

Tentative Rulings for June 8, 2023
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.

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Tentative Rulings for Department 503

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Tentative Ruling

Re: **Ramirez v. Farmers Insurance**
Superior Court Case No. 22CECG00341

Hearing Date: June 08, 2023 (Dept. 503)

Motion: Defendant's Demurrer to the Complaint

Tentative Ruling:

To sustain, with leave to amend, the demurrer to the first and only cause of action in the First Amended Complaint, for uncertainty and failure to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e); (f).) Plaintiff Roberto Martinez Ramirez is granted 20 days' leave to file the second amended complaint. The time to file the second amended complaint will run from service by the clerk of the minute order.

Explanation:

Defendant Farmers Insurance demurs to the sole cause of action stemming from a motor vehicle accident, contending that the First Amended Complaint ("FAC") fails to state cause of action, there is a nonjoinder or misjoinder of parties, the FAC is vague and ambiguous, and the cause of action is time-barred by the applicable statute of limitations.

Indeed, the FAC is uncertain and fails to allege facts sufficient to state a cause of action, as it is completely devoid of any facts to apprise defendant of the issues it is being asked to defend against. It is unknown what injury plaintiff has suffered, when the injury occurred, and how defendants have caused such injury. A complaint must contain "a statement of facts constituting the cause of action..." (Code Civ. Proc., § 425.10, subd. (a)(1).)

However, since no facts are alleged in the operative complaint and no party has requested judicial notice of any matters outside of the pleading, it cannot be determined whether there is a nonjoinder or misjoinder of parties, or whether plaintiff's claims are time-barred by the applicable statute of limitations. A demurrer may only be used to challenge defects that appear on the face of the pleading, or from matters outside the pleading that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

Accordingly, the court intends to sustain the demurrer 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: jyh **on** 6/7/23.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Praetorian Insurance Company v. Haight Brown & Bonesteel, LLP***

Superior Court Case No. 20CECG01978/LEAD

Hearing Date: June 8, 2023 (Dept. 503)

Motion: By Plaintiff Praetorian Insurance Company on Motion for Sanctions Under Code of Civil Procedure Section 128.7

Tentative Ruling:

To deny.

Explanation:

Under Code of Civil Procedure section 128.7, subdivision (b),

By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met:

(1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

(3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Thus, a court may impose sanctions if the pleading was filed for an improper purpose or was indisputably without merit, either legally or factually. (*Bucur v. Ahmad* (2016) 244 Cal.App.4th 175, 189.)

If, after notice and a reasonable opportunity to respond, the court determines that there was a violation of one or more of the above conditions, the court may impose an appropriate sanction upon the attorneys, law firms, or parties that are responsible for the violation. (Code Civ. Proc., § 128.7, subd. (c).)

A sanction imposed for a violation shall be limited to what is sufficient to deter repetition of this conduct or comparable conduct by others similarly situated. (Code Civ. Proc. § 128.7, subd. (d).) Subject to limitation, the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the violation. (*Ibid.*)

Plaintiff Praetorian Insurance Company ("Praetorian") seeks an order finding that defendant Haight Brown & Bonesteel LLP ("defendant") violated Code of Civil Procedure section 128.7, subdivision (b) by filing a legally frivolous motion for summary adjudication for the improper purpose of harassment, to cause unnecessary delay, or needlessly increase the cost of litigation. Accordingly, Praetorian requests the court impose sanctions in an amount of at least \$10,000, compensating Praetorian for some of the attorney's fees incurred in opposing the motion for summary adjudication.

A claim is legally frivolous if it is not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. (*Guillemín v. Stein* (2002) 104 Cal.App.4th 156, 167.) The claim must be objectively unreasonable. (*In re Marriage of Reese & Guy* (1999) 73 Cal.App.4th 1214, 1221.) A claim is objectively unreasonable if any reasonable attorney would agree that it is totally and completely without merit. (*Guillemín v. Stein, supra*, 104 Cal.App.4th at p. 168.) The moving party bears the burden. (*Kumar v. Ramsey* (2021) 71 Cal.App.5th 1110, 1120.)

The court has broad discretion to impose sanctions if the moving party satisfies the elements for sanctions. (*Peake v. Underwood* (2014) 227 Cal.App.4th 428, 441.) The sanctions statute must not be construed so as to conflict with the primary duty of an attorney to represent his or her client zealously. (*Ibid.*) Accordingly, Code of Civil Procedure section 128.7 sanctions should be made with restraint, and are not mandatory, even if a claim is frivolous. (*Id.* at p. 448.) Sanctions should not be routinely or easily awarded even for a claim that is arguably frivolous. (*Ibid.*)

In the present case, Praetorian argues that defendant's motion for summary adjudication was legally frivolous because defendant sought adjudication of compensatory damages, and case law clearly holds that summary adjudication of damages is limited to adjudication of punitive damage claims.¹ Defendant, in opposition, restates its basis for summary adjudication as on the motion for summary adjudication. In what was and remains a muddled approach, defendant argues that the purpose of defendant seeking summary adjudication was, in its view, that Praetorian's claims all fell under one primary right, asserted through four causes of action, and the motion for summary adjudication was premised on the conclusion that Praetorian could not demonstrate that Praetorian was damaged to recover thereon.

Praetorian argues that defendant's motion for summary adjudication based on a primary right theory of subrogation was equally frivolous. As the order on the motion for summary adjudication found, the court agreed that the primary right theory asserted by defendant was unpersuasive. Moreover, the court found that defendant acknowledged

¹ Praetorian's Request for Judicial Notice is granted.

In spite of the above, the court finds sanctions unwarranted. As defendant argues in opposition, the particular facts of this matter do not appear to have been directly addressed by any prior case law that the parties have identified. Though defendant's motion for summary adjudication was unpersuasive, the sanctions statute must not be construed to conflict with the primary duty of the attorney to zealously represent his or her client. (*Peake v. Underwood, supra*, 227Cal.App.4th at p. 448.)²

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.

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(Judge's initials) (Date)

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