Evid. Code, § 452, subds. (c), (d).)

Defendant is granted 20 days' leave to file its responsive pleadings to the Second Amended Complaint. The time in which the responsive pleadings can be filed will run from service by the clerk of the minute order.

Explanation:

First Cause of Action – Breach of Contract

Defendants argue that the Second Amended Complaint ("SAC") fails to allege the existence of a breach, plaintiff's performance or excuse for nonperformance, and a contractual relationship between plaintiff one on side and defendants Darren Wade and John Bustamante on the other.

"A cause of action for breach of contract requires proof of the following elements: (1) existence of the contract; (2) plaintiff's performance or excuse for nonperformance; (3) defendant's breach; and (4) damages to plaintiff as a result of the breach." (*CDF Firefighters v. Maldonado* (2008) 158 Cal.App.4th 1226, 1239.) "A written contract may be pleaded either by its terms—set out verbatim in the complaint or a copy of the contract attached to the complaint and incorporated therein by reference—or by its legal effect." (*Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 993.)

Here, the real property purchase agreement is attached as an Exhibit A to the SAC. The purchase agreement requires the seller to provide "fully completed disclosures or notices required by statute. These 'disclosures' and 'notices' include the 'C.A.R. Form SPQ or ESD." (SAC, Ex. A, ¶ 11(A)(1).) Defendants contend that the allegations concede that they have complied with this obligation by providing a completed SPQ, and that the agreement does not contain any provision obligating defendants to disclose all material facts relating to the property. However, there is a reasonable inference that the provision requiring the seller to provide a fully completed disclosure implicitly requires the seller to provide a SPQ without known material misrepresentations even if the SPQ itself is not intended to be a part of the contract.

Further, the purchase agreement does contain a provision generally requiring defendants to disclose all material defects as follows:

> Seller shall . . . DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property . . . and make any and all other disclosures required by Law.

(SAC, Ex. A, ¶ 11(M).)

Next, defendants contend that plaintiff fails to allege her performance or excuse for nonperformance of the contract. While SAC does not explicitly allege plaintiff's performance of the contract, there are sufficient facts to infer that plaintiff has fully performed. The parties entered into an agreement to purchase residential real property (SAC, ¶ 14), plaintiff's purchase of the property was recorded on September 13, 2022 (SAC, ¶ 15), the defendants refused to return the consideration plaintiff paid for the purchase of the property (SAC, ¶ 24). These allegations are sufficient to allow a reasonable inference that plaintiff paid some amount of funds for the purchase of the subject property.

Lastly, defendants argue that there are insufficient facts alleged against defendants Mr. Wade and Mr. Bustamante, since the contract is only between the buyer plaintiff and sellers Tri Wade Homes, LLC ("Tri Wade Homes") and JC Home Restorations, LLC ("JC Home Restorations"). However, the SAC alleges that these defendants were the alter egos of Tri Wade Homes and JC Home Restorations. (SAC, ¶¶ 11, 12.)

Accordingly, the demurrer to the first cause of action for breach of contract is overruled.

Second Cause of Action – Fraud

" 'The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or "scienter"); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.' " (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638, citations omitted.) Each element must be alleged with particularity. General and conclusory allegations are insufficient. (Id., at p. 645.) This particularity requirement necessitates pleading *facts* which "show how, when, where, to whom, and by what means the representations were tendered." (*Ibid.,* citations omitted, italics in original.) A plaintiff's burden in asserting a fraud claim against a corporate employer is even greater. In such a case, the plaintiff must "allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written." (*Ibid.,* citations omitted.)

Plaintiff's cause of action for fraud is based on allegations that defendants misrepresented and/or concealed the true condition of the water heater, plumbing, ducting, insulation, sloped north bathroom floor, and HVAC system. (SAC, ¶ 17.)

Here, defendants contend that the complaint is insufficiently specific, since it does not state what the defects were. Nor does the complaint attach any photographs of the

alleged defects. The court finds it sufficient that the complaint at least pleads each element of the property that is defective and that the defects exist. No photographs evidencing such defects are necessary at the pleading stage.

Additionally, plaintiff need not specify how defendants knew that the representations were false or that the facts were concealed, how the misrepresentation/concealment was intentional, or why plaintiff's reliance was justifiable. It is unlikely that plaintiff would be privy to the former information at the pleading stage, and the latter—plaintiff's reliance, can be implied since this action pertains to plaintiff's purchase of real property that belonged to the defendant sellers.

The SPQ provides that the seller was not aware of any defects to the "heating, air conditioning, electrical, plumbing. . ., water, sewer, waste disposal or septic system, sump pumps, well roof, gutters, chimney, fireplace foundation, crawl space, attic, soil, grading drainage, retaining walls, interior or exterior doors, windows, walls, ceilings, floors or appliances." (SAC, Ex. B, ¶ 8(A).) The SPQ is signed by defendants Darren Wade and John Bustamante, who are alleged to be alter egos of Tri Wade Homes and JC Home Restorations, on July 25, 2022.

Thus, there are sufficient allegations to state a cause of action of fraud. Accordingly, the demurrer to the second cause of action for fraud 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: JS on 5/19/2025.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Andre Howell v. Select Portfolio Servicing, Inc.***
Superior Court Case No. 24CECG03894

Hearing Date: May 21, 2025 (Dept. 503)

Motion: Defendants' Demurrer to the Complaint

Tentative Ruling:

To overrule the demurrer, with Defendants granted 10 days' leave to file their answer(s) to the complaint. The time in which the answer(s) can be filed will run from service by the clerk of the minute order.

Explanation:

The function of a demurrer is to test the sufficiency of a plaintiff's pleading by raising questions of law. (*Plumlee v. Poag* (1984) 150 Cal.App.3d 541, 545.) The test is whether the plaintiff has succeeded in stating a cause of action; the court does not concern itself with the issue of a plaintiff's possible difficulty or inability in proving the allegations of his complaint. (*Highlanders, Inc. v. Olsan* (1978) 77 Cal.App.3d 690, 697.) In assessing the sufficiency of the complaint against the demurrer, we treat the demurrer as admitting all material facts properly pleaded, bearing in mind the appellate courts' well established policy of liberality in reviewing a demurrer sustained without leave to amend, liberally construing the allegations with a view to attaining substantial justice among the parties. (*Glaire v. LaLanne-Paris Health Spa, Inc*. (1974) 12 Cal.3d 915, 918.)

In ruling on a demurrer, whether a plaintiff will be able to prove his or her case at trial is not considered. (*Griffith v. Department of Public Works* (1956) 141 Cal.App.2d 376, 381.) A demurrer admits the truth of all material factual allegations in the complaint. The question of a plaintiff's ability to prove those allegations, or the possible difficulty in making such proof does not concern the reviewing court. (*Perdue v. Crocker National Bank* (1985) 38 Cal.3d 913, 922.) On demurrer, the court assumes the truth of the facts alleged in the complaint and the reasonable inferences that may be drawn from those facts. (*Miklosy v. Regents of University of California* (2008) 44 Cal. 4th 876, 883.) A demurrer is not the appropriate procedure for determining the truth of disputed facts or what inferences should be drawn when competing inferences are possible. (*Crosstalk Productions, Ltd. v. Jacobson* (1998) 65 Cal.App.4th 631, 635.)

It is not the function of the demurrer to challenge the truthfulness of the complaint and for purposes of ruling on the demurrer, all facts pleaded in the complaint are assumed to be true, no matter how improbable. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.)

Judicial Notice

Defendant requests the Court take judicial notice of a Trustee's Deed Upon Sale pursuant to Evidence Code section 452, subdivisions (c) and (d). These subdivisions provide the Court *may* take judicial notice of (c) official acts and (d) court records. (Evid. Code, § 452, subds. (c), (d).) While the court may take judicial notice of these, this does not mean that the court accepts as true the contents of the documents. (*Dominguez v. Bonta* (2022) 87 Cal.App.5th 389, 400.) "Courts can take judicial notice of the existence, content and authenticity of public records and other specified documents." (*Ibid*.) Here, the Court will take judicial notice of the Trustee's Deed, but, not for the truth of the factual matters asserted in this document.

Homeowner Bill of Rights Causes of Action

Plaintiff alleges violations of the Homeowner Bill of Rights ("HBOR") in its first four causes of action. Defendants argue that Plaintiff has not alleged a material violation. Defendants also assert that they cured any violation and that Plaintiff failed to submit a complete application for a first lien loan modification. Defendants rely on *Billesbach v. Specialized Loan Servicing LLC* (2021) 63 Cal.App.5th 830 for the majority of these arguments. Notably, the court in *Billesbach* was considering a summary judgment motion, not a demurrer. (*Ibid*.) Here, Defendants arguments are to the merits of Plaintiff's HBOR claims. As such, these are not proper considerations for the court at the pleadings stage. The Court overrules the demurrers as to the first four causes of action.

Wrongful Foreclosure

Plaintiff's fifth cause of action is for wrongful foreclosure based on the alleged HBOR violations. Defendants argue that this cause of action fails because Plaintiff has not alleged prejudice and because Plaintiff has not alleged that he tendered the full amount due. To plead wrongful foreclosure, a plaintiff must allege 1) an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust, 2) the party attacking the sale was prejudiced or harmed, and 3) the trustor or mortgagor tendered the amount of the secured indebtedness or was excused from tendering. (*Citrus El Dorado, LLC v. Chicago Title Co*. (2019) 32 Cal.App.5th 943, 948.) The court in Miles v. Deutsche Bank National Trust Co. (2015) 236 Cal.App.4th 394, 409, noted that "mere technical violations of the foreclosure process will not give rise to a tort claim; the foreclosure must have been entirely unauthorized on the facts of the case."

Turning first to the failure to allege prejudice argument, Plaintiff has alleged that notices required by Civil Code section 2924, subdivision (c) were never mailed to Plaintiff. Additionally, Plaintiff was never contacted by Defendants to assess his financial situation prior to foreclosure. The court in *Citrus El Dorado v. Chicago Title, supra*, 32 Cal.App.5th at p. 950 implies that notice issues would be material.

Turning to the issue of tender, Plaintiff has alleged that the tender requirement is excused because of Defendants' HBOR violations. (Complaint, ¶ 66.) While alleging the ability to tender is an element for wrongful foreclosure, Plaintiffs can also allege an excuse from tendering. (*Citrus El Dorado v. Chicago Title, supra*, 32 Cal.App.5th at p. 948.) Here, Plaintiffs have alleged an excuse based on HBOR violations. There are several

recognized exceptions to the tender rule: "(1) the underlying debt is void, (2) the foreclosure sale or trustee's deed is void on its face, (3) a counterclaim offsets the amount due, (4) specific circumstances make it inequitable to enforce the debt against the party challenging the sale, or (5) the foreclosure sale has not yet occurred." (*Chavez v. Indymac Mortgage Services* (2013) 219 Cal.App.4th 1052, 1062.) Here, Defendants have not provided authority to state that violations of HBOR would not be sufficient to allege an excuse from tendering at the pleadings stage. As such, the Court overrules the demurrer to this cause of action.

Unfair Business Practices

Plaintiff's sixth cause of action alleges Defendant engaged in unfair business practices in violation of Business and Professions Code section 17200 et seq. Defendant argues that where the HBOR causes of action fail, the unfair business practices claim likewise fails. In light of the Court overruling Defendant's demurrers as to the HBOR causes of action, the Court similarly overrules the demurrer as to this cause of action.

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: JS on 5/19/2025.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Michael Tran v. Kia America, Inc.***
Superior Court Case No. 24CECG00364

Hearing Date: May 21, 2025 (Dept. 503)

Motion: By Plaintiff Michael Tran to Enforce Settlement

Tentative Ruling:

To find that Defendant Kia America, Inc. shall pay Plaintiff Michael Tran $3,955.85 as the amount of interest owed pursuant to the parties' Settlement Agreement. Defendant is to make this payment within 30 days of service of the minute order by the clerk.

Explanation:

Plaintiff seeks an order enforcing a settlement agreement made with Defendant regarding the repurchase of a vehicle. The Court finds that the terms of the agreement were largely performed, making the majority of this request moot, with the exception of the agreement to pay interest.

The Court finds that Kia owes Plaintiff $3,955.85 as the interest Plaintiff paid on the vehicle between the date the parties signed the Agreement and the date Defendant performed its obligation in the Agreement. The Agreement does address that "Kia America Inc. will reimburse Plaintiff for interest accrued on the loan for the Subject Vehicle between August 2, 2024 and the date of the loan payoff." (Valiskaya Decl., Exh. A.) Plaintiff asserts the total interest accrued during this period was $4,378.72. (Valitskaya Supp. Decl., ¶¶ 12-13.) Defendant asks the Court to reduce this amount to account for untimely payments increasing the interest owed. Defendant asserts that interest should be calculated as $3,454.55. (Rafter Supp. Decl., ¶¶ 9-12.) Having reviewed Supplemental Exhibit 3 in Plaintiff's declaration, the Court finds that Plaintiff has evidenced $3,955.85 in interest paid by Plaintiff between the signing of the Agreement on August 8, 2024 and the repurchase on April 8, 2025.

The Court will not award attorney's fees. The Agreement provides that $10,000 of the overall payment of $77,608.61 is attorney's fees. (Valiskaya Decl., Exh. A, Section 2.) The Agreement further states, "Other than the amount set forth in Section 2 of the Settlement Agreement, each party is to bear its own costs and attorney's fees." (Id. at Section 4.)

The Court will not award additional expenses incurred by Plaintiff for the rental of another vehicle and the registration fees. The parties were invited to provide supplemental briefing in order to address the payment of the additional expenses incurred by Plaintiff. Plaintiff's supplemental briefing and declaration did not point to a clause in the Agreement providing for these expenses, nor did Plaintiff provide sufficient legal authority for including these expenses.

Lastly, for the first time in the supplemental papers, Plaintiff asserts a shortfall with the amount paid to Chase Auto, totaling $498.91. The Court will not be awarding any additional amount. First, Plaintiff did not address this issue in its moving papers. Second, the Court did observe, prior to continuing the motion to address interest amounts, that there was a discrepancy between the agreement amounts and the amounts paid. However, these were as to both payments, with Plaintiff receiving a higher payment than the amount provided for in the agreement. As such, the Court is not inclined to disturb the principal amounts already paid by Defendant.

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: JS on 5/19/2025.
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Ventresca v. Shannon, et al.***
Superior Court Case No. 23CECG05173

Hearing Date: May 21, 2025 (Dept. 503)

Motion: by Defendant West Coast Arborists, Inc. for Summary Judgment

Tentative Ruling:

To continue the hearing to June 11, 2025 at 3:30 p.m. in Department 503. Plaintiff shall file his opposition to the motion by 3:00 p.m. on May 21, 2025.

Explanation:

The opposition to defendant West Coast Arborists, Inc.'s motion for summary judgment was to be filed and served not less than 20 days before the May 21, 2025 hearing date. (Code Civ. Proc. § 437c, subd. (b)(2).) Based on the reply filed May 9, 2025, it appears plaintiff served his opposition to the motion on the parties to the action. The electronic filing was not accepted by the court on May 1, 2025. Accordingly, the court finds good cause to order plaintiff's opposition filed no later than 3:00 p.m. on Wednesday May 21, 2025 and to continue the hearing on the motion to June 11, 2025 to allow the court to consider the opposing papers.

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: JS (Judge's initials) on 5/19/2025 (Date).

(27)

Tentative Ruling

Re: ***In re Adrianne Bravo***
Superior Court Case No. 25CECG02013

Hearing Date: May 21, 2025 (Dept. 503)

Motion: Petition to Compromise the Claim of Minor Adrianne Bravo

Tentative Ruling:

To grant the petition. Orders Signed. No appearances necessary. The court sets a status conference for Tuesday, September 9, 2025, at 3:30 p.m., in Department 503, for confirmation of deposit of the minors' funds into the blocked accounts. If Petitioner files the Acknowledgment of Receipt of Order and Funds for Deposit in Blocked Account (MC-356) at least five court days before the hearing, the status conference will come off calendar.

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: JS (Judge's initials) on 5/20/2025 (Date).

(35)

Tentative Ruling

Re: ***Mahrt v. General Motors, LLC***
Superior Court Case No. 24CECG02424

Hearing Date: May 21, 2025 (Dept. 503)

Motion: By Plaintiff Jack Mahrt for Leave to Amend

Tentative Ruling:

To deny.

Explanation:

Motions for leave to amend the pleadings are directed to the sound discretion of the court. "The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading . . . ." (Code Civ. Proc. § 473, subd. (a)(1); see also Code Civ. Proc. § 576.) Judicial policy favors resolution of cases on the merits, and thus the court's discretion as to allowing amendments will usually be exercised in favor of permitting amendments. This policy is so strong, that denial of a request to amend is rarely justified where "the motion to amend is timely made and the granting of the motion will not prejudice the opposing party." (*Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, 530.) The validity of the proposed amended pleading is not considered in deciding whether to grant leave to amend. (*Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048.) Absent prejudice, it is an abuse of discretion to deny leave to amend. (*Higgins v. DelFaro* (1981) 123 Cal.App.3d 558, 564-65.)

Plaintiff Jack Mahrt ("Plaintiff") seeks leave to materially alter the legal authority for existing causes of action against defendant General Motors, LLC ("Defendant"). Plaintiff submits that relatively recent case law has altered Plaintiff's ability to pursue a claim as filed, under the Song-Beverly Act. (*Rodriguez v. FCA US, LLC* (2024) 17 Cal.5th 189.) Namely, the vehicle purchased with alleged defects now no longer qualifies as a vehicle subject to the Song-Beverly Act. (*Id.* at p. 196.) Accordingly, Plaintiff seeks to restate his claims under the federal Magnuson-Moss Warranty Act.

Defendant opposes. Defendant submits that Plaintiff has not been diligent with his knowable claims to such a degree as to constitute unwarranted delay. Defendant submits that Plaintiff impermissibly relied on hopes that this matter would resolve prior to the decision in *Rodriguez*, or that *Rodriguez* would favor Plaintiff. As such, Defendant concludes that the eleven months between the filing of this action and the filing of this motion constitutes unwarranted delay.

Based on the above, the court finds that leave to amend would be prejudicial. Delay alone is not a grounds to deny leave to amend absent prejudice. (*Hirsa v. Superior Court* (1981) 118 Cal.App.3d 486, 490.) However, as Defendant argues, the substance of the legal foundation of the claim will be materially altered. Any potential notice provided of the substance of Plaintiff's claims through the original Complaint will effectively be

vitiated as an entirely new action. Moreover, as Defendant suggests in opposition, nothing precluded Plaintiff from additionally bringing a claim under the Magnuson-Moss Warranty Act in the first instance when the action was originally filed. While the court does not comment on, or imply any findings on the viability of the proposed pleading, the court finds that the material shift in legal theories constitutes a prejudice to Defendant. Accordingly, the motion to amend this pleading is denied.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 5/20/2025.
(Judge's initials) (Date)