Tentative Rulings for July 2, 2025
Department 502

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 502

Begin at the next page

(03)

Tentative Ruling

Re: ***Irene Luque v. General Motors LLC***
Superior Court Case No. 23CECG02555

Hearing Date: July 2, 2025 (Dept. 502)

Motion: Defendant General Motors' Motion for Summary Judgment, or in the Alternative Summary Adjudication

If oral argument is timely requested, it will be entertained at 3:00 p.m.

Tentative Ruling:

To grant plaintiff's request for a continuance of the summary judgment hearing to allow plaintiff an opportunity to conduct discovery into the issue of whether defendant General Motors was acting as a distributor or dealer at the time plaintiff bought the subject vehicle. To continue the hearing to September 17, 2025 at 3:30 p.m. in Department 502. Plaintiff shall file and serve supplemental opposition by the close of business on September 3, 2025, with any reply due by the close of business on September 10, 2025.

Explanation:

GM moves for summary judgment as to plaintiff's entire complaint, or in the alternative summary adjudication of the plaintiff's three causes of action under the Song-Beverly Act. GM contends that, under the recent California Supreme Court decision of *Rodriguez v. FCA US LLC* (2024) 17 Cal.5th 189, a purchaser of a used motor vehicle with some portion of the manufacturer's warranty still in effect cannot sue the manufacturer for violation the express warranties under the Song-Beverly Act. (*Id*. at pp. 201-206.) Nor can plaintiff sue the manufacturer for violation of implied warranty, since only distributors and retail sellers are liable for breach of implied warranty. (*Nunez v. FCA US, LLC* (2021) 61 Cal.App.5th 385, 399.) Here, GM points out that plaintiff has admitted that she bought her vehicle used from Tranquility Chevrolet with about 23,000 miles on the odometer, so GM concludes that it cannot be held liable for breach of express or implied warranties under the SBA. Therefore, GM requests that the court grant summary judgment or adjudication in its favor.

In her opposition, plaintiff concedes that she purchased the vehicle used from Tranquility Chevrolet with 23,000 miles on the odometer. However, she contends that GM can still be held liable if it was involved in the sale of the vehicle to her and it was acting as a distributor of used vehicles at the time of the sale. (*Rodriguez, supra*, at p. 202; *Nunez, supra*, at p. 399.) Plaintiff claims that GM does in fact sell used vehicles and that it derives some of its profits from such used car sales. Therefore, plaintiff concludes that GM has failed to show that it cannot be held liable here, and summary judgment or adjudication should be denied. In the alternative, plaintiff requests a continuance to allow plaintiff to conduct more discovery into whether GM was acting as a distributor when the vehicle was sold to plaintiff, including the deposition of GM's person most knowledgeable.

In *Rodriguez*, the California Supreme Court held that the Song-Beverly Act's provisions regarding the sale of "new motor vehicles" do not impose liability on manufacturers for breach of express warranty where the vehicle was sold used with only a portion of the manufacturer's warranty intact, unless the manufacturer issues a new warranty with the sale or plays a substantial role in the sale of the used vehicle. "For new products, liability extends to the manufacturer; for used products, liability extends to the distributor or retail seller and not to the manufacturer, *at least where the manufacturer has not issued a new warranty or played a substantial role in the sale of a used good*." (*Id.* at p. 202, citations omitted, italics added.)

Also, in *Nunez v. FCA US LLC, supra*, 61 Cal.App.5th 385, the Court of Appeal held that the plaintiff could not state a claim for breach of implied warranty against the manufacturer of the defective vehicle, "because in the sale of used consumer goods, liability for breach of implied warranty lies with distributors and retailers, not the manufacturer, *where there is no evidence the manufacturer played any role in the sale of the used car to plaintiff*." (*Id.* at p. 398, italics added.)

"It is evident from these provisions that only distributors or sellers of *used* goods—not manufacturers of *new* goods—have implied warranty obligations in the sale of used goods. (See § 1795.5.) As one court has put it, the Song-Beverly Act provides similar remedies (to those available when a manufacturer sells new consumer goods) 'in the context of the sale of used goods, except that the manufacturer is generally off the hook.'" (*Id*. at p. 399, quoting *Kiluk v. Mercedes-Benz USA, LLC* (2019) 43 Cal.App.5th 334, 339, italics in original.)

"Of course, as *Kiluk* explains, 'the assumption baked into section 1795.5 is that the manufacturer and the distributor/retailer are distinct entities. Where the manufacturer sells directly to the public, however, it takes on the role of a retailer.' *Kiluk* involved a defendant manufacturer that 'issu[ed] an express warranty on the sale of a used vehicle' that 'would last for one year from the end of the new car warranty.' In *Kiluk*, the manufacturer 'partnered with a dealership to sell used vehicles directly to the public by offering an express warranty as part of the sales package,' and by doing so, 'stepped into the role of a retailer and was subject to the obligations of a retailer under section 1795.5.'" (*Nunez, supra,* at p. 399, quoting *Kiluk, supra*, at pp. 337, 340.) "This is not such a case. Here, plaintiff presented no evidence that defendant was 'a distributor or retail seller of used consumer goods' (§ 1795.5), or in any way acted as such." (*Nunez, supra,* at p. 399.)

In the present case, GM claims that it was not involved in the sale of the subject vehicle to plaintiff, and that plaintiff purchased the vehicle used from Tranquility Chevrolet with 23,000 miles on the odometer, so GM cannot be held liable under the SBA for breach of express or implied warranty. Plaintiff, on the other hand, contends that GM sells used vehicles and that GM has not shown that it was not acting as a distributor when the vehicle was sold to plaintiff. However, GM's representative, Bryan Jensen, has stated in his declaration that GM was not a party to the sale of vehicle to plaintiff. (Jensen decl., ¶ 5.) Thus, defendant has submitted enough evidence to meet its burden of showing that it was not acting as a dealer or distributor when the vehicle was sold to plaintiff, and thus it cannot be liable under the SBA for breach of express or implied warranties.

Plaintiff has not submitted any evidence showing that GM was involved in the sale of the subject vehicle to plaintiff. Plaintiff does cite to GM's annual report to the SEC from

2020, which plaintiff contends shows that GM sells used cars and profits from those sales. (Cao decl., Exhibit 2.) However, annual report only shows that GM sells some used vehicles, apparently primarily used rental fleet vehicles or vehicles that were used by GM employees. (Exhibit 2 to Cao decl., GM's SEC 2020 Annual Report, Form 10-K, p. 56.) The report says nothing about whether GM was acting as a dealer or distributor at the time the subject vehicle was sold to plaintiff, or whether Tranquility Chevrolet is an authorized GM dealer and that GM was effectively acting as a distributor when Tranquility sold plaintiff the vehicle. Therefore, plaintiff's evidence does not raise a triable issue of material fact with regard to whether GM can be held liable under the SBA for breach of express or implied warranties related to the subject vehicle.

Nevertheless, the court intends to grant a continuance of the summary judgment motion to allow plaintiff more time to conduct discovery into the question of whether GM was acting as a dealer or distributor of used cars at the time the vehicle was sold to plaintiff. Under Code of Civil Procedure section 437c, subdivision (h), "If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication, or both, that facts essential to justify opposition may exist but cannot, for reasons stated, be presented, the court shall deny the motion, order a continuance to permit affidavits to be obtained or discovery to be had, or make any other order as may be just."

Here, plaintiff's counsel has stated that plaintiff intends to take the deposition of GM's person most knowledgeable in order to discover whether GM was acting as a dealer or distributor when the vehicle was sold to plaintiff. (Cao decl., ¶ 11.) Counsel claims that it is very likely that further controverting evidence concerning GM's role in distributing pre-owned vehicles like the subject vehicle will be discovered. (*Ibid*.)

However, counsel's declaration is vague about what steps they have taken to depose GM's PMK, or whether they have even served a deposition notice or subpoena yet. It is also unclear what topics the PMK will be asked about. Nor has plaintiff's counsel stated how much time they need to take the deposition or conduct other discovery related to the issues raised by the motion. Plaintiff's counsel also does not explain why they delayed so long before trying to take the deposition, especially since *Rodriguez* was issued on October 31, 2024, almost eight months ago, and the present summary judgment motion was filed on April 10, 2025, over two months ago. Arguably, plaintiff's counsel should have immediately served deposition notices and other discovery to obtain any information they needed to oppose the motion as soon as it became clear that defendant was claiming that it was not liable under the SBA because it was not involved in the used vehicle sale.

Still, given the harsh consequences to plaintiff if the defendant's motion is granted, the court intends to give plaintiff an opportunity to conduct discovery into whether GM was acting as a dealer or distributor when the vehicle was sold to plaintiff. As discussed above, if plaintiff can show that GM was directly involved in selling the vehicle to plaintiff, then she might be able to raise a triable issue of fact with regard to whether the SBA imposes liability on GM. (*Rodriguez, supra*, at p. 202; *Nunez, supra*, at p. 399.) As a result, the court will grant the requested continuance of the summary judgment motion in order to give plaintiff an opportunity to discover whether GM was involved in the sale of the subject vehicle to plaintiff, and whether its involvement was substantial enough to warrant imposing liability on it despite the fact that plaintiff bought the vehicle used.

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: KCK on 07/01/25.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Michael DeRaffaele v. Jeff Crane***
Superior Court Case No. 22CECG02759

Hearing Date: July 2, 2025 (Dept. 502)

Motion: By Plaintiff for Entry of Default Judgment

If oral argument is timely requested, it will be entertained at 3:00 p.m.

Tentative Ruling:

To deny without prejudice.

Explanation:

A party seeking a default judgment on declarations must use a mandatory Form CIV-100, and must additionally file: (1) a brief summary of the case; (2) declarations or other admissible evidence in support of the judgment requested; (3) interest computations as necessary; (4) a memorandum of costs and disbursements; (5) a declaration of nonmilitary status as to each defendant against whom the judgment is sought; (6) a proposed form of judgment; (7) a dismissal of all parties against whom the judgment is not sought; (8) exhibits as necessary; and (9) a request for attorney fees if applicable. (Cal. Rules of Ct., rule 3.1800(a).)

Here, while a CIV-100 was filed, plaintiff Michael DeRaffaele ("Plaintiff") fails to submit a summary of the case, admissible evidence, and interest computations.[1] Moreover, the lack of evidence is problematic. A "default judgment … can be entered only upon proof to the court of the damage sustained." (*Taliaferro v. Hoogs* (1963) 219 Cal.App.2d 559, 560; *see also* 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."]) Here, the Complaint is not well pled. As to the breach of contract cause of action, there are no allegations as to how defendant Jeff Crane ("Defendant") breached the agreement, nor are there allegations as to how Plaintiff suffered damages. As to the common count of money had and received, no evidence was submitted to show that Defendant received $250,000.00 as alleged in the Complaint. There is a discrepancy in the value alleged in the Complaint and the amount sought on default judgment of $50,000.00.

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.

[1] The amount of interest sought appears to be in excess of legal limits.

Tentative Ruling
Issued By: KCK on 07/01/25.
(Judge's initials) (Date)

(20)

Tentative Ruling

Re: ***In Re: Imidacloprid Cases***
Superior Court Case No. 22JCCP05241

Hearing Date: July 2, 2025 (Dept. 502)

Motion: Application to Appear *pro hac vice* by Savannah Caroline Cole

If oral argument is timely requested, it will be entertained at 3:00 p.m.

Tentative Ruling:

To grant. (Cal. Rules of Court, Rule 9.40(a).) No appearances are necessary.

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

Tentative Ruling
Issued By: KCK on 07/01/25 .
(Judge's initials) (Date)