

**Tentative Rulings for November 30, 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)**

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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.*

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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 begin at the next page)

## **Tentative Rulings for Department 503**

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(03)

**Tentative Ruling**

Re: ***Higgins v. SWH Mimi's Café, LLC***  
Superior Court Case No. 20CECG02931

Hearing Date: November 30, 2023 (Dept. 503)

Motion: Plaintiff's Motions to Compel Defendant SWH Mimi's Café, LLC  
Respond to Discovery Requests, Set Two, to Deem Matters in  
the Requests for Admissions to be Admitted, and for Monetary  
Sanctions

**If timely requested, oral argument will be heard on Thursday,  
December 7, 2023, at 3:30 p.m. in Department 503.**

**Tentative Ruling:**

To grant plaintiff's motion to compel defendant SWH Mimi's Café', LLC to respond to the second set of form interrogatories, without objections. Defendant shall serve verified responses without objections within 10 days of the date of service of this order.

To grant the motion to deem SWH Mimi's Café, LLC to have admitted the truth of the matters and the genuineness of all documents in the requests for admissions. Defendants are deemed to have waived all objections to the requests for admissions.

To deny plaintiffs' request for monetary sanctions against defendant, as plaintiff's counsel has not provided any evidence to support the requested amount of sanctions.

**Explanation:**

The court intends to grant the plaintiff's motions to compel defendant SWH Mimi's Café, LLC to respond to the second set of form interrogatories, as defendant has failed to answer the interrogatories within 30 days. (Code Civ. Proc., §§ 2030.290, subd. (b).) Defendant has also waived its right to object to the requests by failing to respond in a timely manner, so defendant must provide responses without objections. (Code Civ. Proc., §§ 2030.290, subd. (a).)

The court also intends to grant the request for an order deeming defendant to have admitted the truth of the matters in the requests for admissions, as defendant has not provided timely responses to the requests for admissions. (Code Civ. Proc., § 2033.280, subd. (b).) Again, defendant has waived any objections to the requests by its failure to provide timely responses. (Cal. Code Civ. Proc., § 2033.280, subd. (a).)

On the other hand, the court intends to deny the request for monetary sanctions against defendant. Plaintiff seeks \$4,000 in sanctions against Mimi's Café. However, plaintiff's counsel has not stated how he calculated the amount of sanctions, what his hourly rate is, or how many hours he worked on the present motion. Therefore, there is



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**Tentative Ruling**

Re: ***Sukh Lakh Jass Boparai, Inc. v. Kaur, et al.***  
Superior Court Case No. 23CECG01482

Hearing Date: November 30, 2023 (Dept. 503)

Motion: Defendant Coastal Brokers Insurance Services, Inc.'s  
Demurrer to Complaint

**If timely requested, oral argument will be heard on Thursday,  
December 7, 2023, at 3:30 p.m. in Department 503.**

**Tentative Ruling:**

To overrule the demurrer to the complaint on the ground that it is uncertain. (Code Civ. Proc. § 430.10, subd. (f).)

To overrule the demurrer to the first cause of action on the ground that defendant cannot ascertain whether the contract is written, oral or implied by conduct. (Code Civ. Proc. § 430.10, subd. (g).)

To sustain the general demurrer to each cause of action, on the ground that each of them fails to state facts sufficient to adequately state a cause of action. (Code Civ. Proc., § 430.10, subd. (e).) Plaintiff is granted 30 days' leave to file the first amended complaint, which will run from service by the clerk of the minute order. New allegations must be set in **boldface** type.

**Explanation:**

In California, a complaint shall contain a statement of the facts constituting the cause of action, in ordinary and concise language; and a demand for judgment for the relief to which the pleader claims to be entitled. (Code Civ. Proc. §425.10.) If the recovery of money or damages is demanded, the amount demanded shall be stated unless it is an action brought to recover actual or punitive damages for personal injury or wrongful death, in which case the amounts sought shall not be stated. (Id.)

In other words, a cause of action must allege every fact which the plaintiff is required to prove in order to allege the facts, or elements, necessary to constitute a cause of action. Where plaintiff fails to allege essential facts, the pleading is subject to demurrer. (See Code Civ. Proc. §§ 425.10, 430.10.)

In testing a pleading against a demurrer, the facts alleged are deemed to be true, "however improbable they may be" (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604) as it is "not the ordinary function of a demurrer to test the truth of the plaintiff's allegations or the accuracy with which [plaintiff] describes the

defendant's conduct. A demurrer tests only the legal sufficiency of the pleading. [Citation.]" (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 47.)

To be "demurrer-proof," a complaint must allege sufficient ultimate facts to state a cause of action under a statute or case law. (*People ex rel. Dept. of Transportation v. Superior Court* (1992) 5 Cal.App.4th 1480, 1484; CCP §425.10(a).) Although California courts take a liberal view of inartfully drawn complaints, "[i]t remains essential...that a complaint set forth the actionable facts relied upon with sufficient precision to inform the defendant of what plaintiff is complaining[.]" (*Signal Hill Aviation Co. v. Stroppe* (1979) 96 Cal.App.3d 627, 636.) Courts indulge in great liberality in allowing amendments to a complaint in order that no litigant is deprived of its day in court due to pleading technicalities. (*Saari v. Superior Court* (1960) 178 Cal.App.2d 175, 178.) Where the complaint alleges facts showing that plaintiff is entitled to damages of some sort, amendment should be permitted. (*Ibid.*; see also *Smith v. Wells Fargo Bank, N.A.* (2005) 135 Cal.App.4th 1463, 1485.)

In the case at bench, plaintiff Sukh Lakh Jass Boparai, Inc. ("Boparai, Inc.") filed its complaint using the judicial council form for an action based in contract and alleges causes of action for breach of contract and fraud. Defendant Coastal Brokers Insurance Services, Inc. ("Coastal Brokers") specially demurs on the grounds the complaint is uncertain and generally demurs to each cause of action.

### Uncertainty

Defendant Coastal Brokers demurs to each cause of action on the grounds it is uncertain in its failure to state what causes of action are pled against which defendants. Section 430.10, subdivision (f) authorizes a party against whom a complaint has been filed to object by special demurrer to the pleading on the ground that "[t]he pleading is uncertain. As used in this subdivision, 'uncertain' includes ambiguous and unintelligible." Demurrers for uncertainty are disfavored. (*Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 616.) A demurrer for uncertainty may be sustained when the complaint is drafted in a manner that is so vague or uncertain that the defendant cannot reasonably respond, e.g., the defendant cannot determine what issues must be admitted or denied, or what causes of action are directed against the defendant. (*Ibid.*) Demurrers for uncertainty are appropriately overruled where "ambiguities can reasonably be clarified under modern rules of discovery." (*Ibid.*)

Each cause of action is pled in ordinary language using the judicial council forms. The form for each cause of action includes a paragraph wherein plaintiff has named the defendants against whom the cause of action is pled. Defendant should be able to determine what issues must be admitted or denied. Accordingly, the complaint is not uncertain. The special demurrer for uncertainty is overruled. (Code Civ. Proc. § 430.10, subd. (f).)

### First Cause of Action: Breach of Contract

A cause of action for breach of contract must allege: (1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff. (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990)

222 Cal.App.3d 1371, 1388; see also CACI 303.) Where the contract is written, a copy of the instrument attached to the complaint and incorporated by reference is sufficient to allege the terms of the contract. (*Otworth v. Southern Pac. Transportation Co.* (1985) 166 Cal.App.3d 452, 459.)

Here, defendant Coastal Brokers demurs to the first cause of action on the grounds that it fails to state sufficient facts and defendant cannot ascertain whether the contract alleged is written, oral, or implied by conduct.

In order to avoid a special demurrer to a breach of contract claim, plaintiff must specify whether the alleged contract is written, oral, or implied by conduct. (Code Civ. Proc. §430.10(g); see, e.g., *Hills Transp. Co.*, supra, 266 Cal.App.2d at p. 706; *Hays*, supra, 23 Cal.App.2d at pgs. 692, 695; *Adkins v. Model Laundry Co.* (1928) 92 Cal.App. 575, 580.)

Item BC-1 of the complaint alleges the Boparai, Inc. and defendants Coastal Brokers, Midline Insurance Services, Inc. and Amneet Kaur entered into a written agreement on or about November 2021. The written agreement is identified as attached to the complaint as Exhibit A. (Complaint, BC-1.) The complaint is not uncertain as to whether the contract alleged is written, oral or implied. The special demurrer on this basis is overruled. (Code Civ. Proc. § 430.10, subd. (g).)

Defendant additionally demurs to the first cause of action for failure to state sufficient facts on the basis that the documents attached to the complaint in Exhibit A state on their face that they are not contracts. The documents are Certificates of Liability Insurance identifying a producer, insured and naming the insurers who have issued insurance policies affording coverage to the insured. The certificates do not set out any terms of a written agreement between Boparai, Inc. and defendants Coastal Brokers, Midline Insurance Services, Inc. and Amneet Kaur. The complaint does not set out the essential terms of the agreement that is alleged to have been breached. The extent of the facts alleged are that plaintiff paid for a policy of insurance to be reinstated and it was not. This is not sufficient to allege the existence of a written contract between the parties.

Therefore, the general demurrer to the first cause of action is sustained. (Code Civ. Proc. § 430.10, subd. (e).)

### Second Cause of Action: Fraud

Allegations of fraud must be pleaded "with specificity," requiring the following elements: misrepresentation (false representation, concealment or nondisclosure); knowledge of falsity ("scienter"); intent to defraud, i.e., to induce reliance; justifiable reliance; and resulting damage (*Philipson & Simon v. Gulsvig* (2007) 154 Cal.App.4th 347, 363.) Every element of a cause of action for fraud must be alleged in full, factually and specifically. (*Hills Transp. Co. v. Southwest Forest Industries, Inc.* (1968) 266 Cal.App.2d 702, 707.) Accordingly, the policy of liberal construction of the pleadings "will not ordinarily be invoked to sustain a pleading defective in any material respect[;]" instead, this "particularity requirement necessitates pleading facts which show how, when, where, to whom, and by what means the representations were tendered. (*Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 73, internal citations and quotation marks omitted.)

Therefore, the general demurrer to the second cause of action is sustained.  
(Code Civ. Proc. § 430.10, subd. (e).)

The plaintiff is granted 30 days leave to amend and file a first amended complaint. (CLD Construction, Inc. v. City of San Ramon, supra, 120 Cal.App.4th 1141, 1146-1147.)

**Issued By:** jyh **on** 11/29/23  
(Judge's initials) (Date)