Tentative Rulings for May 8, 2024
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.***

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

(20) **Tentative Ruling**

Re: ***Huntington Equity Invest, LLC v. Allstate Roofing Specialists***
Superior Court Case No. 23CECG04811

Hearing Date: May 8, 2024 (Dept. 503)

Motion: Demurrer to and Motion to Strike First Amended Complaint

Tentative Ruling:

To continue the demurrer to June 11, 2024 at 3:30 p.m. in Department 501. Defense counsel shall file a revised meet and confer declaration *at least 10 days* prior to the date of the continued hearing. No further flings on the substance of the demurrer, as it is fully briefed.

Explanation:

The demurring parties must meet in confer, *in person or by telephone*, prior to filing a demurrer, and file and serve with the motion a declaration detailing the meet and confer efforts. (Code Civ. Proc., § 430.41, subd. (a), (b).) A letter or exchange of emails (see Goldstein Decl., Exh. A) does not satisfy the explicit requirement to meet and confer in person or by telephone.

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: jyh on 5/6/24 .
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Musick v. Mercedes Benz USA, LLC***
Superior Court Case No. 22CECG00481

Hearing Date: May 8, 2024 (Dept. 503)

Motion: By Plaintiff Jessica Musick for an Award of Attorney Fees

Tentative Ruling:

To grant the motion for an award of attorney fees and award $17,030.75 in fees in favor of plaintiff Jessica Musick. To award costs in the amount of $1,226.99.

Explanation:

Plaintiff Jessica Musick ("Plaintiff") seeks an award of attorney fees under Civil Code section 1794, subdivision (d). Plaintiff submits a partially executed settlement agreement declaring Plaintiff as the prevailing party, entitling her to seek fees and costs. The settlement agreement is not subscribed by defendant Mercedes-Benz, USA, LLC ("Defendant"), against whom Plaintiff seeks to enforce this provision. In opposition, Defendant does not appear to contest the execution of the settlement agreement. The court finds that Plaintiff sufficiently states a basis upon which to seek an award of fees and costs. Plaintiff submits, and Defendant does not dispute, that the settlement was for full restitution of the vehicle by way of repurchase. (Casey Decl., ¶ 22.) Neither party suggests whether the settlement contemplated any treatment of the civil penalty sought. The fee request is considered in light of this outcome.

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

A trial court may not rubberstamp a request for attorney fees, and must determine the number of hours <u>reasonably</u> expended. (*Donahue v. Donahue* (2010) 182 Cal.App.4th 259, 271.) A court assessing attorney's fees begins with a touchstone or lodestar figure, based on the 'careful compilation of the time spent and reasonable hourly compensation of each attorney . . . involved in the presentation of the case." (*Serrano v. Priest* (*Serrano III*) (1977) 20 Cal.3d 25, 48.) Lodestar refers to the "number of

hours reasonably expended multiplied by the reasonable hourly rate" of an attorney. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1096.)

Counsel for Plaintiff seeks to set the lodestar at $24,069.50. Counsel submits a total of 52.7 hours of billed time across four timekeepers. Counsel predominately practice in Song-Beverly claims, such as the present action. (Casey Decl., ¶ 30.) As to attorneys, counsel submits hourly rates of $525 to $565 for Aaron Fhima, $500 to $515 for Tate Casey, and $450 to $475 for Lauren Bradshaw; as to paralegals, counsel submits the rate of $200 for Cindie Ianni. (*Id.*, ¶ 31.) The court finds that the hourly rates are high. The reasonable hourly rate is that prevailing in the community for similar work. (*PLCM Group v. Drexler*, *supra*, 22 Cal.4th at p. 1095.) The rate is measured in the market place, and reflects several factors: the level of skill necessary, time limitations, the amount to be obtained in the litigation, the attorney's reputation, and the undesirability of the case. (*Shaffer v. Superior Court* (1995) 33 Cal.App.4th 993, 1002.) The court finds that the rates asserted exceed the rates prevailing in the local community for similar work. The court sets the rates of Fhima and Casey to $350 per hour, Lauren Bradshaw to $300 per hour, and Ianni to $125 per hour.

Following a careful review of the entries submitted, the court finds that a few entries that are purely clerical (*e.g.*, Casey Decl., Ex. B, p. 4 [change of address], 6 [emailing copies of filed documents]), or are billed disproportionately to the tasks described (*id.*, Ex. B, p. 3 [2.6 hours for initial Song-Beverly discovery], 6 [3.1 hours to draft a common Song-Beverly complaint], 7 [6.5 hours to prepare deposition notices]).[1] The court does not credit 1.2 hours of Tate Casey, 1.1 hours of Lauren Bradshaw, and 4.9 hours of Cindie Ianni. The court credits 2 hours to Tate Casey for review of the opposition and preparation of the reply brief. Accordingly, the lodestar is set at $15,482.50.

Plaintiff seeks the imposition of a multiplier at 1.2. As stated by the California Supreme Court regarding lodestar multipliers, sometimes referred to as fee enhancements:

> …the trial court is *not required* to include a fee enhancement to the basic lodestar figure for contingent risk, exceptional skill, or other factors, although it retains discretion to do so in the appropriate case; moreover, the party seeking a fee enhancement bears the burden of proof. In each case, the trial court should consider whether, and to what extent, the attorney and client have been able to mitigate the risk of nonpayment, e.g., because the client has agreed to pay some portion of the lodestar amount regardless of outcome. It should also consider the degree to which the relevant market compensates for contingency risk, extraordinary skill, or other factors under *Serrano III*. We emphasize that when determining the appropriate enhancement, a trial court should not consider these factors

[1] The court shares the concerns raised by Defendant as to the practice of block-billing. Plaintiff on reply correctly notes that time records are not required to support a fee request. As noted above however, it is Plaintiff's burden to demonstrate reasonableness. To the extent that Plaintiff submits block-billing that obscures the court's ability to evaluate reasonableness, or, as is Plaintiff's noted right, that Plaintiff submits no time entries at all, Plaintiff may fail that burden. However, the entries here, taken in aggregate of the time billed, are generally proportional to the tasks described.

> to the extent they are already encompassed within the lodestar. The factor of extraordinary skill, in particular, appears susceptible to improper double counting; for the most part, the difficulty of a legal question and the quality of representation are already encompassed in the lodestar. A more difficult legal question typically requires more attorney hours, and a more skillful and experienced attorney will command a higher hourly rate. (*See Margolin v. Regional Planning Com.* (1982) 134 Cal.App.3d 999, 1004, 185 Cal.Rptr. 145.) Indeed, the " 'reasonable hourly rate [used to calculate the lodestar] is the product of a multiplicity of factors ... the level of skill necessary, time limitations, the amount to be obtained in the litigation, the attorney's reputation, and the undesirability of the case.' " (*Ibid*.) Thus, a trial court should award a multiplier for exceptional representation only when the quality of representation far exceeds the quality of representation that would have been provided by an attorney of comparable skill and experience billing at the hourly rate used in the lodestar calculation. Otherwise, the fee award will result in unfair double counting and be unreasonable. Nor should a fee enhancement be imposed for the purpose of punishing the losing party. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138-1139 [emphasis original].)

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

Here, Plaintiff submits that counsel took the matter on contingency, and obtained full compensation. The court acknowledges the contingent risk taken by counsel, and finds the outcome to be ordinary to the statutory relief afforded in these actions. Accordingly, the court applies a multiplier of 1.1. The motion for an award of attorney fees is granted in the amount of $17,030.75.

Costs

Costs are sought via declaration. Defendant argues that the declaration provides insufficient information for it to contest the costs sought.

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

Though Plaintiff did not file a memorandum of costs, Plaintiff verifies the costs sought under penalty of perjury. The items sought consists entirely of filing and service fees, with the exception of one entry for CourtCall. Filing and service fees are allowable costs. (Code Civ. Proc. § 1033.5, subd. (a).) Telephonic costs are specifically disallowed. (Code Civ. Proc. § 1033.5, subd. (b)(3); *see also id.*, § 367.6 [repealed 2022].) The court taxes costs in the amount of $94.00. The court notes a discrepancy on the line-item on December 28, 2022, where the cost of the entry differs from the "bill price". The court uses the actual cost value of this entry. Costs are awarded in the amount of $1,226.99.

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: jyh on 5/6/24 .
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Magallen v. Chandler, et al.***
Superior Court Case No. 21CECG03582

Hearing Date: May 8, 2024 (Dept. 503)

Motion: by Defendants for Summary Judgment or in the Alternative, Summary Adjudication

Tentative Ruling:

To deny defendants' motion for summary judgment, and the alternative motion for summary adjudication.

Explanation:

Defendants Ron Chandler, Katie Gorman, Jim Sutton, Bonnie Rookus, Debbie Porter, John Douglas, David Byrd, Virginia Johnson and Wonder Valley Property Owners Association ("POA"), (collectively "Defendants") move for summary judgment of plaintiff's complaint on the basis that the undisputed material facts demonstrate defendants have a complete affirmative defense to the action, that the plaintiffs have failed to proffer evidence to support their claims, and that there is no merit to their causes of action. Defendants move in the alternative for summary adjudication of each cause of action within the complaint and the claim for punitive damages.

Summary judgment law turns on issue finding rather than issue determination. (*Diep v California Fair Plan Ass'n* (1993) 15 Cal.App.4th 1205, 1207.) The court does not decide the merits of the issues, but merely discovers, through the medium of affidavits or declarations, whether there are issues to be tried and whether the parties possess evidence that demands the analysis of a trial. (*Melamed v City of Long Beach* (1993) 15 Cal.App.4th 70, 76; *Molko v Holy Spirit Ass'n* (1988) 46 Cal.3d 1092, 1107; *Schwoerer v Union Oil Co.* (1993) 14 Cal.App.4th 103, 110.) In short, the motion is not a substitute for a bench trial.

If the moving party carries this initial burden of production, the burden of production shifts to the opposing party to show that a triable issue of material fact exists. In determining whether any triable issues of material fact exist, the court must strictly construe the moving papers and liberally construe the declarations of the party opposing summary judgment. Any doubts as to whether a triable issue of material fact exist are to be resolved in favor of the party opposing summary judgment/adjudication. (*Barber v. Marina Sailing, Inc.* (1995) 36 Cal.App.4th 558, 562; see also *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 900 ["Summary adjudication is a drastic remedy and any doubts about the propriety of summary adjudication must be resolved in favor of the party opposing the motion."].)

In the case at bench, defendants have filed a separate statement[2] identifying four issues: (A) There is No Merit to the Cause of Action for Declaratory Relief; (B) There is No Merit to the Cause of Action for Declaratory Relief; (C) Defendants are Protected from Liability by the Business Judgment Rule, and (D) There is No Cause of Action to Dissolve an Association. Taken together, Issues A through D are meant to demonstrate the entire complaint is subject to summary judgment in favor of defendants. The absence of the issue of punitive damages from the separate statement precludes the summary adjudication of this issue despite its inclusion in the notice of motion.

Issue A: There is No Merit to the Cause of Action for Declaratory Relief

As an initial matter, defendants have failed to include the Declaration of Ron Chandler, cited as evidence that the board of directors of the POA has been elected and has operated within the scope of the association's bylaws and CC&Rs. (UMF No. 3.) The declaration is also the basis of the board having filled vacancies on the board in compliance with the procedure set forth in Article IV, Section 3 of the bylaws. (UMF No. 5.) For this reason alone, the court should deny the motion for summary judgment and adjudication of Issues A and C, which is also supported by material fact nos. 1 through 15. Counsel's reply declaration indicates the omission was inadvertent and that plaintiffs failed to alert defendant to its omission until filing their opposition. This does not rectify the court's inability to timely consider the evidence in determining whether defendants have met their burden in moving for summary judgment.

The court has reviewed the Declaration of Ron Chandler, submitted with defendants' reply. The portion of the declaration relied upon as the sole evidence to support Undisputed Material Fact No. 3 consists of mere conclusions that the board has been elected and operated within the scope of the bylaws. (Rutherford Reply Decl., Exh. 7, ¶ 5.) The declaration provides no factual basis for these conclusions, such as the dates the current members were elected and by what process they were elected.

Evidentiary issues notwithstanding, summary judgment and summary adjudication of these issues is prevented by the clear factual disputes with regard to whether the current board members of the POA occupy their positions in conformity with the procedures set forth in the bylaws. This factual dispute appears to be the foundation of each cause of action within the complaint.

Defendants argue that plaintiffs' discovery responses are devoid of facts and evidence to support their theory that the current board members were not elected or appointed to their seats through the procedures in the bylaws. (UMF Nos. 8-15.) However, "[i]t is not enough for defendant to show merely that plaintiff 'has no evidence' on a key

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[2] The court notes the separate statement does not comply with California Rules of Court, rule 3.1350, subdivision (b), which provides in relevant part [emphasis added]: "If summary adjudication is sought, whether separately or as an alternative to the motion for summary judgment, the specific cause of action, affirmative defense, claims for damages, or issues of duty must be stated <u>specifically in the notice of motion and be repeated, verbatim, in the separate statement of undisputed material facts</u>." Although not verbatim of what is stated in the Notice of Motion, the court is able to ascertain that issue "C" is intended to address the third cause of action of the complaint charging defendants with breaching their fiduciary duties to the members of the POA.

element of plaintiff's claim. Defendant must also produce evidence showing plaintiff *cannot reasonably obtain* evidence to support that claim. [*Gaggero v. Yura* (2003) 108 CA4th 884, 891, 134 CR2d 313, 318; *Zoran Corp. v. Chen* (2010) 185 CA4th 799, 808, 110 CR3d 597, 604]." (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2023) § 10:244.) Defendants have not produced evidence showing plaintiffs cannot reasonably obtain evidence to support their claims.

Accordingly, defendants' motion for summary judgment is denied, as is the alternative request for summary adjudication of Issues A and C.

Issue B: There is No Merit to the Cause of Action for Injunctive Relief

Plaintiff's second cause of action seeks to enjoin the current board of directors from continuing in their positions and using their positions to take action on behalf of the POA. The argument that the current board is not legitimate is premised on the argument that none of the current board members were elected to their position in compliance with the bylaws. Defendants challenge that premise and assert an election is not required to fill a vacant seat.

Defendants set forth a single material fact in support of their motion to summarily adjudicate this cause of action. Defendants cite to the procedures in Article IV, section 4 of the bylaws which provide a mechanism for filling vacancies on the board that does not require a quorum of membership to participate or a formal vote by the membership. (UMF No. 16.) The single material fact presumes the foundational facts that the board members who have been added to the board in this manner were filling a seat of a member who was elected and/or appointed in accordance with the bylaws. The same is argued by plaintiffs in their dispute of this material fact.

Due to the missing foundational material facts and evidence in support thereof, the court finds defendants have not met their burden to summarily adjudicate the issue of whether defendants can be enjoined from acting on behalf of the POA.

Issue D: There is No Cause of Action to Dissolve an Association

Defendants argue the dissolution of the Wonder Valley Property Owners Association requires approval on multiple levels, including the board of directors and members. The separate statement sets forth as the only material fact in support of this issue its citations to the relevant sections of the Corporations Code.

The arguments made in the memorandum, and repeated as material fact in the separate statement, do not explain how "there is no cause of action to dissolve an association." If defendants intended to argue this cause of action is actually a remedy rather than a cause of action, this is a challenge to the pleadings rather than an issue for summary adjudication. If defendants intended to argue that plaintiffs have not or cannot meet the requirements of the Corporations Code with regard to the dissolution of the association, the separate statement lacks material facts as to how plaintiffs have not, or cannot, comply with these requirements. For example, the memorandum argues the three plaintiffs seeking dissolution falls far short of the 100% of the 500 members to

approve the dissolution as required by Corporations Code section 8724 but there is no material fact with supporting evidence to this effect within the separate statement.

The material facts set forth in the separate statement are insufficient to support the conclusion that there is no cause of action to dissolve an association. As such, defendants have not met their burden to summarily adjudicate the issue.

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: jyh on 5/6/24 .
(Judge's initials) (Date)

(27)

<u>Tentative Ruling</u>

Re: ***Larissa Sherman v. William Christiansen***
Superior Court Case No. 23CECG03651

Hearing Date: May 8, 2024 (Dept. 503)

Motion: By Plaintiff for Default Judgment

Tentative Ruling:

To deny, without prejudice.

Explanation:

Plaintiff's requested judgment of $184,395.45 exceeds the $170,000 prayed for in the complaint. (Code Civ. Proc., § 585, subd. (b) ["The court shall … render judgment in the plaintiff's favor … not exceeding the amount stated in the complaint … as appears by the evidence to be just."].) In addition, although plaintiff's declaration references escrow accounts, balances, and credits, there is no documentary evidence offered to support these representations. (*Taliaferro v. Hoogs* (1963) 219 Cal.App.2d 559, 560 [a "default judgment … can be entered only upon proof to the court of the damage sustained."].)

Furthermore, counsel's declaration confirms attorneys' fees and costs are sought pursuant to the terms of the promissory note. (Newsum, Decl., ¶ 8.) However, the promissory note was omitted from the version of the complaint filed with the court, and the body of the complaint does not reference the recovery of attorneys' fees and costs. A defaulted defendant only admits well pleaded facts (*Vasey v. California Dance Co*. (1977) 70 Cal.App.3d 742, 749), as framed by the damages sought both by the prayer and the allegations in the body of the complaint. (*National Diversified Services, In. v. Berstein* (1985) 168 Cal.App.3d 410, 417-418.)

Considering the absence of documentary evidence of indebtedness and notice to defendants of the amount demanded, plaintiff's request for default judgment is insufficiently supported and must be 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: <u>jyh</u> on <u>5/6/24</u> .
(Judge's initials) (Date)

(36)

<u>Tentative Ruling</u>

Re: ***Leaf Capital Funding, LLC v. Green, et al.***
Superior Court Case No. 23CECG02532

Hearing Date: May 8, 2024 (Dept. 503)

Motion: by Plaintiff to Strike Defendant Legacy – Make Your Mark LLC's Answer

Tentative Ruling:

To grant the motion to strike the answer filed on September 5, 2023 as to Legacy – Make Your Mark LLC ("Legacy") only, with Legacy granted 30 days leave to file an amended answer showing representation by a licensed attorney. (Code Civ. Proc., § 436, subd. (b).) Legacy's default may not be taken during the 30-day leave to amend period. The time in which the answer may be amended will run from service by the clerk of the minute order.

Explanation:

The court previously continued plaintiff's motion to strike to allow time for the parties to meet and confer on the issue. Plaintiff's counsel, Stephanie J. Schiern, has filed a declaration indicating that the parties have properly met and conferred.

The court may "[s]trike out any irrelevant, false, or improper matter inserted in any pleading." (Code Civ. Proc., § 436, subd. (b).)

Corporations may not represent themselves before the court in *propria persona*, nor can corporations represent themselves through their officers, directors, or any other employee who is not an attorney. (*CLD Construction, Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1145.) Corporations must be represented by an appropriately licensed attorney in court proceedings. (*CLD Construction, Inc. v. City of San Ramon*, *supra*, 120 Cal.App.4th 1141, 1145.) The only exception to this rule would be for small claims matters. (*Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, fn. 5; *Van Gundy v. Camelot Resorts, Inc.* (1983) 152 Cal.App.3d Supp. 29, 30.) The prohibition against corporations appearing in *propria persona* is because a corporation is an artificial entity that can only act through natural persons. (*CLD Construction, Inc. v. City of San Ramon*, *supra*, 120 Cal.App.4th 1141, 1146.) If the corporation's representative is not an attorney, that person would be engaged in the unlicensed practice of law. (*Ibid*.)

The rule requiring that a licensed attorney represent a corporation is not limited to the application to corporations but also applies to other entities. The fundamental rule is that "[a] person who is not an attorney authorized to practice law in this state cannot represent anyone other than himself." (*Roddis v. Strong* (1967) 250 Cal.App.2d 304, 311.) Accordingly, it should then follow that the rule applies whenever a private individual seeks to represent another person or entity, such as a limited liability company.

The court may prevent an unlicensed person from appearing in a court proceeding. (*Van Gundy v. Camelot Resorts, Inc., supra,* 152 Cal.App.3d Supp. 29, 31.) However, the court also has a duty to inform the representative of a corporation, or here, a limited liability company, of the requirement that it be represented by a licensed attorney. (*Id.* at p. 32.)

Accordingly, the motion to strike the answer is granted as to Legacy is granted. The court will allow 30 days leave for Legacy to file an amended answer showing representation by a licensed attorney.

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: jyh on 5/6/24.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Parra, et al. v. General Motors, LLC***
Superior Court Case No. 23CECG00441

Hearing Date: May 8, 2024 (Dept. 503)

Motion: Defendant's Demurrer and Motion to Strike Portions of the First Amended Complaint

Tentative Ruling:

To continue the demurrer and motion to strike to Thursday, June 13, 2024, at 3:30 p.m., in Department 503, in order to allow the parties to meet and confer *in person or by telephone*, as required. If this resolves the issues, defense counsel shall call the court to take the motions off calendar. If it does not resolve the issues, defense counsel shall file a declaration, on or before Thursday, June 6, 2024, at 5:00 p.m., stating the efforts made.

Explanation:

Defendant did not satisfy the requirement to meet and confer prior to filing the demurrer and motion to strike. Code of Civil Procedure, sections 430.41 and 435.5 make it very clear that meet and confer must be conducted in person or by telephone prior to filing a demurrer and/or motion to strike. 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. (Code Civ. Proc., §§ 430.41, subd. (a)(3)(B) [demurrer]; 435.5, subd. (a)(3)(B) [motion to strike].) The evidence did not show a bad faith refusal to meet and confer on plaintiff's part that would excuse defendant from complying with the statute.

The parties must engage in good faith meet and confer, in person or by telephone, as set forth in the statutes. The court's normal practice in such instances is to take the motions off calendar, subject to being re-calendared once the parties have met and conferred. However, given the extreme congestion in the court's calendar currently, the court will instead continue the hearing to allow the parties to meet and confer, and only if efforts are unsuccessful will it rule on the merits.

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: jyh on 5/6/24 .
(Judge's initials) (Date)