Tentative Rulings for October 14, 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

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Tentative Ruling

Re: ***Nuno-Gutierrez v. General Motors, LLC***
Superior Court Case No. 23CECG00312

Hearing Date: October 14, 2025 (Dept. 403)

Motion: by Plaintiff for an Award of Attorney Fees and Costs

If oral argument is timely requested, it will be entertained on Thursday, October 16, 2025, at 3:30 p.m. in Department 403.

Tentative Ruling:

To grant the motion for an award of attorney fees and award $12,153 in fees in favor of plaintiff Jose Nuno-Gutierrez. To award costs in the amount of $1,023.96.

Explanation:

Plaintiff Jose Nuno-Gutierrez ("plaintiff") seeks an award of attorney fees under Civil Code section 1794, subdivision (d). Plaintiff submits an executed Offer to Compromise pursuant to Code of Civil Procedure section 998 authorizing plaintiff to seek fees and costs from defendant General Motors, LLC ("defendant") by noticed motion. The court finds that plaintiff sufficiently states a basis upon which to seek an award of fees and costs. Defendant challenges the motion as untimely pursuant to California Rules of Court, rule 3.1702(b)(1) and rule 8.104. As there is no judgment entered, the motion is timely and the court will proceed.

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 reasonably 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 $13,205.00, excluding an additional $4,000 sought in connection with anticipated time for the reply and hearing for the motion at bench. Counsel submits a total of 33 hours of billed time across six timekeepers. Counsel primarily practice in Song-Beverly claims, such as the present action. (Jacobson Decl., ¶ 4.) As to the attorneys, counsel submits hourly rates ranging from $395 per hour for associates to $525 for managing partner Kevin Jacobson. These rates are somewhat high for the Fresno area.

Reasonable hourly compensation is the "hourly prevailing rate for private attorneys in the community conducting noncontingent litigation of the same type" (*Ketchum v. Moses*, *supra*, 24 Cal.4th at p. 1133.) Ordinarily, "'the value of an attorney's time . . . is reflected in his normal billing rate.'" (*Mandel v. Lackner* (1979) 92 Cal.App.3d 747, 761.)

Where a party is seeking out-of-town rates, he or she is required to make a "sufficient showing…that hiring local counsel was impractical." (*Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1244.) Plaintiff has made no showing that local counsel practicing "Lemon Law" and Song-Beverly consumer litigation are not available. That counsel's rates have been found reasonable in courts within the greater Los Angeles area is not persuasive. The court intends to award fees based on local rates.

The timekeeping records include billing for a local attorney, Alicia Hinton, whose qualifications are excluded from the evidence submitted in support of the motion, likely because she is not employed by Quill & Arrow LLP. This is consistent with the inclusion of Ms. Hinton's services as a cost within its summary of invoices within Exhibit 6 and listed on the memorandum of costs. As the appearance by Ms. Hinton was billed for $125.00, the court does not intend to include the time entries attributed to her appearance at the April 8, 2025 hearing. This results in a reduction of $300 to the lodestar.

Having reviewed the qualifications of each of the timekeepers the court finds the reasonable value of services of Mr. Jacobson on par with Ms. Hinton at $500 per hour and finds $325 per hour for each of the associate attorneys barred between 2019 and 2022 to be reasonable based on local rates.

Following a careful review of the entries submitted, the court finds that the vast majority of time entries appear reasonable for the task billed. Defendant's arguments that certain entries are unreasonable in light of the use of templates is not borne out in the court's review.

Plaintiff requests an additional $4,000 in connection with the reply and appearance at the hearing for the motion at bench. The amount sought is not connected with any particular timekeeper and there was no additional evidence of time billed submitted with the reply. The court finds it reasonable to award an additional 3 hours in connection with Mr. Jacobson's review of the opposition and preparation of the reply. This results in an addition of $1,500 to the lodestar.

With the reductions in hourly rates and adjustment to the hours billed, the lodestar is set at $12,153. The motion for an award of attorney fees is granted in the amount of $12,153.

Costs

Costs and expenses are sought via declaration in the amount of $1,023.96. (Jacobson Decl., ¶ 47, 49, Exh. 6.)

If the items on a verified statement appear to be proper charges, the statement 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. (*See 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, 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.)

In Song-Beverly Act cases, Civil Code section 1794, subdivision (d), provides for an award of not only "costs", but also "expenses" to the prevailing buyer if the costs and expenses were reasonably incurred in the commencement and prosecution of the action. Courts have interpreted the term "expenses" to mean that the trial court has discretion to award more than just the costs provided under section 1033.5, and that the court may grant other costs that were reasonably incurred by the buyer in connection with the commencement and prosecution of the action. (*Jensen v. BMW of North America, Inc*. (1995) 35 Cal.App.4th 112, 137-138, [finding trial court should not have denied plaintiff's request for expert witness fees simply because they were not permitted under section 1033.5]; disapproved on other grounds by *Rodriguez v. FCA US, LLC* (2024) 17 Cal.5th 189.)

Defendant has challenged costs sought for appearance attorneys, including Ms. Hinton's appearance discussed above, and the cost to file a notice of change of address. The charges appear proper and reasonably incurred. Any duplication of charges attributed to Ms. Hinton's appearance have been remedied by the exclusion of the hourly time entries attributed to her within the attorney fees sought. Accordingly, costs are awarded in the total amount of $1,023.16.

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: lmg on 10-13-25.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Garcia-Chacon v. Valdovinos Tree Services et al.***
Superior Court Case No. 24CECG01141

Hearing Date: October 14, 2025 (Dept. 403)

Motion: By Plaintiffs to Lift Stay

If oral argument is timely requested, it will be entertained on Thursday, October 16, 2025, at 3:30 p.m. in Department 403.

Tentative Ruling:

To grant and lift stay.

To set a Case Management Conference for Thursday, November 20, 2025, 3:30 p.m. in Department 403.

Explanation:

Plaintiffs Andrea Garcia-Chacon, Jesus Garcia-Chacon, Pedro Jesus Garcia-Chacon, Antonio Alvarado-Leon, and Josiah Garcia, a minor by and through his guardian ad litem (together "Plaintiffs") seek to lift the stay imposed on October 30, 2024, pending the outcome of a related criminal matter. Plaintiffs now report that the criminal matter is concluded. Defendants Valdovinos Tree Services and Francisco Valdovinos, Jr. did not oppose. Accordingly, the motion is granted and the stay is lifted.

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: lmg on 10-13-25.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***TXT E Solutions USA Inc. v. Queclink of North America LLC***
Superior Court Case No. 24CECG04290

Hearing Date: October 14, 2025 (Dept. 403)

Motion: Demurrer

If oral argument is timely requested, it will be entertained on Thursday, October 16, 2025, at 3:30 p.m. in Department 403.

Tentative Ruling:

To overrule the demurrer as to the first cause of action for breach of contract, and to sustain the demurrer as to the second cause of action for intentional misrepresentation, with leave to amend. Plaintiff is granted 15 days leave to file the Second Amended Complaint. The time in which the First Amended Complaint may be amended will run from service of the order by the clerk.

Explanation:

Defendant Queclink of North America, LLC ("defendant" or "Queclink NA") demurs to the First Amended Complaint ("FAC") filed by plaintiff TXT E Solutions USA Inc. ("plaintiff").

Legal Standard

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 demurrer does not admit mere contentions, deductions or conclusions of fact or law. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) On general demurrer, the court determines if the essential facts of any valid cause of action have been stated. (*Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 572; Code Civ. Proc. § 430.10 subd. (e).) A plaintiff is not required to plead evidentiary facts supporting the allegation of ultimate fact; the pleading is adequate if it apprises defendant of the factual basis for plaintiff's claim. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) Leave to amend should be granted if there is a reasonable possibility that plaintiff could state a cause of action. (*Blank v. Kirwan*, supra, 39 Cal.3d at 318.)

Misjoinder of Parties to First Cause of Action

Defendant demurs to the first cause of action for breach of contract on the grounds that there is misjoinder of parties. A defendant may object to a complaint by

demurrer on the ground that there is a defect or misjoinder of parties. (Code Civ. Proc., § 430.10, subd. (d); *Van Zant v. Apple, Inc.* (2014) 229 Cal.App.4th 965, 973.) A demurrer on the ground of defect or misjoinder lies only when the defect appears on the face of the complaint or in matters judicially noticed. (See *Royal Surplus Lines Ins. Co., Inc. v. Ranger Ins. Co*. (2002) 100 Cal.App.4th 193, 198.) In addition, the plaintiff's "ability to prove [their] allegations, or the possible difficulty in making such proof does not concern the reviewing court …." (*Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 496; *Stella v. Asset Management Consultants, Inc.* (2017) 8 Cal.App.5th 181, 190.)

Defendant argues that Queclink NA was not a party to any contract alleged in this case. (Demurrer, 3:13.) Defendant relies on the invoices attached to the FAC to assert that plaintiff engaged in transactions with Queclink Wireless Solutions Co., Ltd., ("Queclink WSC"), which is a separate and distinct entity from Queclink NA. (*Id*., 3:17.) The court is not convinced that this argument is sufficient to determine defendant Queclink NA should not have been joined to this action.

The invoices attached to the FAC print the name of Queclink WSC at the top of the document, but that alone does not make the exhibits contradictory to the allegations against Queclink NA. In fact, the FAC clearly alleges that plaintiff and Queclink NA orally entered into various purchase agreements, and invoices were generated for the purchases by Queclink WSC. (FAC, ¶¶ 15, 18, 21, 24.) The FAC alleges that plaintiff believes defendant is a subsidiary of Queclink WSC. (FAC, ¶ 3.) Defendant provides the court with extrinsic evidence to "demonstrate" that Queclink NA is not a subsidiary of Queclink WSC. (i.e. Declaration of Manuel Hernandez.) A demurrer is not the correct avenue for the court to determine the truth of the allegations in the pleading. Ultimately, plaintiff has pled that it entered into oral contracts with defendant Queclink NA. The invoices prepared by Queclink WSC are insufficient to contradict that plaintiff had contracted with Queclink NA to purchase goods.

Subject Matter Jurisdiction of First Cause of Action

Defendant demurs to the first cause of action for breach of contract on the grounds that the court lacks subject matter jurisdiction. A party may challenge a court's power to grant relief by way of demurrer for lack of jurisdiction. (Code Civ. Proc., § 430.10, subd. (a).) The concept of "subject matter jurisdiction" relates to the inherent authority of the court involved to adjudicate the merits of the dispute before it. (*Palomar Health v. National Nurses United* (2023) 97 Cal.App.5th 1189, 1200–1201.)

Defendant argues that the FAC does not provide any suitable allegation that the claim arises between any California entities. Defendant again relies on the invoices attached to the FAC to assert that the invoices were made between a Chinese company and a Canadian company or individual. (Demurrer, 4:2-3.) Again, the court does not find the invoices to be sufficiently contradictory to the allegations of the FAC so as to render the allegations meritless. The FAC alleges that plaintiff is a California corporation and defendant Queclink NA is a California limited liability company. The FAC alleges that the Canadian address on the invoices belongs to one of plaintiff's warehouses (tying in the invoices to the allegations) and that the agreement was still made in California between plaintiff, a California company, and defendant. (FAC, ¶¶ 16, 19, 22, 25.) The court is satisfied that it has subject matter jurisdiction over the breach of contract action and

defendant has not demonstrated any facts or legal authority depriving this court of jurisdiction.

Contract Issues in First Cause of Action

Defendant demurs to the first cause of action for breach of contract on the grounds that it cannot be ascertained from the pleading whether the contract at issue is written, is oral, or is implied by conduct. (Code Civ. Proc., § 430.10, subd. (g).) Here, the FAC clearly alleges that the contracts between plaintiff and defendant Queclink NA were oral. (FAC, ¶¶ 15, 18, 21, 24.)

Defendant then argues that the cause of action is barred by the statute of frauds, as multiple of the parties' agreements were for the purchase of goods over $500.00. Plaintiff counters that the partial payment exception to the statute of frauds applies, as the FAC alleges that plaintiff performed by paying for the goods.

An oral contract for the sale of goods for the price of five hundred dollars is still enforceable in respect to goods for which payment has been made and accepted or which have been received and accepted. (Cal. U. Com. Code, § 2201.) Defendant argues that the payments were not made to Queclink NA, and instead made to Queclink WSC. Proof of where the payments was made to is not a subject of this demurrer, which looks to the face of the pleading. The FAC alleges that plaintiff "fully complied with the terms contained in the [Date of] Agreement and paid the entire [amount] as required by the [Date of Agreement] Invoice." (See FAC, ¶¶ 23, 26, 28.)

Only the first four contracts (January 2021, March 2021, April 2021, and December 2021) are alleged to have been made between plaintiff and defendant. The other contracts (May 2022 [x2], August 2022 [x2]) were made between plaintiff's alleged sister company, Locate Signal, Inc. ("Locate")[1] and defendant Queclink NA. Plaintiff alleges that the rights to these agreements were assigned to plaintiff by Locate. (FAC, ¶¶ 29, 32, 35, 38.) For the purposes of this demurrer, it is sufficient that this assignment was alleged in the FAC.

Defendant further argues that the specific terms of the oral contracts are not alleged in the FAC, so as to not be on notice for what it allegedly breached. It does not appear that the terms of the quantity, price, or dates are disputed, but merely that defendant failed to provide plaintiff with properly working devices.

The FAC alleges that "[a]s a term of each Agreement, Hernandez, on behalf of Queclink North, verbally assured Plaintiff that all of the 600 Tracking Devices and 53 Tracking Devices were fully functional, worked properly, and came with a one-year warranty." (FAC, ¶ 41.) The devices all began to malfunction or failed to work within the one-year warranty. (*Id*., ¶ 42.) The defects included sparking, exploding, and catching on fire. (*Id*., ¶ 43.) Despite attempts at repair, all of the devices were unable to be repaired and are now allegedly sitting useless in plaintiff's possession. (*Id*., ¶ 48.)

[1] The defendant's request for judicial notice is denied.

Defendant claims that the allegations are insufficient to put it on notice of what it allegedly breached. However, the allegations of the FAC do inform defendant that, as a term of the agreement, it agreed to provide functional, working devices and none of the devices provided are working.

Failure to State Causes of Action

Breach of Contract

To state a cause of action for breach of contract, the complaint must allege (1) the existence of a contract; (2) plaintiff's performance or excuse for nonperformance of the contract; (3) defendant's breach; and (4) resulting damage. (See *State Compensation Insurance Fund v. ReadyLink Healthcare, Inc.* (2020) 50 Cal.App.5th 422, 449.) For reasons discussed above, the court is satisfied that a breach of contract was pled.

Intentional Misrepresentation

The essential elements of a count for intentional misrepresentation are (1) a misrepresentation, (2) knowledge of falsity, (3) intent to induce reliance, (4) actual and justifiable reliance, and (5) resulting damage. (*Chapman v. Skype Inc.* (2013) 220 Cal.App.4th 217, 230–231.) The allegations must be pled with particularity. (See *Lauckhart v. El Macero Homeowners Assn.* (2023) 92 Cal.App.5th 889, 903.)

The FAC fails to plead the elements of intentional misrepresentation with the specificity necessary for this cause of action. While the FAC makes the allegations that touch on the elements, it lacks specific facts such as who said what to whom, when these representations were made, how defendant (or its agents) knew these representations to be false when they were made, etc. This cause of action is not well pled with the requisite specificity.

Conclusion

For the foregoing reasons, the court intends to overrule the demurrer as to the first cause of action for breach of contract, and to sustain the demurrer as to the second cause of action for intentional misrepresentation.

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: lmg on 10-13-25.
(Judge's initials) (Date)