Tentative Rulings for June 26, 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.***

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

23CECG00493 ***Bhagwan Kaur v. Palka Bazar, LLC*** **is continued to Thursday, August 21, 2025 at 3:30 p.m. in Department 503**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

Begin at the next page

(03)

Tentative Ruling

Re: ***Thandi v. Singh***
Case No. 25CECG00604

Hearing Date: June 26, 2025 (Dept. 503)

Motion: Defendant Singh's Motion to Dismiss or Stay Action Pursuant to CCP § 410.30

If oral argument is timely requested, it will be entertained on Thursday, July 24, 2025, at 3:30 p.m. in Department 503.

Tentative Ruling:

To deny defendant Singh's motion to dismiss or stay the action pursuant to Code of Civil Procedure section 410.30. To order Singh to file his responsive pleading within ten days of the date of service of this order.

Explanation:

First, defendant's notice of motion states that he is moving to dismiss the action based on the argument that California lacks personal jurisdiction over him, because defendant is not "at home" in California and the lawsuit does not involve any entities registered or located in California and does not arise out of any conduct directed at California. (Notice of Motion, p. 2, lines 1-15.) However, defendant makes no further mention of these arguments in his points and authorities brief, nor does he cite to any legal authorities or evidence that would tend to show that the court lacks personal jurisdiction over him. As a result, he has waived the argument that California lacks personal jurisdiction over him.

In any event, even if the court were to consider the merits of the defendant's personal jurisdiction argument, plaintiff has submitted ample evidence to show that California has personal jurisdiction over defendant. According to plaintiff's evidence, defendant owns at least two parcels of residential real property in California, including one that is his personal residence and which also serves as location for his travel agency business. (Thandi decl., ¶¶ 2, 3, Freeman decl., ¶ 3, and Exhibit A thereto.) He also owns and operates several businesses in California, including a travel agency in Fresno, Aashian Travels, as well as businesses in Antioch, Canoga Park, New Hall, Bakersfield, and Los Angeles. (Thandi decl., ¶¶ 2, 3.) Defendant's businesses are incorporated and registered with the California Secretary of State. (*Id*. ¶ 2, see also plaintiff's Request for Judicial Notice, Exhibits 1-8. The court will take judicial notice of the articles of incorporation for defendant's businesses and the fact that defendant operates businesses in California under Evidence Code section 452, subds. (c) and (f).) Defendant admits that he owns a residence in California, although he claims that he spends about two-thirds of his time in Washington State because his businesses there require close attention. (Singh decl., ¶ 7.) He also does not deny that he owns and operates several businesses in California.

Thus, based on the evidence before the court, defendant is a California resident who owns several parcels of property in California, as well as owning and operating several businesses within California. As a result, there is more than enough evidence to conclude that California has properly exercised personal jurisdiction over defendant, and consequently defendant is not entitled to have the action dismissed or service of the summons and complaint quashed due to lack of jurisdiction. (*Zehia v. Superior Court* (2020) 45 Cal.App.5th 543, 551; *Vons Companies, Inc. v. Seabest Foods, Inc*. (1996) 14 Cal.4th 434, 445.)

Next, defendant's primary contention is that the case should be dismissed or stayed because California is an inconvenient forum to try the dispute, which is based on the parties' alleged partnership to own and operate several Subway restaurants in Washington State. Defendant moves to dismiss or stay the action under Code of Civil Procedure section 410.30, which states that, "[w]hen a court upon motion of a party or its own motion finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just." (Code Civ. Proc., § 410.30, subd. (a).)

"A defendant, on or before the last day of his or her time to plead or within any further time that the court may for good cause allow, may serve and file a notice of motion for one or more of the following purposes: … To stay or dismiss the action on the ground of inconvenient forum." (Code Civ. Proc., § 418.10, subd. (a)(2).) Thus, a motion to stay or dismiss the action must normally be brought within the time in which the defendant may file its answer or other responsive pleading, although the court has the discretion to hear a late-filed motion of there is good cause to do so.

Here, defendant did not bring his motion to dismiss or stay the action within 30 days of being served. In fact, he did not file his motion until April 30, 2025, well over 30 days after he was served with the summons and complaint. Defendant concedes that his motion was not brought within the statutory time for bringing such motions. Thus, his motion to dismiss or stay is untimely. Nevertheless, the parties have stipulated to an extension of time for defendant to file his responsive pleading until May 8, 2025, so the motion's untimeliness does not necessarily bar the court from hearing the merits of the motion. In light of the parties' stipulation, the court will hear the merits of the motion despite its untimeliness.

However, the defendant has not met his burden of showing that California is such an inconvenient forum that dismissal or stay of the action is warranted. In the seminal case of *Stangvik v. Shiley Inc*. (1991) 54 Cal.3d 744, the California Supreme Court explained that "[f]orum non conveniens is an equitable doctrine invoking the discretionary power of a court to decline to exercise the jurisdiction it has over a transitory cause of action when it believes that the action may be more appropriately and justly tried elsewhere. The doctrine was first applied in California in *Price v. Atchison, T. & S. F. Ry. Co.* (1954) 42 Cal.2d 577 [268 P.2d 457, 43 A.L.R.2d 756] (hereafter Price). We described the basis of the doctrine as follows: ' "There are manifest reasons for *preferring residents* in access to often overcrowded Courts, both in convenience and in the fact that broadly speaking it is they who pay for maintaining the Courts concerned." ... [T]he injustices and the burdens on local courts and taxpayers, as well as on those leaving their

work and business to serve as jurors, which can follow from an *unchecked and unregulated importation of transitory causes of action for trial in this state* ... require that our courts, acting upon the equitable principles ..., exercise their discretionary power to decline to proceed in those causes of action which they conclude, on satisfactory evidence, may be more appropriately and justly tried elsewhere.'" (*Stangvik, supra*, at p. 751, citations omitted italics added.)

"On a motion for forum non conveniens, the defendant, as the moving party, bears the burden of proof. The granting or denial of such a motion is within the trial court's discretion, and substantial deference is accorded its determination in this regard." (*Ibid*, citations omitted.) "The high court recognized that there is 'ordinarily a strong presumption in favor of the plaintiff's choice of forum', but held that *a foreign plaintiff's choice deserves less deference than the choice of a resident*." (*Id*. at p. 753, citations omitted, italics added.)

Thus, the Supreme Court in *Stangvik* was more concerned about foreign plaintiffs filing actions in California and congesting California courts with their claims than with California plaintiffs bringing their claims in California courts. "Many cases hold that the plaintiff's choice of a forum should rarely be disturbed unless the balance is strongly in favor of the defendant. But the reasons advanced for this frequently reiterated rule apply only to residents of the forum state: (1) if the plaintiff is a resident of the jurisdiction in which the suit is filed, the plaintiff's choice of forum is presumed to be convenient; and (2) a state has a strong interest in assuring its own residents an adequate forum for the redress of grievances… Where, however, the plaintiff resides in a foreign country, *Piper* holds that the plaintiff's choice of forum is much less reasonable and is not entitled to the same preference as a resident of the state where the action is filed." (*Id*. at pp. 754–755, citations omitted.) "Defendant's residence is also a factor to be considered in the balance of convenience." (*Id*. at p. 755.)

"Because the dismissal of an action results in California's loss of jurisdiction over the matter, it has long been the rule… that an action brought by a California resident may not be dismissed on grounds of forum non conveniens except in extraordinary circumstances." (*Century Indemnity Co. v. Bank of America* (1997) 58 Cal.App.4th 408, 41, citations and footnote omitted.)

In the present case, both plaintiff and defendant are residents of California, so there is a strong presumption that plaintiff's choice of forum is proper and convenient. This is not a case where a foreign plaintiff has sought to take advantage of California law by filing a case here even though plaintiff has no real connection to the state. Both plaintiff and defendant have strong connections to California, since they both live here and defendant owns and operates multiple businesses here. Also, the subject contract was entered into in California, and plaintiff paid defendant money in California in performance of his duties under the contract. He asserts that defendant broke California laws regarding contracts, partnerships, and fraud when he induced plaintiff to enter into the contract and pay tens of thousands of dollars to him, and then refused to perform his duties under the agreement. Therefore, there is a strong presumption that plaintiff is entitled to try his claims in California, and defendant is not entitled to dismiss the action for lack of convenience unless he makes a showing that there are extraordinary circumstances warranting such relief.

"In determining whether to grant a motion based on forum non conveniens, a court must first determine whether the alternate forum is a 'suitable' place for trial." (*Stangvik, supra*, at p. 751.) The action will not be dismissed or stayed in California if the defendant cannot be subjected to jurisdiction in the other state, or if plaintiff's cause of action would be barred by the statute of limitations. (*Id*. at p. 752.) However, the defendant may stipulate to jurisdiction in the other state and to waive the statute of limitations, and thus establish that the other state's court is suitable for trial of the action. (*Ibid*; see also *Hahn v. Diaz-Barba* (2011) 194 Cal.App.4th 1177, 1190.)

In the present case, defendant has offered to stipulate to jurisdiction in Washington, and he has also offered to stipulate to a reasonable extension of any statute of limitations defense so that plaintiff can file his action in Washington. (Singh decl., ¶¶ 8, 9.) Plaintiff does not argue that Washington will be unable to provide any remedy for him, or that it would not be a suitable jurisdiction to hear the matter. Therefore, defendant has met his burden of showing that Washington is a suitable forum for the trial of the action.

On the other hand, defendant has not met his burden of showing that the private and public factors weigh in favor of dismissing or staying the case. If defendant shows that there is another suitable jurisdiction to hear the case, "the next step is to consider the private interests of the litigants and the interests of the public in retaining the action for trial in California. The private interest factors are those that make trial and the enforceability of the ensuing judgment expeditious and relatively inexpensive, such as the ease of access to sources of proof, the cost of obtaining attendance of witnesses, and the availability of compulsory process for attendance of unwilling witnesses. The public interest factors include avoidance of overburdening local courts with congested calendars, protecting the interests of potential jurors so that they are not called upon to decide cases in which the local community has little concern, and weighing the competing interests of California and the alternate jurisdiction in the litigation." (*Stangvik*, *supra*, at p. 751, citations omitted.)

Here, defendant contends that the private and public factors weigh in favor of dismissal. With regard to the private factors, defendant argues that California is an inconvenient forum to try the case because most of the sources of proof, such as witnesses, documents, and bank accounts are in Washington rather than California. He points out that the Subway franchises are in Washington, so all witnesses and documents are in Washington as well. He also argues that it would also be expensive and inconvenient to have the witnesses appear in California, since most of the witnesses reside in Washington. In addition, defendant argues that California will not be able to compel the Washington witnesses to appear in California for depositions or trial. He also claims that the court will be unable to enforce its judgments and orders in Washington. He contends that it would be expensive and impractical to have the witnesses appear in California for trial or depositions.

However, the contract was entered into in California and both plaintiff and defendant are California residents, so not all witnesses and documents will be in Washington. There will be witnesses and evidence in California, since that is where the

parties formed the contracts and where plaintiff allegedly paid defendant to invest in the franchises.

Also, even if many of the witnesses are in Washington, they can still appear at deposition or even trial by videoconference technology like Zoom. Documents are also accessible electronically, or they can be sent through emails or by FedEx or UPS if necessary. If witnesses do need to appear personally, they can fly to Fresno in a few hours. Thus, defendant has not shown that it would be a great burden or inconvenience for him to gather evidence, documents, or witnesses, even if they are primarily located in Washington.

In addition, defendant has failed to show that the California court cannot subpoena the witnesses in Washington. Indeed, as plaintiff points out, California subpoenas can be enforced in Washington by having the subpoena sent to the Washington court clerk, who would then issue a Washington subpoena that is substantially identical to the California subpoena. (Wash. Rev. Code Ann. § 5.51.020.) Thus, defendant has failed to show that California cannot compel discovery of witnesses and documents in Washington.

Nor has defendant shown that the California court would be unable to enforce its judgments or orders in Washington. Plaintiff can enforce any judgment he obtains in Washington by registering a copy of the judgment with the court in Washington. The judgment would then be enforceable as if it were a Washington judgment. (Wash. Rev. Code Ann. § 6.36.025.) As a result, defendant is incorrect that plaintiff cannot enforce a California court's judgment or orders in Washington. In summary, defendant has not met his burden of showing that the private factors weigh in favor of dismissing or staying the case so that it can be tried in Washington.

Nor has defendant shown that the public factors weigh in favor of dismissing or staying the case. Defendant contends that it would create an undue burden on California courts to try this action, which would add to the court's already congested calendar. He also argues that California has no interest in trying the case, which involves a dispute over Washington Subway franchises. He contends that the only connection with California is that he owns a house in California, and that the case is complex and will take ten or more days to try. He claims that it will require expert testimony about the Subway franchise system. Also, he contends that witnesses will have to travel from Washington, which will create challenges and delays. The court will also have to resolve choice of law issues, as it may have to apply Washington substantive law to plaintiff's claims.

However, defendant is overstating the complexity of the case and the problems with trying it. Plaintiff has alleged a fairly simple action for breach of a partnership agreement, fraud, and related claims. There do not appear to be any complex or difficult issues that are presented by the complaint. Also, unlike the situation in *Stangvik*, where there were over 200 separate actions filed by different plaintiffs from various countries, here there is only one case between two parties, both of whom reside in California. Thus, trying the case would not be likely to cause any undue strain on the court's calendar. In fact, California courts handle hundreds of similar cases every day.

In addition, California has a strong interest in assuring that its residents have their claims tried and resolved fairly and efficiently. The plaintiff's claims also have a clear connection to California, since the alleged contracts were induced, formed, and at least partially performed in California. In fact, California has a stronger interest in the case than Washington, since the rights of its residents are at issue here, whereas than the rights of Washington residents are not likely to be affected by the outcome of the case.

Furthermore, while defendant claims that the court would have to apply Washington law to resolve plaintiff's claims, there does not appear to be any reason why plaintiff's claims cannot be resolved using California substantive law, including the law of contracts, partnerships, and fraud. Thus, there is no reason to believe that California courts would be unduly burdened by keeping the case in California.

While defendant argues that it would protect the interests of the jurors to dismiss the case and refile it in Washington, as the jurors would have little interest in a case that involves Washington Subway franchises and they will have to try a complex case that involves Washington law, again defendant is overstating the burden on the jurors. Since the case is fundamentally a dispute between two California residents and involves a contract that was formed and partially performed in California, it would not be an unreasonable burden on a jury to hear it. Also, defendant offers no evidence to support his claim that the case is a "complex action, involving extensive medical, scientific and technical issues." (Points and Authorities brief, p. 10, lines 15-16.) There is no reason to believe that this apparently simple contract and fraud action will involve any "medical, scientific and technical issues." Nor does it seem likely that the jurors will have to apply Washington law to resolve plaintiff's claims, which are based on California contract and fraud law. In any event, the court will be the one to instruct them on the correct law to apply, so there should be no undue burden on the jurors from having to consider which laws to apply.

Finally, defendant argues that Washington has a greater interest in the litigation than California, since the Subway franchises are located in Washington and most of the evidence and witnesses will be found in Washington. However, as discussed above, California has a greater interest in the case than Washington. Both plaintiff and defendant are residents of California, and defendant owns multiple businesses in California. The contract was entered into in California, and plaintiff paid money to defendant to perform his duties under the contract in California. California has a strong interest in protecting the rights of its citizens, including the right to enforce contracts and protect against fraud. While the subject Subway franchises are located in Washington, any interest that Washington might have in the case is outweighed by the interest that California has in ensuring that its citizens can bring their claims for violation of their rights in their home state.

Therefore, defendant has failed to meet his burden of showing that the plaintiff's chosen forum, which is presumptively proper, is so inconvenient that his case must be dismissed and refiled in Washington. As a result, the court intends to deny the motion to dismiss or stay the case and order defendant to file his responsive pleading.

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 6/13/2025.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Schroeder, et al. v. King***
Superior Court Case No. 25CECG02293

Hearing Date: June 26, 2025 (Dept. 503)

Motion: Petition to Confirm Arbitration Award

If oral argument is timely requested, it will be entertained on Thursday, July 24, 2025, at 3:30 p.m. in Department 503.

Tentative Ruling:

To deny without prejudice. (Code Civ. Proc., §1290.2, 415.20.)

Explanation:

"If a petition or response under this chapter is duly served and filed, the court shall confirm the award as made, whether rendered in this state or another state, unless in accordance with this chapter it corrects the award and confirms it as corrected, vacates the award or dismisses the proceeding." (Code Civ. Proc., § 1286; see also *Brinker v. Super. Ct.* (1991) 235 Cal.App.3d 1296.)

The petition must be served as required by the arbitration agreement. (Code Civ. Proc., § 1290.2.) Where the arbitration agreement does not designate the manner of service, the petition must be served in the same manner as normal service during litigation under Code of Civil Procedure section 1010 et seq., or as required for the service of a summons if the respondent has not previously appeared or been served. (Code Civ. Proc., § 1290.4.)

Here, it does not appear that the arbitration agreement designates the manner of service and the respondent has not previously appeared or served in this action. The proof of service accompanying the petition and notice of hearing indicate that the papers were served by substitute service. The proof of service indicates that the papers were delivered on June 3, 2025 to respondent's daughter at his regular place of abode, and thereafter mailed to his address on June 4, 2025. (See the Proof of Service.)

Substitute service of the summons is governed by Code of Civil Procedure section 415.20, which provides two methods of service depending on whether the defendant/respondent is an individual or other entity. For corporations, joint stock companies or associations, unincorporated associations, or public entities, a copy of the petition may be served by leaving a copy of the petition "during usual office hours in his or her office or, if no physical address is known, at his or her usual mailing address, . . ., with the person who is apparently in charge thereof, and by thereafter mailing a copy . . . to the person to be served. . ." (Code Civ. Proc., § 415.20, subd. (a).) For individual persons, "*[i]f a copy of the [petition] cannot with reasonable diligence be personally delivered to the person to be served*. . ." then the petition may be served by leaving a

copy "at the person's dwelling house, usual place of abode, usual place of business, or usual mailing address. . ., in the presence of a competent member of the household or a person apparently in charge. . ., and by thereafter mailing a copy. . . by first-class mail. . ." (Code Civ. Proc., § 415.20, subd. (b), emphasis added.)

Here, however, seemingly without any regard to their having named respondent as an individual in this proceeding, petitioners have not adhered to either of the two methods described in subdivisions (a) or (b) of Code of Civil Procedure section 415.20. Assuming petitioners attempted to serve respondent pursuant to subdivision (a), serving an occupant at respondent's usual place of abode is not an appropriate location for service. Assuming petitioners have attempted to serve respondent pursuant to subdivision (b), an affidavit of due diligence is not submitted to show that reasonable diligence to personally serve respondent was attempted prior to the substitute service. Accordingly, the petition is denied without prejudice.

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 6/24/2025.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re:	***Giumarra Brothers Fruit Co. v. Mora*** Superior Court Case No. 23CECG03466
Hearing Date:	June 26, 2025 (Dept. 503)
Motion:	(1) By Cross-Defendant Giumarra Brothers Fruit Company on Demurrer to First Amended Cross-Complaint (2) By Cross-Defendant Giumarra Brothers Fruit Company on Motion to Strike Portions of First Amended Cross-Complaint

Tentative Ruling:

To sustain the general demurrer as to the Third Cause of Action for Promissory Fraud; Fourth Cause of Action for Conversion; Fifth Cause of Action for Receipt of Stolen Goods; Sixth Cause of Action for Negligent and Intentional Interference with Prospective Economic Advantage; and Ninth Cause of Action for Fraudulent Misrepresentation and Concealment. (Code Civ. Proc. § 430.10, subd. (e).) To overrule as to the Seventh Cause of Action for Breach of Fiduciary Duty. (Code Civ. Proc. § 430.10, subd. (e).)

To grant the motion to strike the prayer for punitive damages as to the Third, Furth, Sixth, and Ninth Causes of Action, with leave to amend. To deny the motion to strike the prayer for punitive damages as to the Seventh Cause of Action. To grant the motion to strike the prayer for treble damages as to the Fifth Cause of Action, with leave to amend. To grant the motion to strike the prayer for general and special damages "on all causes of action", with leave to amend.

Cross-Complainant Cesar Mora shall serve and file an amended complaint within 10 days of the date of service of this minute order by the clerk. All new allegations shall be in **boldface**.

If oral argument is timely requested, it will be entertained on Thursday, July 24, 2025, at 3:30 p.m. in Department 503.

Explanation:

Demurrer

Cross-Defendant Giumarra Brothers Fruit Company ("Cross-Defendant") demurs to the First Amended Cross-Complaint ("FACC") filed by Cross-Complainant Cesar Mora ("Cross-Complainant") on the grounds that the third, fourth, fifth, sixth, seventh, and ninth causes of action fail to state sufficient facts. The causes of action, respectively, are for promissory fraud; conversion; receipt of stolen goods; negligent and intentional interference with economic advantage; breach of fiduciary duty; and fraudulent misrepresentation and concealment.

On a demurrer a court's function is limited to testing the legal sufficiency of the complaint. A demurrer is simply not the appropriate procedure for determining the truth of disputed facts. (*Fremont Indemnity Co. v. Fremont General Corp*. (2007) 148 Cal.App.4th 97, 113-114.) In determining a demurrer, the court assumes the truth of the facts alleged in the complaint and the reasonable inferences that may be drawn from those facts. (*Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 883.) The court must determine if the factual allegations of the complaint are adequate to state a cause of action under any legal theory. (*Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 103.)

Contentions, deductions, and conclusions of law, however, are not presumed as true. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.) A plaintiff is not required to plead evidentiary facts supporting the allegation of ultimate facts; the pleading is adequate if it apprises the defendant of the factual basis for the plaintiff's claim. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) When the complaint is defective, great liberality should be exercised in permitting a plaintiff to amend the complaint if there is a reasonable possibility that the defect can be cured by amendment. (*Scott v. City of Indian Wells* (1972) 6 Cal.3d 541, 549.)

Promissory Fraud and Fraudulent Misrepresentation

The elements which give rise to a tort action for fraud are: (1) a misrepresentation (concealment); (2) knowledge of the falsity; (3) intent to defraud or induce reliance; (4) justifiable reliance; and (5) resulting damages. (*Engalla v. Permanente Medical Group, Inc*. (1997) 15 Cal.4th 951, 974.) The elements of promissory fraud are the same as misrepresentation, where the misrepresentation is specifically a promise made by a defendant which the defendant did not intend to keep. (*Id.* at pp. 973-974.) Fraud must be pled specifically; general and conclusory allegations do not suffice. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) The policy of liberal construction of pleadings will not ordinarily be invoked to sustain a pleading defective in any material respect for allegations of fraud. (*Ibid.*) The requirement necessitates pleading facts which show how, when, where, to whom, and by what means the representations were tendered. (*Ibid.*)

Cross-Defendant submits that the FACC fails to allege any representations or promises made. The FACC fails to sufficiently allege misrepresentations and false promises. While the FACC identifies an actor, Jeanine Martin, the FACC does not actually state any promises or misrepresentations by Martin. (*See* FACC, ¶ 28.) Rather, as Cross-Defendant submits, the FACC merely states expectations based on a marketing agreement. The FACC does not state upon what representations and promises these expectations relied. While some contentions of ultimate facts may be conclusory due to a defendant's superior knowledge (*e.g.*, *Cansino v. Bank of Am.* (2014) 224 Cal.App.4th 1462, 1469), Cross-Defendant does not hold superior knowledge as to what misrepresentations and promises Cross-Complainant contends were made. Specifically as to the fraudulent misrepresentation cause of action, while the FACC does identify a misrepresentation that culls were discarded rather than resold, the misrepresentation is not attributed to an actor.

For the above reasons, the demurrer is sustained as to the third and ninth causes of action for promissory fraud and fraudulent misrepresentation and concealment, with leave to amend.

Conversion

The elements of a cause of action for conversion are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of the property rights; and (3) damages. (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1240.)

Cross-Defendant submits, in effect, that this cause of action is subject to the economic loss doctrine. Cross-Defendant submits that the conversion cause of action is an attempt to reframe a breach of contract claim. As pled, the conversion cause of action is a restatement of a breach of contract claim. The FACC specifically identifies that the marketing agreement allowed Cross-Defendant to cull product either by destruction or sale. (FACC, ¶ 15(a).) Cull sales, net of handling costs, were to be distributed to Cross-Complainant. (*Ibid.*) The conversion cause of action arises out of wrongful control of money received from culled sales which Cross-Defendant is alleged to have refused to pay. (*Id.*, ¶¶ 36-41.) This is an economic damage arising out of a contractual obligation. Conduct amounting to a breach of contract becomes tortious only when it also violates a duty independent of the contract arising from the principles of tort law. (*Erlich v. Menezes* (1999) 21 Cal.4th 543, 551.)

In opposition, Cross-Complainant relies on *Mendoza v. Continental Sale Company*, which he argues allows for a conversion cause of action under similar facts. (*Mendoza v. Continental Sales Co.* (2006) 140 Cal.App.4th 1395, 1404 ["*Mendoza*"].) However, the facts of *Mendoza* are inapposite. There, the allegation was not that the proceeds of the culled sales at all, as here. There the allegation was that the defendant sold culled fruit at a price higher than reported and kept the difference. (*Id.* at pp. 1404-1405.)[1]

The demurrer as to the fourth cause of action for conversion is sustained, with leave to amend.

Receipt of Stolen Property

Every person who receives any property that has been stolen or that has been obtained in any manner constituting theft, knowing the property to be so stolen or obtained, or who conceals, sells, withholds any property from the owner, knowing the property to be so stolen or obtained is liable for three times the amount of actual damages. (Pen. Code § 496, subd. (c).)

[1] Neither is *Fischer v. Machado*, (1996) 50 Cal.App.4th 1069, instructive. There was no question pending as to whether the conversion considered in that case was subsumed by a contractual obligation. (*See ibid.*) Rather, it appears that the only cause of action stated was for conversion. (*Id.* at p. 1071.) The only question discussed was whether a principal in an agentive relationship is entitled to dominion and control over proceeds of a sale held by the agent. (*Id.* at pp. 1073, 1074.)

Cross-Defendant submits that this cause of action fails to allege the above, and confusingly cites to the Civil Code and criminal theft statutes. As both parties acknowledge, to prove a theft, the plaintiff must establish criminal intent on the part of the defendant beyond mere proof of nonperformance or actual falsity. (*Siry Investment, L.P. v. Farkhondehpour* (2022) 13 Cal.5th 333, 361.) This is to prevent ordinary commercial defaults from being transformed into theft. (*Ibid.*) If misrepresentations or unfulfilled promises are made innocently or inadvertently, they can no more form the basis for a prosecution for obtaining property by false pretenses than can an innocent breach of contract. (*Ibid.*)

Here, the FACC alleges theft by false pretense, or fraud. (FACC, ¶ 45.) The FACC alleges that Cross-Defendant sold culled fruit and received money, used for its own exclusive benefit with an intent to deprive Cross-Complainant. (*Ibid*.) The statement is conclusory. No other facts alleged support the conclusion. Cross-Complainant suggests that the allegations of visiting the culling facility and viewing the process, coupled with allegations that he never received the proceeds is sufficient. It is not, and would be indistinguishable from "commercial default" without any allegations as to knowledge and intent.

The demurrer as to the fifth cause of action for receipt of stolen property is sustained, with leave to amend.

Negligent and Intentional Interference

Intentional interference with prospective economic advantage has five elements: (1) the existence, between the plaintiff and some third party, of an economic relationship that contains the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentionally wrongful acts designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm proximately caused by the defendant's action. (*Roy Allan Slurry Seal, Inc. v. American Asphalt South, Inc.* (2017) 2Cal.5th 505, 512.) Negligent interference with prospective economic relations carries the same elements as intentional interference, substituting the element of an intentionally wrongful act designed to disrupt to the relationship to the defendant's knowledge, actual or constructive, that the relationship would be disrupted if the defendant failed to act with reasonable care, and failed to act with reasonable care. (*Redfearn v. Trader Joe's Co.* (2018) 20 Cal.App.5th 989, 1005.)

Cross-Defendant submits that the cause of action fails because there are no allegations of relationships with a third party. Upon review of the FACC, the cause of action fails to allege the existence of an economic relationship between Cross-Complainant and a third party. Cross-Complainant submits that Cross-Defendant interfered with third parties who purchased Cross-Complainant's fruit on consignment. This allegation is not on the face of the FACC. If this be the basis for the cause of action, the FACC fails to allege it.[2]

[2] Neither is it clear, as Cross-Defendant argues, whether third party purchasers in this situation are in an economic relationship with Cross-Complainant, rather than Cross-Defendant, who is alleged to have acted as the seller. (*See Blank v. Kirwan* (1985) 39 Cal.3d 311, 329, 330.)

The demurrer to the sixth cause of action for negligent and intentional interference with prospective economic advantage is sustained, with leave to amend.

Breach of Fiduciary Duty

To plead a cause of action for breach of fiduciary duty, there must be a fiduciary duty, a breach of that duty, and damages proximately caused. (*Mosier v. Southern Cal. Physicians Ins. Exchange* (1998) 63 Cal.App.4th 1022, 1044.) A fiduciary relationship is any relationship existing between parties to a transaction wherein one of the parties is in duty bound to act with the utmost good faith for the benefit of the other party. (*Wolf v. Superior Court* (2003) 107 Cal.App.4th 25, 29.) Such a relation ordinarily arises where a confidence is reposed by one person in the integrity of another, and in such a relation the party in whom the confidence is reposed, if he voluntarily accepts or assumes to accept the confidence, can take no advantage from his acts relation to the interest of the other party without the latter's knowledge or consent. (*Ibid.*)

Cross-Defendant submits that the cause of action fails to state facts sufficient to establish a fiduciary duty, referring only to agency. However, as Cross-Complainant argues, an agency relationship is both consensual and fiduciary. (*Fisher v. Machado*, *supra*, 50 Cal.App.4th 1069, 1072.) Here, the FACC alleges that Cross-Defendant was an agent of Cross-Complainant for marketing and selling Cross-Complainant's fruit. (FACC, ¶ 55.) The FACC alleges in conclusory fashion that Cross-Defendant breached its fiduciary duty. However, the FACC furthers alleges in support that Cross-Defendant operated as a packer, selling fruit on consignment. (*Id.*, ¶¶ 10, 12.) The FACC reasonably infers that Cross-Defendant was subject to federal law, the Perishable Agricultural Commodities Act. (*Id.*, ¶ 15.) The FACC alleges that Cross-Defendant routinely sold Cross-Complainant's fruit on price adjustment without contact or approval as required by federal law. (*Id.*, ¶¶ 21, 22.) The FACC alleges that Cross-Defendant unfairly manipulated costs causing damages to Cross-Complainant's profits. (FACC, ¶ 23.)

Based on the above, the demurrer to the seventh cause of action for breach of fiduciary duty is overruled.

Motion to Strike

Cross-Defendant seeks to strike portions of the FACC praying for punitive damages, treble damages, and special and general damages. Cross-Defendant submits that the FACC fails to state sufficient facts to state causes of action, and accordingly, the corresponding prayers for punitive damages on these causes of action must be stricken.

Based on the concurrent ruling on demurrer, the motion is granted as to striking the prayer for punitive damages from the Third, Fourth, Sixth, and Ninth Causes of Action, with leave to amend. The motion is denied as to punitive damages on the Seventh Cause of Action. The motion to strike the prayer for treble damages is granted as to the Fifth Cause of Action, with leave to amend.

Regarding the prayer for general and special damages across all causes of action, Cross-Defendant merely submits that the First and Second Causes of Action for

Unfair Competition and Breach of Implied Covenant of Good Faith and Fair Dealing only authorize restitution and injunctive relief. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1148.) Cross-Complainant's opposition does not address the issue. The motion to strike the prayer for general and special damages, as pled "on all causes of action" is granted, with leave to amend.

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

Tentative Ruling
Issued By: JS on 6/25/2025.
(Judge's initials) (Date)