Tentative Rulings for March 16, 2022
Department 503

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 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

Begin at the next page

(03)

Tentative Ruling

Re: ***Jaramillo v. TitleMax of California***
Superior Court Case No. 21CECG01529

Hearing Date: March 16, 2022 (Dept. 503)
In the event oral argument is timely requested, it will be heard on March 16, 2022, at 1:00 p.m., in Dept. 503.

Motion: Defendants' Demurrers to Complaint

Tentative Ruling:

To overrule defendants' demurrers to the second and eighth causes of action. To sustain the demurrers to the third cause of action, without leave to amend, for failure to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10, subd. (e).) Defendants shall serve and file their answers to the complaint within 10 days of the date of service of this order.

Explanation:

Second Cause of Action: Defendants demur to the second cause of action for violation of the Rosenthal Fair Debt Collection Practices Act (the "Rosenthal Act") on the ground that plaintiff has not and cannot state a valid claim because she admits that she did not actually owe defendants a debt, and thus she has no standing to sue under the Act.

However, Civil Code section 1788.2, subdivision (h), defines the term "debtor" to mean "a natural person from whom a debt collector seeks to collect a consumer debt that is due and owing *or alleged to be due and owing* from such person." (Civ. Code, § 1788.2, subd. (h), italics added.) Likewise, "[t]he term 'debt' means money, property, or their equivalent that is due or owing *or alleged to be due or owing* from a natural person to another person." (Civ. Code, § 1788.2, subd. (d), italics added.) Also, "[t]he terms 'consumer debt' and 'consumer credit' mean money, property, or their equivalent, due or owing *or alleged to be due or owing* from a natural person by reason of a consumer credit transaction." (Civ. Code, § 1788.2, subd. (f), italics added.)

In *Masuda v. Citibank, N.A*. (N.D. Cal. 2014) 38 F.Supp.3d 1130, the federal District Court for the Northern District of California rejected the same argument raised by defendants here, that the plaintiff lacked standing to bring a claim under the Rosenthal Act because he admitted that he was not actually a debtor. (*Id*. at p. 1133-1134.) "Here, Masuda has standing to bring an action under the Rosenthal Act because he fits perfectly well into the second classification of debtor—those who are *alleged* to have a consumer debt due and owing." (*Id*. at p.1133, italics in original.) The court also noted that the other cases relied upon by the defendant debt collectors, *Sanchez v. Client Servs., Inc*. (N.D. Cal. 2007) 520 F.Supp.2d 1149, 1155, fn. 3, and *People v. Persolve, LLC* (2013) 218 Cal.App.4th 1267, were distinguishable because in those cases the plaintiffs lacked standing because they neither owed a debt to the defendants, nor were they

alleged to have owed a debt. "Neither of these cases is similar to the circumstances here, where Masuda was alleged to owe a debt and Citibank sought to collect it." (*Masuda v. Citibank, N.A.*, *supra*, 38 F.Supp.3d at pp. 1133–1134.) The court also held that the plaintiff had stated a claim under the federal Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. section 1692d, and that federal interpretations of the FDCPA are incorporated into the Rosenthal Act by Civil Code section 1788.17. (*Id*. at p. 1134.) Thus, a plaintiff may state a claim under the Rosenthal Act by showing that defendant violated any of the provisions of the FDCPA. (*Ibid*.)

The federal District Court for the Eastern District of California also held in *Davis v. Midland Funding, LLC* (E.D. Cal. 2014) 41 F.Supp.3d 919, that the plaintiff could state a claim against the defendant debt collector under the FDCPA, even where the plaintiff did not actually owe the underlying debt, because the FDCPA bars unfair debt collection practices based on debts owed "or due **or asserted to be owed or due** to another." (*Id*. at p. 924, emphasis in original.) "The highlighted text strongly suggests that Congress intended the FDCPA to protect consumers who were subjected to collection efforts for obligations they did not owe." (*Ibid*.)

The *Davis* court also noted that other courts, including the Eighth Circuit Court of Appeals, have held that the FDCPA gives standing to consumers who are subjected to unfair debt collection practices by creditors who "allege" that they owe a debt, even if they do not actually owe the debt. (*Ibid.*, citing *Dunham v. Portfolio Recovery Assocs., LLC* (8th Cir. 2011) 663 F.3d 997, 1002 and *Gonzalez v. Law Firm of Sam Chandra, APC* (E.D. Wash. 2013) 2013 WL 4758944.) "This court finds the reasoning in these opinions to be persuasive. By its plain text, the FDCPA encompasses claims brought by individuals subjected to collection efforts for obligations they are falsely alleged to have owed." (*Ibid*.) To hold otherwise, the court declared, would lead to absurd results, because "it would fail to restrain debt collectors from suing anyone, willy-nilly, whose name was similar to that of an alleged debtor. It is difficult to conceive of a more *unfair* debt collection practice than dunning the wrong person. . . . Congress could not have intended such a result. And, in fact, as the Ninth Circuit has recognized, the FDCPA's legislative history makes clear that 'Congress designed the Federal Act to "eliminate the recurring problem of debt collectors dunning the wrong person or attempting to collect debts which the consumer has already paid."'" (*Davis v. Midland Funding, LLC*, *supra*, 41 F.Supp.3d at pp. 925–926, internal citations omitted, italics in original.)

Likewise, here plaintiff alleges that defendants repossessed her car and did not return it for a month, despite being given notice on a prior occasion that they did not have a valid lien and that plaintiff owned the car free and clear of any liens. (Complaint, ¶¶ 26-57, 65-70.) In other words, defendants alleged that plaintiff owed a debt, which is enough to show standing under the Rosenthal Act. Even if plaintiff did not actually owe a debt to defendants, she has still stated a valid cause of action under the Rosenthal Act because defendants claimed that she did owe them a debt, and they then repossessed her car even after she explained to them that there was no lien on the car.

Defendants argue that, under *People v. Persolve, LLC*, *supra*, 218 Cal.App.4th 1267, only a "debtor" has standing to bring a claim under the Rosenthal Act. However, *Persolve* dealt with the issue of whether the State of California could sue a debt collector for unfair collection practices under state and federal law, not whether a private

individual could bring suit under the Rosenthal Act. (*Id*. at pp. 1271-1272.) The court found that the People could bring suit under federal and state statutes barring unfair debt collection practices, and that the conduct at issue was not protected by the litigation privilege. (*Id*. at p. 1272.) Thus, the holding of *Persolve* is not particularly helpful to the issue raised in the present case, which is whether a private consumer can sue for violations of the Rosenthal Act, even where the consumer does not actually owe a debt. The *Persolve* court did observe in a footnote that, under Civil Code section 1788.2, subdivision (h), "[o]nly the person who owes the debt or is otherwise obligated to pay the debt has standing to assert violations under the California Act and the Federal Act." (*People v. Persolve, LLC*, *supra*, 218 Cal.App.4th p. 1272, fn. 1.) However, as discussed above, the complete language of the statute defines a "debtor" as "a natural person from whom a debt collector seeks to collect a consumer debt that is due and owing *or alleged to be due and owing* from such person." (Civ. Code, § 1788.2, subd. (h), italics added.) The Court of Appeal in *Persolve* omitted part of the statute's definition of "debtor," probably because it was not relevant to its analysis. Regardless, the court's discussion of Civil Code section 1788.2's definition of "debtor" in a footnote was nothing more than dicta and does not support defendants' contention that plaintiff lacks standing to sue here.

The other cases cited by defendants simply hold that "[i]t is well-established that a plaintiff lacks standing to bring a cause of action under the [Rosenthal Act] when [he] does not owe *or is not alleged to owe* the debt." (*Barvie v. Bank of Am., N.A*. (S.D. Cal. 2018) 2018 WL 4537723, at *4, emphasis added; *Alan v. JPMorgan Chase Bank, National Association* (C.D. Cal. 2020) 2020 WL 5757390, at *2; *Inzerillo v. Green Tree Servicing, LLC* (N.D. Cal. 2014) 2014 WL 6660534, at *6; *Sanchez v. Client Services, Inc*. (N.D. Cal. 2007) 520 F.Supp.2d 1149, 1155, fn. 3.) While the court in *Alan, supra*, went on to hold that the plaintiff lacked standing to sue under the Act because he did not actually owe a debt, the court appeared to ignore the language of section 1788.2 that defines a debtor as one who owes *or is alleged to owe* a debt. (*Alan v. JPMorgan Chase Bank, National Association, supra*, 2020 WL 5757390, at * 2-4.) Thus, this court declines to follow the *Alan* decision, which appears to misinterpret and misapply California law.

Also, defendants' interpretation of the Rosenthal Act would mean that consumers who are harassed by debt collectors and have their property seized despite the debt collector knowing that they do not owe a debt would have no right to sue for unfair debt collection practices because they did not actually owe a debt. Such a result would be absurd and would defeat the clear purpose of the Act, which is to deter and punish such unfair debt collection practices. (*Davis v. Midland Funding, LLC*, *supra*, 41 F.Supp.3d at pp. 925–926.) The Act's plain language and clearly expressed intent is to allow consumers to bring an action for unfair debt collection practices even if they do not owe a debt, as long as the debt collector alleges that they do owe the debt. (Civ. Code, § 1788.2. subd. (h).) Here, plaintiff has alleged that defendants claimed she owed a debt, and that they then seized her car despite being told that she owned the car free and clear of any liens. As a result, she has stated a valid claim under the Rosenthal Act, and the court overrules the demurrer to the second cause of action.

Third Cause of Action: Next, defendants demur to the third cause of action, which asserts a claim under the Consumer Legal Remedies Act ("CLRA"). The CLRA bars "unfair methods of competition and unfair or deceptive acts or practices . . . undertaken by any

person in a transaction intended to result or that results in the sale or lease of goods or services to any consumer . . . ." (Civ. Code, § 1770, subd. (a).)

Defendants note that, under the CLRA, "'[t]ransaction' means an agreement between a consumer and another person, whether or not the agreement is a contract enforceable by action, and includes the making of, and the performance pursuant to, that agreement." (Civ. Code, § 1761, subd. (e).) They contend that plaintiff has not alleged that there was any "transaction" between herself and defendants, as there was no contract or agreement between the parties for the sale or lease or goods or services. In fact, plaintiff has expressly denied that she had any business relationship with defendants, or that they sold or leased her any goods or services. Also, defendants contend that the loan transaction between the former owner of the vehicle and TitleMax does not constitute a "transaction" under the CLRA because an agreement to loan money that is unconnected to the sale or lease of goods or services is not a "transaction" for the purposes of the CLRA. (*Berry v. American Express Publishing, Inc.* (2007) 147 Cal.App.4th 224, 232.) Thus, they conclude that plaintiff has not alleged and cannot allege a valid claim under the CLRA.

However, courts have held that a transaction does not have to be directly between the defendant and the plaintiff in order for the plaintiff to state a claim under the CLRA. For example, in *Keilholtz v. Superior Fireplace Co.*, the federal District Court for the Northern District of California stated, "Defendants fail to cite any authority to support the proposition that a CLRA claim can be asserted only against defendants who sell goods or services directly to consumers. Plaintiffs' allegations that Defendants sold the fireplaces to home builders, who installed them in homes, resulting in their sale to Plaintiffs, is sufficient to allege that Defendants entered into a transaction which was 'intended to result or which result[ed] in the sale' of goods to a consumer." (*Keilholtz v. Superior Fireplace Co.* (N.D. Cal. 2009) 2009 WL 839076, at *4, internal citation omitted.)

"[C]ourts have soundly rejected Defendant's contention that the use of a retailer or other middle-man shields manufacturers from CLRA liability." (*Tait v. BSH Home Appliances Corp.* (C.D. Cal. 2011) 2011 WL 3941387, at *2, fn. 1.) "'[A]a cause of action under the CLRA may be established independent of any contractual relationship between the parties.'" (*Seifi v. Mercedes-Benz USA, LLC* (N.D. Cal. 2013) 2013 WL 2285339, at *7, internal citations omitted; see also *McAdams v. Monier, Inc.* (2010) 182 Cal.App.4th 174, 186.)

Therefore, to the extent that defendants argue that plaintiff has not stated a claim under the CLRA because she was not a party to the original transaction between TitleMax and the car's original owner, the contention is not well taken. Even if plaintiff was not a party to the loan agreement, she can still state a claim under the CLRA if defendants engaged in unfair or deceptive conduct in connection with the agreement that caused her harm, assuming that the loan agreement constitutes a "transaction" under the CLRA.

Nevertheless, it does not appear that the loan agreement was a "transaction" as defined by the CLRA, since a loan agreement is not an agreement for the sale or lease of goods or services. In *Berry v. American Express Publishing, Inc., supra*, 147 Cal.App.4th 224, the Court of Appeal held that the CLRA does not apply to credit card agreements, as such loan agreements are not "transactions" for the purchase or lease of "goods or

services" as defined by the CLRA. "Most of the matters in section 1770 appear directed toward the purchase and lease of tangible goods and services, and none suggests the statutory language covered extensions of credit unrelated to a specific sale or lease transaction. Moreover, the Legislature considerably narrowed section 1770 before enacting CLRA. . . . Thus, the Legislature unmistakably narrowed the act's scope by limiting liability to transactions involving the actual or contemplated sale or lease of goods and services. Consequently, providing credit *separate and apart* from the sale or lease of any specific good or service falls outside the scope of section 1770." (*Berry v. American Express Publishing, Inc., supra*, 147 Cal.App.4th at p. 232, italics in original.)

Likewise, in *Fairbanks v. Superior Court* (2009) 46 Cal.4th 56, the California Supreme Court held that life insurance was not a "good" or "service" for the purposes of the CLRA, and thus the plaintiff could not state a claim under the CLRA against the insurer. "Because life insurance is not a 'tangible chattel,' it is not a 'good' as that term is defined in the Consumers Legal Remedies Act. (Civ. Code, § 1761, subd. (a).) Neither is life insurance a 'service' under the act. An insurer's contractual obligation to pay money under a life insurance policy is not work or labor, nor is it related to the sale or repair of any tangible chattel. Accordingly, we agree with the Court of Appeal that the life insurance policies at issue here are not services as defined in the Consumers Legal Remedies Act." (*Fairbanks v. Superior Court*, *supra*, 46 Cal.4th at p. 61.)

Also, in *Consumer Solutions REO, LLC v. Hillery* (N.D. Cal. 2009) 658 F.Supp.2d 1002, the federal District Court for the Northern District of California held that mortgage loans are not "goods or services" that are covered by the CLRA. (*Id*. at pp. 1016-1017.) The *Consumer Solutions* court noted that *Fairbanks* held that life insurance policies are not goods or services under the CLRA. "*Fairbanks* thus indicates that loans are intangible goods and that ancillary services provided in the sale of intangible goods do not bring these goods within the coverage of the CLRA." (*Id.* at p. 1016.)

In the present case, plaintiff has alleged that TitleMax filed a lien against the subject vehicle in 2018 after it was purchased by the former owner. (Complaint, ¶¶ 16, 17.) While not expressly alleged in the complaint, it appears that the lien was intended to secure a loan issued by TitleMax in relation to the purchase of the vehicle. (*Id*. at ¶ 9, alleging that TitleMax is in the business of issuing loans that are secured by liens against vehicles.)

However, these facts do not support a claim under the CLRA, as a loan agreement is not a "transaction" for the purposes of the CLRA because it is not an agreement for the sale or lease of goods or services. (*Berry v. American Express Publishing, Inc., supra*, 147 Cal.App.4th at pp. 232-233; *Consumer Solutions REO, LLC v. Hillery, supra*, 658 F.Supp.2d at pp. 1016-1017.) A loan is an intangible agreement to provide money rather than a "good" that can be leased or sold. (*Ibid*.) Nor has plaintiff alleged that TitleMax or any of the other defendants provided any services to her, or to the original owner of the vehicle for that matter. Any services that might have been provided by TitleMax that were ancillary to the loan agreement would also not be sufficient to support a claim under the CLRA. (*Berry v. American Express Publishing, Inc., supra*, 147 Cal.App.4th at pp. 232-233; *Fairbanks v. Superior Court*, *supra*, 46 Cal.4th at p. 61; *Consumer Solutions REO, LLC v. Hillery, supra*, 658 F.Supp.2d at pp. 1016-1017.) Thus, since plaintiff has not alleged that there was a "transaction" for the sale or lease of "goods" or "services" between

defendants and the original owner of the car, her CLRA claim fails to state a valid cause of action.

Plaintiff argues in her opposition that there was an agreement between herself and the tow truck driver that can support her CLRA claim, since the tow truck driver told her to resolve the issues with her title to the car or he would return the next day and repossess the vehicle. (Opposition, p. 7:21-26.) Plaintiff claims that she did in fact speak with Sierra Towing and the DMV to confirm that she had clear title to the car, and thus she performed under her agreement with the tow truck driver. (*Id*. at pp. 7:26-27 – 8:1-2.)

However, the alleged agreement between the tow truck driver and plaintiff did not constitute a "transaction" for the sale or lease of goods or services within the meaning of the CLRA. Plaintiff did not buy or lease any goods or services from the tow truck driver. At most, the driver agreed not to take the car until plaintiff had a chance to resolve the alleged problems with her title, but he never provided her with any goods or services, nor did he attempt to do so. As a result, the purported agreement between plaintiff and the tow truck driver does not support her CLRA claim, and the court sustains the demurrer to the third cause of action.

Nor does it appear that plaintiff can allege any other facts to cure the defect in the claim, as she has not identified any other allegations she could truthfully make that would show that there was a transaction for the sale or lease of goods or services within the meaning of the Act. Consequently, the court denies leave to amend as to the third cause of action.

Eighth Cause of Action: Finally, defendants demur to the eighth cause of action, which seeks to state a claim for treble damages and attorney's fees for a violation of Penal Code section 496 for receiving stolen property. Defendants contend that plaintiff has not and cannot state a claim under section 496 because treble damages and attorney's fees under section 496, subdivision (c), are not available based on allegations of fraud, conversion, or theft that do not involve stolen property. (*Siry Investment, L.P. v. Farkhodehpour* (2020) 45 Cal.App.5th 1098, 1134.) They argue that to allow treble damages here would be inconsistent with the usual rule that damages for theft or conversion are based on actual harm to the plaintiff, and would supersede the normal requirement that the plaintiff prove by clear and convincing evidence that defendant was guilty of fraud, malice, or oppression before plaintiff can receive an award of punitive damages. (*Ibid*.) They also argue that there is no indication that the Legislature intended to replace the traditional body of law regarding tort damages, so the court should not allow treble damages and attorney's fees here. (*Ibid*.)

However, defendants' argument ignores the plain language of Penal Code section 496. Under section 496, subdivision (a), it is a crime to knowingly buy or receive property "that has been stolen or that has been obtained in any manner constituting theft or extortion." Section 496, subdivision (c), provides that "[a]ny person who has been injured by a violation of subdivision (a) or (b) may bring an action for three times the amount of actual damages, if any, sustained by the plaintiff, costs of suit, and reasonable attorney's fees."

Thus, courts have held that, under the clear and unambiguous language of section 496, a person whose property is stolen or obtained in any manner constituting theft may bring a civil action against any person who knowingly buys or receives the stolen property for treble damages and attorney's fees. Moreover, a criminal conviction for theft is not necessary in order to state a claim under subdivision (c). (*Bell v. Feibush* (2013) 212 Cal.App.4th 1041, 1045–1047.) All that is necessary is that a "violation" of section 496 has occurred. (*Ibid*.) "A violation may be found to have occurred if the person engaged in the conduct described in the statute. While section 496(a) covers a spectrum of impermissible activity relating to stolen property, the elements required to show a violation of section 496(a) are simply that (i) property was stolen or obtained in a manner constituting theft, (ii) the defendant knew the property was so stolen or obtained, and (iii) the defendant received or had possession of the stolen property." (*Switzer v. Wood* (2019) 35 Cal.App.5th 116, 126, internal citations omitted.)

"As reflected in *Bell v. Feibush, supra*, 212 Cal.App.4th at p. 1048 . . . , the issue of whether a wrongdoer's conduct in any manner constituted a 'theft' is elucidated by other provisions of the Penal Code defining theft, such as Penal Code section 484. . . . Section 484, subdivision (a), states as follows: 'Every person who shall feloniously steal, take, carry, lead, or drive away the personal property of another, or who shall fraudulently appropriate property which has been entrusted to him or her, or who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property, or who causes or procures others to report falsely of his or her wealth or mercantile character and by thus imposing upon any person, obtains credit and thereby fraudulently gets or obtains possession of money, or property or obtains the labor or service of another, *is guilty of theft*.' (Italics added.)" (*Switzer v. Wood*, *supra*, 35 Cal.App.5th at pp. 126-127.)

In *Bell v. Freibush, supra*, 212 Cal.App.4th 1041, the Court of Appeal held that the plaintiff was entitled to treble damages and attorney's fees after proving that the defendant had committed theft by false pretenses in violation of section 496(a), even though the defendant had not been convicted of theft. (*Bell v. Freibush*, *supra*, 212 Cal.App.4th at pp. 1043-1044.) The court also rejected the defendant's contention that allowing treble damages would circumvent traditional limits on civil remedies, finding that the statutory language was clear and unambiguous, and that policy concerns were best left to the Legislature. (*Ibid*.)

Likewise, in *Switzer v. Wood, supra*, 35 Cal.App.5th 116, the Fifth District Court of Appeal held that the plaintiff was entitled to treble damages and attorney's fees under section 496(c) based on the jury's finding that defendants had obtained money by theft, and concealed or withheld the plaintiff's property with knowledge that it was stolen, thus causing harm to the plaintiff. (*Switzer v. Wood, supra*, 35 Cal.App.5th at pp. 127-128.) "These explicit findings of fact by the jury, which have not been challenged on appeal, clearly establish violation(s) of section 496(a). [¶] That being the case, under the plain and literal terms of section 496(c), Switzer was entitled to an award of three times his actual damages that were found by the jury on both the direct and derivative section 496 causes of action." (*Switzer v. Wood, supra*, 35 Cal.App.5th at p.128.)

The Court of Appeal in *Switzer* also held that the trial court erred in refusing to award treble damages to the plaintiff given the jury's findings and the clear language of

section 496(c). (*Switzer v. Wood, supra*, 35 Cal.App.5th at pp. 128-130.) The court rejected the defendants' argument, which is the same argument raised by defendants in the case at bar, that applying section 496(c) would lead to absurd results and would be inconsistent with the usual rules regarding actual and punitive damages in tort actions.

"Based on the plain wording of section 496(c), the Legislature apparently believed that *any* violation of section 496(a) (or of subdivision (b)), if proven, would warrant the availability of treble damages. The creation of an enhanced civil remedy for any person injured by the theft-related criminal offenses defined in the statute is certainly not absurd or unreasonable. . . . In the final analysis, we are unable to conclude that the results produced by a literal reading of the statute would be 'so unreasonable the Legislature could not have intended them.' In other words, the potential results of following the unambiguous literal wording of section 496(c) are not so absurd or unreasonable that we would be justified to override its plain meaning." (*Switzer v. Wood, supra*, 35 Cal.App.5th at p. 130, internal citation omitted.) The court also noted that any policy concerns were best left to the Legislature to resolve. (*Ibid*.)

On the other hand, in *Siry Investment, L.P. v. Farkhodehpour*, *supra*, 45 Cal.App.5th 1098, the Second District Court of Appeal reached the opposite conclusion and agreed with the defendant that applying the plain language of section 496(c) would lead to absurd results and would defeat the normal rules regarding imposition of damages in ordinary tort cases. "In our view, reading Penal Code section 496 to authorize an award of treble damages whenever a plaintiff proves (or, in the case of a default, sufficiently alleges) any type of theft—whether it be fraud, misrepresentation, conversion, or breach of fiduciary duty—by which the defendant obtains money or property would institute a 'significant change' for two reasons." (*Siry Investment, L.P. v. Farkhodehpour*, *supra*, 45 Cal.App.5th at p. 1135.) "First, it would transmogrify the law of remedies for those torts. Until now, the damages remedy for these torts has been limited to the amount of damages actually caused by the fraud, misrepresentation, conversion or breach of fiduciary duty. Treble damages under Penal Code section 496, if held applicable to these torts, would all but eclipse these traditional damages remedies." (*Siry Investment, L.P. v. Farkhodehpour*, *supra*, 45 Cal.App.5th at pp. 1135–1136, internal citations omitted.)

"Second, reading Penal Code section 496 to apply in theft-related tort cases would effectively repeal the punitive damages statutes. Until now, a plaintiff seeking greater than compensatory damages had to prove, by clear and convincing evidence, that the defendant was 'guilty of oppression, fraud, or malice.' If Penal Code section 496 applied to these torts, a plaintiff could obtain treble damages merely by proving the tort itself by a preponderance of the evidence." (*Siry Investment, L.P. v. Farkhodehpour*, *supra*, 45 Cal.App.5th at p. 1136, internal citations omitted.)

"What is more, our Legislature has not shouted, stated, or even whispered anything about Penal Code section 496 effecting such a 'significant change' to the universe of tort remedies. Rather, the Legislature had a far more targeted goal in mind when it enacted Penal Code section 496's treble damages remedy—namely, 'to dry up the market for stolen goods.' … Because imposing treble damages in cases alleging fraud, misrepresentation, breach of fiduciary duty and other torts outside the context of stolen property does nothing to 'advance the legislative purpose to "dry up the market for

stolen goods,"' we cannot even infer any legislative intent to affect this significant change." (*Siry Investment, L.P. v. Farkhodehpour*, *supra*, 45 Cal.App.5th at pp. 1136-1137, internal citations omitted.) "Because we cannot presume that our Legislature intended to so significantly alter the universe of tort remedies without saying anything about its desire to do so, we conclude that Penal Code section 496's language sweeps more broadly than its intent and hold that it does not provide the remedy of treble damages for torts not involving stolen property." (*Siry Investment, L.P. v. Farkhodehpour*, *supra*, 45 Cal.App.5th at p. 1137.) Likewise, the court held that attorney's fees were also not available under section 496(c). (*Siry Investment, L.P. v. Farkhodehpour*, *supra*, 45 Cal.App.5th at p. 1138.)

Thus, there is a split of authority on the issue of whether treble damages and attorney's fees are available under section 496(c) in cases where the plaintiff has alleged that defendant knowingly received his or her property through theft or conversion. This court believes that the reasoning of the *Switzer* and *Bell* courts is more persuasive here, and it follows those cases and permits plaintiff to seek treble damages and attorney's fees under section 496(c).

The plain language of the statute clearly allows treble damages and attorney's fees in cases where the defendant knowingly receives property that has been taken by theft or extortion. While defendants contend that applying the literal language of section 496 would lead to absurd results and would subvert the usual rules regarding awards of punitive damages in tort cases, there does not appear to be anything absurd about the Legislature's decision to allow treble damages and attorney's fees where the defendant is found to have knowingly received property that was unlawfully taken by theft or extortion from the plaintiff. Although there may be some legitimate policy concerns about whether allowing treble damages in such cases might effectively replace the limits on actual and punitive damages, this is an issue that is best resolved by the Legislature. The court should not act as a "super-Legislature" and rewrite the language of the statute, particularly where it clearly states that treble damages are available in cases where the defendant receives property taken by theft or extortion. Therefore, the court follows the holdings of *Bell* and *Switzer* rather than the *Siry* court's reasoning, and finds that plaintiff can seek treble damages and attorney's fees under section 496(c).

Plaintiff has also alleged sufficient facts to bring her claim within the terms of section 496(c). She has alleged that defendants received and retained her property by theft, despite knowing that they had no legal right to retain it, and that she suffered damages as a result. (Complaint, ¶¶ 124-127.) Plaintiff has also alleged that defendants were guilty of conversion and trespass to chattels because they repossessed her car despite knowing that they did not have a valid lien against it. (*Id*. at ¶¶ 97-114.) Penal Code section 484, subdivision (a), states, 'Every person who shall feloniously steal, *take*, *carry*, lead, or *drive away* the personal property of another, . . . is guilty of theft." (Pen. Code, § 484, subd. (a), italics added.) The facts alleged by plaintiff sufficiently show that defendants took, carried, or drove away her car without her consent and in violation of her property rights. They also show that defendants received and withheld the vehicle from plaintiff despite knowing that they did not have a valid lien against it, and despite plaintiff telling them that she owned the car free and clear of liens and encumbrances. (Complaint, ¶¶ 26-50.) As a result, plaintiff has sufficiently alleged a claim for treble

damages and attorney's fees under section 496(c), and the court overrules the demurrer to the eighth cause of action.

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: KAG on 3/11/2022 .
(Judge's initials) (Date)

(24)

Tentative Ruling

Re: ***Atkinson v. Beverly Healthcare California, Inc.***
Superior Court Case No. 20CECG00391

Hearing Date: March 16, 2022 (Dept. 503)
In the event oral argument is timely requested, it will be heard on March 16, 2022, at 1:00 p.m., in Dept. 503.

Motion: Defendant Dycora Transitional Health – Reedley LLC's Motion for Judgment on the Pleadings

Tentative Ruling:

To take the motion of calendar, as no moving papers were filed.

Explanation:

Moving party attempted to e-file the moving papers on July 30, 2021. However, at that time, the case was at dismissed status, so the e-filing was rejected. The dismissal was subsequently vacated, but defendant apparently never attempted to file the moving papers again thereafter. As a result, there is no motion before the court.

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: KAG on 3/11/2022 .
(Judge's initials) (Date)