

Tentative Rulings for August 26, 2025
Department 403

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 403

Begin at the next page

(03)

Tentative Ruling

Re: ***TD Bank, N.A. v. Singh***
Case No. 21CECG01521

Hearing Date: August 26, 2025 (Dept. 403)

Motion: Plaintiff's Motion for Judgment Prove Up

Tentative Ruling:

To deny plaintiff's motion for judgment prove up, without prejudice.

Explanation:

First, plaintiff has not served defendant with the motion at least 16 court days before the hearing, as required by Code of Civil Procedure section 1005, subdivision (b). Under section 1005(b), "Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 16 court days before the hearing. ... However, if the notice is served by mail, the required 16-day period of notice before the hearing shall be increased by five calendar days if the place of mailing and the place of address are within the State of California..." (Code Civ. Proc., § 1005, subd. (b).)

Here, plaintiff served defendant with the motion by regular United States Mail on August 15, 2025, which is just 11 calendar days before the August 26, 2025 hearing date. Since service was by regular mail, plaintiff was required to serve the motion at least 21 court days before the hearing. Therefore, plaintiff has not given timely notice of the motion to defendant. Nor has defendant filed any opposition, so he has not waived his right to full and timely notice. As a result, the court could deny the motion for this reason alone.

Also, the notice of motion is not supported by a points and authorities brief containing legal authorities, a summary of the facts of the case, legal arguments, and the reasons why the court should grant the requested relief. (See Cal. Rules of Court, rule 3.1113.) "The court may construe the absence of a memorandum as an admission that the motion or special demurrer is not meritorious and cause for its denial ..." (Cal. Rules of Court, rule 3.1113(a).) Thus, the court has the discretion to deny the motion for lack of a supporting brief.

In addition, plaintiff has not submitted any admissible evidence to support the requested damages. Plaintiff has submitted several exhibits, including what appears to be a copy of the retail sales agreement, and a ledger of payments made and amounts still owed on the loan. However, plaintiff has not submitted a declaration from someone with personal knowledge of the facts that authenticates and lays a foundation for the exhibits. The exhibits themselves are not admissible evidence unless they are authenticated and a foundation is laid for their admission into evidence. As a result, the motion is unsupported by evidence of damages, and there is no evidentiary basis for the court to grant the requested judgment at this time.

Plaintiff also needs to file and serve a declaration from counsel regarding his requested fees. Plaintiff previously filed a declaration from its attorney, David Chen, to support the requested fees and costs. However, plaintiff apparently never served defendant with a copy of the declaration, which was filed almost a year ago. Therefore, plaintiff also needs to file and serve a recent declaration from its counsel to support the request for fees and costs. Consequently, the court intends to deny the motion to enter judgment against defendant, 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: img on 8-25-25
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Tarn Taran Logistics, Inc. v. Gracefully Transportation, Inc. et al.***

Superior Court Case No. 25CECG00801

Hearing Date: August 26, 2025 (Dept. 403)

Motion: (1) By Defendant Fastline Commercial Insurance, LLC on Demurrer to Complaint
(2) By Defendant Fastline Commercial Insurance, LLC to Strike Punitive Damages

Tentative Ruling:

To sustain the demurrer as to the first cause of action for negligence, with leave to amend. (Code Civ. Proc., § 430.10, subd. (e).) To overrule the demurrer as to the third cause of action. (Code Civ. Proc., § 430.10, subd. (e).)

To grant the motion to strike the prayer for punitive damages, with leave to amend.

Plaintiff Tarn Taran Logistics, Inc. shall serve and file an amended complaint within ten (10) days of the date of service of this order. All new allegations shall be in **boldface**.

Explanation:

Demurrer

Defendant Fastline Commercial Insurance, LLC ("Defendant") demurs to Complaint ("Complaint") filed by plaintiff Tarn Taran Logistics, Inc. ("Plaintiff") on the grounds that the first cause of action, for negligence, and the third cause of action, for breach of the implied covenant of good faith and fair dealings, fails to state sufficient facts.

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.)

Defendant submits that as to the first cause of action, the Complaint fails to allege a duty owed. The Complaint fails to allege that Defendant owed a duty. The general allegations state that Defendant is an insurance agent, who produced a policy issued by defendants Palomar Excess and Surplus Insurance Company and Palomar Holdings, Incorporated, to cover Plaintiff's vehicle, which was rented to defendant Gracefully Transportation, Inc. (Complaint, ¶¶ 1-3.) However, no further allegations define these relationships or how a duty arose therefrom as to Defendant. (*Id.*, ¶¶ 1-10.) The Complaint only states in conclusory fashion that as a direct consequence of Defendant's actions, Plaintiff has been damaged for \$350,000. (*Id.*, ¶¶ 11, 12.) Plaintiff did not oppose. The demurrer as to the first cause of action is sustained, with leave to amend. (*McDonald v. Superior Court* (1986) 180 Cal.App.3d 297, 303-304 ["Unless the [original] complaint shows on its face that it is incapable of amendment, denial of leave to amend constitutes an abuse of discretion, irrespective of whether leave to amend is requested or not."])

Defendant further submits that as to the third cause of action, there is no contract alleged between the parties that would give rise to an implied covenant of good faith and fair dealing. Defendant correctly notes that the prerequisite for any action for breach of the implied covenant of good faith and fair dealings is the existence of a contractual relationship between the parties. (*Smith v. City and County of San Francisco* (1990) 225 Cal.App.3d 38, 48-49.) However, the Complaint does allege that Defendant entered into a contract. (Complaint, ¶ 21 ["Plaintiff and Defendants PAOLMAR AND ITS INSURANCE AGENT/PRODUCER [Defendant], and Does 1 to 100, and each of them, entered into a valid and binding Insurance Contract for insurance coverage..."].) The allegation is more broadly stated, despite the titles asserted. Defendant does not show that as a matter of law, the mere titling of a party as a "producer" in an insurance contract cannot be a party to the contract. The allegation here is more simple, merely that Plaintiff and, among others, Defendant, entered into a contract. Any further consideration would be a factual inquiry inappropriate on demurrer. As Defendant submits no other basis to challenge the third cause of action, the demurrer as to the third cause of action is overruled.

Motion to Strike

Defendant seeks to strike paragraph 26 of the Complaint and Item 4 of the Prayer for Relief. Both are in regards to punitive damages.

While not cited in the Complaint, Defendant submits that the claim for punitive damages rests on Civil Code section 3294. Civil Code section 3294, subdivision (a) provides:

In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

Mere legal conclusions of oppression, fraud or malice are insufficient and therefore may be stricken. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) However, if looking to the complaint as a whole, sufficient facts are alleged to support the allegations, then a motion to strike should be denied. (*Ibid.*) Allegations that include conclusions of law or that are considered to be ultimate facts will stand if sufficient facts are alleged to support them. (*Ibid.*) Stated another way, if the facts and circumstances are set out clearly, concisely, and with sufficient particularity to apprise the opposite party of what is called on to answer, such is sufficient to support a claim for punitive damages. (*Lehto v. Underground Const. Co.* (1977) 69 Cal.App.3d 933, 944.)

For the above reasons, the motion to strike is granted, with leave to amend.

Tentative Ruling

7

(34)

Tentative Ruling

Re: **Biechler v. FCA US, LLC**
Superior Court Case No. 24CECG04442

Hearing Date: August 26, 2025 (Dept. 403)

Motion: Demurrer to the First Amended Complaint

Tentative Ruling:

To sustain the demurrer to the fifth cause of action, with leave to amend. (Code Civ. Proc., § 430.010, subd. (e).) Plaintiff shall serve and file the Second Amended Complaint within 15 days of the date of service of this order. All new allegations shall be in **boldface**.

Explanation:

Defendant demurs to the fifth cause of action, for fraudulent concealment, for a second time. Plaintiff opposes the demurrer by contending that transactional relationship to support a duty to disclose is adequately pleaded, relying primarily on *Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828.

“ ‘As with all fraud claims, the necessary elements of a concealment/suppression claim consist of “ ‘(1) misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity (scienter); (3) intent to defraud (i.e., to induce reliance); (4) justifiable reliance; and (5) resulting damage.’ ” ’ [Citation.]” (*Dhital v. Nissan North America, Inc.*, *supra*, 84 Cal.App.5th at p. 843.)

“Fraud, including concealment, must be pleaded with specificity. [Citation.]” (*Dhital v. Nissan North America, Inc.*, *supra*, 84 Cal.App.5th at p. 843-844.) “Suppression of a material fact is actionable when there is a duty of disclosure, which may arise from a relationship between the parties, such as a buyer-seller relationship. [Citation.]” (*Id.*, at p. 843.) The First District Court of Appeal in *Dhital* determined a cause of action for fraudulent concealment was sufficiently pled, where the “plaintiffs alleged the CVT transmissions installed in numerous Nissan vehicles (including the one plaintiffs purchased) were defective; Nissan knew of the defects and the hazards they posed; Nissan had exclusive knowledge of the defects but intentionally concealed and failed to disclose that information; Nissan intended to deceive plaintiffs by concealing known transmission problems; plaintiffs would not have purchased the car if they had known of the defects; and plaintiffs suffered damages in the form of money paid to purchase the car.” (*Id.*, at p. 844.) It was held that the plaintiffs sufficiently alleged the existence of a buyer-seller relationship between the parties by alleging that “they bought the car from a Nissan dealership, that Nissan backed the car with an express warranty, and that Nissan’s authorized dealerships are its agents for purposes of the sale of Nissan vehicles to consumers.” (*Ibid.*)

Therefore, the demurrer is sustained to the fifth cause of action. Leave to amend is granted.

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.

Issued By: img on 8-25-25
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***Paul Angus v. Estate of Roger Curtis Dean***
Superior Court Case No. 24CECG05629

Hearing Date: August 26, 2025 (Dept. 403)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To grant the petition. Orders Signed. No appearances necessary. The court sets a status conference for Thursday, December 11, 2025, at 3:30 p.m., in Department 403, for confirmation of deposit of the minors' funds into the blocked accounts. If Petitioner files the Acknowledgment of Receipt of Order and Funds for Deposit in Blocked Account (MC-356) at least five court days before the hearing, the status conference will come off calendar.

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

Tentative Ruling

Issued By: Img on 8-25-25
(Judge's initials) (Date)