Tentative Rulings for January 23, 2025
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)

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.

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Tentative Ruling

Re: ***Central Valley Fallen Heroes v. Lieb, et al.***
Superior Court Case No. 23CECG04281

Hearing Date: January 23, 2025 (Dept. 503)

Motion: Defendants Ron Dupras and California Veterans & Fallen Heroes Demurrer and Motion to Strike Third Amended Complaint

If oral argument is timely requested, it will be entertained on Thursday, January 30, 2025, at 3:30 p.m. in Department 503.

Tentative Ruling:

To sustain the demurrer to the first and second causes of action without leave to amend. (Code Civ. Proc. §430.10, subd. (e).) To overrule the demurrer to the third, fourth, fifth and sixth causes of action. (Code Civ. Proc. § 430.10, subd. (e).)

To grant the motion to strike the prayer for punitive damages in connection with the first and second cause of action and the prayer for attorney fees, without leave to amend. To deny the motion to strike punitive damages in connection with the sixth cause of action and generally for the remaining causes of action.

All defendants shall file their answers to the Third Amended Complaint within 10 days of service of the order by the clerk.

Explanation:

As a preliminary matter, the court notes defendants Matthew Lieb and Central Valley Fallen Heroes, LLC have also filed a demurrer to the Third Amended Complaint with a hearing date of January 23, 2025. No hearing date was reserved with the court for this motion. Defendants also filed a notice of joinder to the demurrer filed by defendants Ron Dupras and California Veterans & Fallen Heroes, however there is no declaration to support finding the parties met and conferred in compliance with Code of Civil Procedure section 430.41. As neither attempt to demur to the Third Amended Complaint is properly before the court, neither will be heard.

Demurrer to Third Amended Complaint

First and Second Cause of Action: Intentional Misrepresentation

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.App4th 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.)

Here, plaintiffs allege repeated fraudulent filings on behalf of plaintiff corporation with the Secretary of State and misrepresentations made by defendants as to their authority to act on behalf of the plaintiff corporation. The Third Amended Complaint alleges neither the individual defendants nor the business entity defendants have been appointed to any position within the Central Valley Fallen Heroes corporation and the repeated filings with the Secretary of State representing defendants hold the specified corporate office, which is then relied upon by the Secretary of State and other third parties, has resulted in harm to the corporation.

Similarly, defendants are alleged to have filed a resignation of Paul Beckley as agent for plaintiff corporation without authority to do so, which was relied upon by the Secretary of State and resulted in harm to plaintiff.

Although the allegations are sufficiently specific to support a fraud-based cause of action, the problem remains that the many alleged misrepresentations were not made to plaintiffs. The Third Amended Complaint, as with the Second Amended Complaint, does not allege defendants intended to deceive plaintiffs or that plaintiffs justifiably relied on these misrepresentations causing them damage. The misrepresentations are alleged to have been made to third parties and relied upon by third parties in taking action that is alleged to have harmed plaintiffs. These allegations do not support a cause of action that defendants have defrauded plaintiffs, as opposed to the third parties.

Accordingly, the demurrer to the first and second causes of action are sustained. As it does not appear plaintiffs can allege they were defrauded by defendants, the court does not intend to allow leave to amend.

Third Cause of Action: Tortious Interference with Contract

The elements which a plaintiff must plead to state the cause of action for intentional interference with contractual relations are: (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of the contract; (3) defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage. (*Farmers Insurance Exchange v. Zerin* (1997) 53 Cal.App.4th 445.)

The cause of action is brought by the plaintiff corporation and alleges a contractual relationship with its bank, Wells Fargo, the knowledge of and disruption of that contract and resulting damage by defendants by closing the corporation's bank account and removing the funds. The court intends to overrule the demurrer to the third cause of action.

Fourth Cause of Action: Tortious Interference with Prospective Economic Advantage

The elements of a cause of action for intentional interference with prospective economic advantage are: (1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant. (*LiMandri* v. *Judkins* (1997) 52 Cal.App.4th 326, 339.)

In order to recover for intentional interference with prospective economic advantage, plaintiffs must plead and prove as part of its case-in-chief that the defendants not only knowingly interfered with the plaintiffs' expectancy, but engaged in conduct that was wrongful by some legal measure other than the fact of interference itself. (*LiMandri* v. *Judkins, supra,* 52 Cal.App.4th at pp. 340-341; *Della Penna* v. *Toyota Motor Sales, U.S.A. Inc.* (1995) 11 Cal.4th 378, 393.)

Here, defendants are alleged to have misrepresented their authority to act on behalf of plaintiff corporation and have contacted persons or entities intending to disrupt plaintiff corporation's ability to organize its charitable fundraisers. The allegations are sufficient to plead a cause of action for intentional interference with prospective advantage. The court intends to overrule the demurrer.

Fifth Cause of Action: Violations of Business & Professions Code section 17200

The equitable doctrine of unfair competition protects against the inequitable pirating of the fruits of another's labor and then either "palming off" those fruits as one's own or simply gaining unearned commercial benefit from them. (*KGB, Inc.* v. *Giannoulas* (1980) 104 Cal.App.3d 844, 850; *Summit Mach. Tool Mfg.* v. *Victor CNC Systems* (9th Cir. 1993) 7 F.3d 1434, 1441 (applying California law); *Ball v. American Trial Lawyers Association* (1971) 14 Cal.App.3d 289, 303-304.) Primarily, it affords injunctive relief to enjoin the unfair or deceptive use of a title, trade name, or trade design or dress that is confusingly similar to one used by the person seeking relief. (*Academy of Motion Picture, etc.* v. *Benson* (1940) 15 Cal.2d 685, 688-692 [trade name]

Business & Professions Code section 17200 defines "unfair competition" to mean and include any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising (including any act prohibited by Bus. & Prof. Code § 17500 et seq.). (Bus. & Prof. Code § 17200.) The statute creates a right to sue for violations of other statutes even when those statutes do not themselves confer any standing for private actions or, perhaps, even when they create more limited standing for action. Business & Professions Code section 17204 grants standing in "actions for any relief pursuant to this chapter to any person acting for the interests of itself, its members or the general public." The remedies under Business & Professions Code section 17203 include injunctive relief, the appointment of a receiver, or such orders or judgments "as may be necessary to restore to any person in interest any money or property, real or personal, which may been acquired by means of such unfair competition." This provision does not create a private right of action for "damages," but it has been construed to allow for the remedy of "restitution." (*Committee on Children's Television, Inc.* v. *General*

Foods Corp. (1983) 35 Cal.3d 197, 211.) When the action is brought for the "general public," restitution in favor of the general public is available. (*People* v. *Thomas Shelton Powers, M.D., Inc.* (1992) 2 Cal.App.43th 330, 339-344.)

Here, plaintiffs allege defendants have created substantially similar named business entities and obtained a trademark of plaintiff's corporate name, and using these similar names to misrepresent their authority to act on behalf of plaintiff corporation. Defendants are alleged to be using the trademark of "Central Valley Fallen Heroes" received by defendant Lieb for purposes of selling engravings to threaten businesses partnering with plaintiff corporation in its charitable activities although there is no connection to the sale of engravings. Defendants are also alleged to have demanded payments intended for plaintiff corporation be directed to defendants.

Defendants are also alleged to have repeatedly filed false statements of information with the Secretary of State on behalf of the plaintiff corporation as well as a fraudulent resignation of Paul Beckley as agent for the plaintiff corporation. The filing of these false documents with the Secretary of State as alleged may support finding a violation of the law and be considered an unlawful business practice, although the Third Amended Complaint does not identify the specific law violated. The Third Amended Complaint does, however, include specific allegations of intentional misrepresentations made by defendants in filing the Statements of Information on behalf of the plaintiff corporation to induce reliance by third parties and the resulting damage. This is sufficient to plead fraudulent business practices by defendants.

The court intends to overrule the demurrer.

Sixth Cause of Action: Intentional Infliction of Emotional Distress by Paul Beckley

The elements of a prima facie case of intentional infliction of emotional distress are: (1) outrageous conduct by the defendant; (2) intent to cause or reckless disregard of the probability of causing emotional distress; (3) severe emotional suffering; and (4) actual and proximate causation of emotional distress. "Outrageous conduct" denotes conduct which is so extreme as to exceed all bounds of decency and which is to be regarded as "atrocious and utterly intolerable in a civilized community." (*Bartling* v. *Glendale Adventist Medical Center* (1986) 184 Cal.App.3d 961, 969.)

Behavior may be considered outrageous if a defendant (1) abuses a relation or position that gives him or her power to damage the plaintiff's interest; (2) knows the plaintiff is susceptible to injuries through mental distress; or (3) acts intentionally or unreasonably with the recognition that the acts are likely to result in illness through mental distress. (*Agarwal* v. *Johnson* (1979) 25 Cal.3d 932, 946; *Robinson* v. *Hewlett-Packard Corp.* (1986) 183 Cal.App.3d 1108, 1130.)

"Conduct to be outrageous must be so extreme as to exceed all bounds of that usually tolerated in a civilized society." (*Davidson v. City of Westminster* (1982) 32 Cal.3d 197, 209.)

" '[I]t is generally held that there can be no recovery for mere profanity, obscenity, or abuse, without circumstances of aggravation, or for insults, indignities or threats which

are considered to amount to nothing more than mere annoyances.'" (*Yurick v. Superior Court* (1989) 209 Cal.App.3d 1116, 1128.)

Whether any particular conduct is sufficiently outrageous to constitute the element of the tort is a mixed question of law and fact. It is for the court to determine, in the first instance, whether the defendant's conduct may reasonably be regarded as so extreme and outrageous that recovery is permissible. (*Tollefson* v. *Roman Catholic Bishop* (1990) 219 Cal.App.3d 843, 858.) If reasonable persons might differ, it is for the jury to determine whether the conduct was, in fact, outrageous. (*Alcorn* v. *Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 499; *Cross* v. *Bonded Adjustment Bureau* (1996) 48 Cal.App.4th 266, 284.)

Damage to plaintiff that is solely economic is insufficient to support claim for emotional distress damages. (See *Smith v. Superior Court* (1992) 10 Cal. App. 4th 1033, 1040 [mere negligence does not support recovery for mental suffering when defendant's tortious conduct results in only economic injury.]) Unless the defendant has assumed a duty to plaintiff in which the emotional condition of the plaintiff is an object, recovery is available only if the emotional distress arises out of the defendant's breach of some other legal duty and the emotional distress is proximately caused by breach of the independent duty. Even then, with rare exceptions, a breach of the duty must threaten physical injury, not simply damage to property or financial interests. (*Erlich v. Menezes* (1999) 21 Cal. 4th 543, 555.)

Paul Beckley is pursuing claims for emotional distress, alleging the defendants' actions were not only intended to interfere with the corporation's ability to do business but to harm him personally. Defendants are alleged to have repeatedly filed false statements of information with the effect of removing Beckley from his position within the corporation. Once Beckley filed a corrected statement, defendants are alleged to file a superseding statement of information with the Secretary of State within minutes. Additionally, defendants are alleged to have filed a false resignation on behalf of Beckley removing him as the corporation's agent for service. Plaintiff includes text messages between defendants Dupras and Lieb commenting on Paul Beckley underestimating them and ridiculing him within the allegations to indicate the actions taken were directed at Beckley. This is sufficient to allege the actions of defendants were intended to harm Beckley personally.

The court intends to overrule the demurrer to the sixth cause of action.

Motion to Strike

Defendants move to strike the punitive damages sought in connection with the first, second and sixth causes of action and the prayer for attorney fees.

"The court may, upon a motion made pursuant to Section 435, or at any time in its discretion, and upon terms it deems proper: (a) Strike out any irrelevant, false, or improper matter inserted in any pleading, (b) Strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Code Civ. Proc., § 436.)

A motion to strike may be used to remove a claim for punitive damages that is not adequately supported by the facts alleged in the complaint. (*Cryolife, Inc. v. Superior Court* (2003) 110 CalApp.4th 1145; *Kaiser Foundation Health Plan, Inc. v. Superior Court* (2012) 203 Cal.App.4th 696.)

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.

Plaintiffs seeks punitive damages in connection with the first and second causes of action for intentional misrepresentation and the sixth cause of action for intentional infliction of emotional distress. Inasmuch as the general demurrer to the first and second causes of action of the Third Amended Complaint was sustained, the prayers for punitive damages are stricken as well. The court does not intend to grant the motion with respect to the punitive damages sought in connection with the sixth cause of action or generally for the remaining causes of action. (TAC, Prayer, p. 56, lines 18-19.) The Third Amended Complaint alleges a series of fraudulent representations of defendants' authority to act on behalf of plaintiffs which is sufficient to support the prayer for punitive damages.

Plaintiffs seek attorney fees in connection with this action but have not alleged the existence of a contract or statutory basis that would support a prayer for attorney fees. Plaintiffs have not opposed the motion to strike the prayer for attorney fees. The motion to strike is granted without leave to amend.

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: jyh on 1/21/25 .
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Nesario v. FCA US LLC***
Superior Court Case No. 24CECG04051

Hearing Date: January 23, 2025 (Dept. 503)

Motion: by Defendant Demurring to the Complaint

If oral argument is timely requested, it will be entertained on Thursday, January 30, 2025, at 3:30 p.m. in Department 503.

Tentative Ruling:

To sustain the demurrer to the third and fifth causes of action, with leave to amend. (Code Civ. Proc., § 430.010, subd. (e).) Plaintiff is granted 20 days' leave to file the First Amended Complaint. The time in which the complaint can be amended will run from service by the clerk of the minute order. All new allegations in the First Amended Complaint are to be set in **boldface** type.

Explanation:

Third Cause of Action – Violation of Civil Code Section 1793.2, subdivision (a)(3)

Defendant demurs to the third cause of action for violation of Civil Code section 1793.2, subdivision (a)(3), on the ground that the complaint fails to state facts sufficient to state a claim.

The relevant provisions of Civil Code section 1793.2, subdivision (a)(3) provides:

> (a) Every manufacturer of consumer goods sold in this state and for which the manufacturer has made an express warranty shall: …
> (3) Make available to authorized service and repair facilities sufficient service literature and replacement parts to effect repairs during the express warranty period.

(Civ. Code, § 1793.2, subd. (a)(3).)

Here, plaintiff alleges "Defendant FCA failed to make available to its authorized service and repair facilities sufficient service literature and replacement parts to effect repairs during the express warranty period." (Compl., ¶ 63.) However, plaintiff does not plead any facts to support this conclusory allegation. Where statutory remedies are invoked, the cause of action "must be pleaded with particularity." (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 410, citations omitted.)

In opposition, plaintiff argues that further particularity cannot be pled, as the information is known only to defendant. However, plaintiff fails to allege what parts or

literature defendant failed to provide or when the alleged violation occurred. Accordingly, the demurrer to the third cause of action is sustained.

Fifth Cause of Action – Fraudulent Concealment

Next, defendant demurs to the fifth cause of action, for fraudulent concealment. Plaintiff opposes the demurrer by contending that the specificity requirement is unnecessary to state a cause of action for fraudulent concealment where there exists a duty to disclose, and relies 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*.)

Here, just as in *Dhital*, the Complaint alleges that the transmission defect exists in numerous vehicles, including the one plaintiff purchased; defendant knew of the defects and the hazards they posed; defendant had exclusive knowledge of the defects but intentionally concealed and failed to disclose that information; plaintiff would not have purchased the vehicle if he had known of the defects; and plaintiff suffered damages in the form of money paid to purchase the vehicle. (*E.g.*, Compl. ¶¶ 71-77.) Notably, however, the Complaint does not allege who plaintiff purchased the car from, and whether the seller was Defendant's agent. Accordingly, the demurrer is sustained to the fifth 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: jyh on 1/21/25 .
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Guadalupe Garcia-Fuentes v. Timothy Howes***
Superior Court Case No. 23CECG05191

Hearing Date: January 23, 2025 (Dept. 503)

Motion: Defendant's Motion for Summary Judgment

If oral argument is timely requested, it will be entertained on Thursday, January 30, 2025, at 3:30 p.m. in Department 503.

Tentative Ruling:

To grant defendant's motion for summary judgment. Defendant is directed to submit to this court, within five days of service of the minute order, a proposed judgment consistent with the court's summary judgment order.

Explanation:

The plaintiff, Guadalupe Garcia-Fuentes (Plaintiff), alleges she sustained severe bodily injury caused by a motor vehicle accident that occurred on October 25, 2022. Plaintiff filed a complaint for personal injury on December 20, 2023, specifically naming only one defendant—the driver, Timothy Connor Howes (Defendant)—in addition to 50 Doe defendants.

Defendant Satisfies His Initial Burden

Defendant now moves for summary judgment under Code of Civil Procedure section 437c against Plaintiff, based on a release dated June 13, 2023 (Release), that Plaintiff signed before filing her complaint. (Fact Nos. 3, 4, 5.) Code of Civil Procedure section 437c, subdivision (c) provides that summary judgment "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." A defendant moving for summary judgment has the initial burden of presenting evidence that a cause of action lacks merit because the plaintiff cannot establish an element of the cause of action or there is a complete defense. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853 (*Aguilar*).) If the defendant satisfies this initial burden, the burden shifts to the plaintiff to present evidence demonstrating there is a triable issue of material fact. (Code Civ. Proc., § 437c, subd. (p)(2); *Aguilar*, at p. 850.)

In a motion for summary judgment, the pleadings delimit the scope of the issues and frame the outer measure of materiality. (*Hutton v. Fidelity National Title Co.* (2013) 213 Cal.App.4th 486, 493.) A defendant moving for summary judgment must negate the plaintiff's "theories of liability *as alleged in the complaint;* that is, a moving party need not refute liability on some theoretical possibility not included in the pleadings." (*Ibid*, italics

original.) In her complaint, Plaintiff alleges Defendant's "negligence and unsafe speed caused Defendant's vehicle to [rear-end] Plaintiff's vehicle[.]"

In her memorandum opposing Defendant's motion, Plaintiff misinforms the court that Kaylie R. Quarles (Quarles) is a co-defendant. Contradicting the allegations of her complaint, Plaintiff argues that when the accident occurred, Defendant "was operating a vehicle owned by Co-defendant [Quarles], which was insured under a separate automobile insurance policy issued by Progressive Insurance." (Opp., p. 2:9-12, some capitalization omitted.) In fact, Plaintiff does not name Quarles as a co-defendant in the complaint, Plaintiff does not allege Quarles owned the vehicle involved in the accident, and Plaintiff makes no reference to a settlement agreement or an insurance company. Instead, Plaintiff alleges Defendant's negligence caused "Defendant's vehicle" to collide with Plaintiff's vehicle. (Comp., p. 5.) The court must analyze Defendant's motion for summary judgment based on the allegations in Plaintiff's complaint.

Defendant provides the court with a copy of the Release signed by Plaintiff, and evidence that Plaintiff acknowledged the copy to be true and correct. Specifically, Fact No. 3 is supported by evidence to show Defendant served Plaintiff with a Request for Admissions, Set One, on May 17, 2024, which included a copy of the single-page Release "purported to have been signed by Plaintiff . . . and her counsel[.]" (Fact No. 3.) Fact No. 5 states Plaintiff signed the single-page Release on June 13, 2023. Defendant supports these facts with a copy of Plaintiff's verified responses to Defendant's Request for Admissions, Set One, in which Plaintiff admits the Release attached as exhibit A includes a true and correct copy of Plaintiff's signature (Resp. to RFA No. 1) and Plaintiff signed the Release on June 13, 2023 (Resp. to RFA No. 2).

Defendant bases his motion on the language of the Release signed by Plaintiff, in which Plaintiff released and discharged Defendant and all others responsible for her accident. The express language of the Release provides that in consideration of the sum of $15,000, Plaintiff released and forever discharged:

> Quarles and [Defendant] and successors, affiliates and assigns … and all others legally responsible for his/her/their acts and omissions of and from every bodily injury claim, demand, right or cause of action arising out of or in any way connected with that certain accident, including all injuries, deaths, and loss of services and consortium, resulting therefrom, which occurred on or about the 25th day of October, 2022 at or near Fresno, CA.

(Release, ¶ 2; Fact No. 7.)

The language of the Release is clear, broad, and unambiguous. It releases Defendant and all others legally responsible for Plaintiff's injuries of and from every bodily injury claim arising out of or in any way connected with Plaintiff's accident. The Release bars Plaintiff from pursuing the claims she alleged against Defendant in her complaint. Therefore, Defendant has satisfied his initial burden to show he has a complete defense to Plaintiff's complaint, based on the Release. The burden then shifts to Plaintiff to raise a triable issue of material fact.

<u>Plaintiff Fails to Raise a Triable Issue of Material Fact</u>

A party opposing summary judgment must present admissible evidence, including "declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice" must or may "be taken." (*Aguilar, supra,* 25 Cal.4th at p. 843, quoting Code Civ. Proc., § 437c, subd. (b).) Plaintiff fails to do so.

The facts and evidence submitted by Defendant include a true and correct copy of the Release that Plaintiff admittedly signed. The Release contains a statement that Plaintiff signed it "under the direction and advice" of her attorney, Alex Megeredchian, followed by Mr. Megeredchian's purported signature. Plaintiff presents no admissible evidence to dispute the genuineness of the signatures or otherwise dispute Defendant's eight stated facts. Plaintiff admits Fact Nos. 1, 2, and 4 are undisputed.

Plaintiff suggests Fact Nos. 3, 5, and 8 are disputed, based on the same response and "supporting evidence." For example, Plaintiff's response to Fact No. 3 (re service of RFA) states: "Disputed as to this fact." But Plaintiff provides no evidence to support her alleged claim that Fact No. 3 is disputed. Instead, she responds "Plaintiff, in her deposition, denied executing any instrument that releases Defendant driver, Timothy Howes, from any and all liability for claims arising out of the October 25, 2022, incident." Plaintiff provides no deposition transcript and no evidence to dispute her own admission that she signed the Release. In any event, evidence of her undisclosed interpretation of the Release is insufficient to dispute Fact No. 3 regarding service of pretrial discovery. Likewise, Plaintiff's attempts to dispute Fact No. 5, that she signed the Release in June 2023, and Fact No. 8, that she signed the settlement check, with the same response, fail for the same reason.

Plaintiff attempts to dispute Fact Nos. 6 and 7 with the following response: "Plaintiff, in her response to Defendant's Request for Admission No. 4., denies executing an instrument and forever releasing and discharging Defendant Timothy Howes for the motor vehicle accident which occurred on October 22, 2025 [sic, numbers transposed]." Defendant's Request for Admission No. 4 asked Plaintiff to: "Admit that [the Release] indicates that in consideration of $15,000.00 YOU released and forever discharged [Quarles] and [Defendant] for a motor vehicle accident which occurred on October 25, 2022." After objecting, Plaintiff responded in writing as follows: "Deny, 'the [R]elease was only for the claim No. 22-9034808 that is stated on Defendant's Exhibit A'." (Resp. to RFA No. 4.) The court finds the language of the Release, as stated in Fact Nos. 6 and 7, is undisputed; but the interpretation of the undisputed language of the Release raises a question of law for the court. (*John's Grill, Inc. v. The Hartford Financial Services Group, Inc.* (2024) 16 Cal.5th 1003, 1013 [in unambiguous contract, court infers parties' mutual intention at time contract formed solely from written provisions].) Therefore, Plaintiff's denial raises a legal question of contract interpretation, not a triable issue of material fact. The court finds Defendant's eight facts to be undisputed.

Plaintiff submits four additional facts in an attempt to raise a triable issue of material fact, but none of the facts are material or sufficient to overcome Plaintiff's admissions. Plaintiff's additional facts describe her settlement efforts with Progressive Insurance Company to recover from Quarles and with AAA Automobile Insurance Company to recover from Defendant. The additional facts do not create a triable issue of material fact to dispute that Plaintiff signed the Release and the language of the

Release is accurately stated. (*AARTS Productions, Inc. v. Crocker National Bank* (1986) 179 Cal.App.3d 1061, 1065 [where party makes admissions against interest, immaterial factual conflicts outside scope of pleadings are insufficient to defeat motion for summary judgment].) As the court explained in *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, when the defendant establishes facts based on the plaintiff's admissions, a plaintiff's self-serving declaration or other self-serving evidence is insufficient to create a triable issue of fact:

> [A]dmissions against interest have a very high credibility value. This is especially true when, as in this case, the admission is obtained not in the normal course of human activities and affairs but in the context of an established pretrial procedure whose purpose is to elicit facts. Accordingly, when such an admission becomes relevant to the determination, on motion for summary judgment, of whether or not there exist triable issues of *fact* (as opposed to legal issues) between the parties, it is entitled to and should receive a kind of deference not normally accorded evidentiary allegations in affidavits.

(*Id.* at p. 22, italics original.)

Furthermore, Plaintiff's complaint, filed after she signed the Release, does not include a request to set aside the Release, nor does she make a motion to set aside the Release now based on mandatory or discretionary grounds under Code of Civil Procedure section 473. Had Plaintiff made such a request, it is unlikely she could have established an excusable error.

In Zamora v. Clayborn Contracting Group, Inc. (2002) 28 Cal.4th 249 (*Zamora*), the California Supreme Court held that the trial court properly granted relief from a mistake after a legal assistant made a "typo" in preparing a section 998 settlement offer by typing the word "against" instead of "in favor of." The defendant promptly accepted the offer, which was the exact opposite of the plaintiff's intent. The high court explained the analysis the trial court must apply to exercise its discretion to determine if an error is excusable--because it is a clerical or ministerial mistake that anyone with no legal training could have made—or inexcusable due to an attorney's failure to meet the professional standard of care:

> "A party who seeks relief under section 473 on the basis of mistake or inadvertence of counsel must demonstrate that such mistake, inadvertence, or general neglect was excusable because the negligence of the attorney is imputed to his client and may not be offered by the latter as a basis for relief." (*Generale Bank Nederland v. Eyes of the Beholder Ltd.* (1998) 61 Cal.App.4th 1384, 1399.) In determining whether the attorney's mistake or inadvertence was excusable, "the court inquires whether 'a reasonably prudent *person* under the same or similar circumstances' might have made the same error.' " (*Bettencourt v. Los Rios Community College Dist.* (1986) 42 Cal.3d 270, 276, italics added by Supreme Court.) In other words, the discretionary relief provision of section 473 only permits relief from attorney error "fairly imputable to the client, i.e., mistakes anyone could have made." (*Garcia* [*v. Hejmadi* (1997)] 58 Cal.App.4th [674,] 682.)

> "Conduct falling below the professional standard of care, such as failure to timely object or to properly advance an argument, is not therefore excusable. To hold otherwise would be to eliminate the express statutory requirement of excusability and effectively eviscerate the concept of attorney malpractice." (*Ibid.*)

(*Zamora, supra,* 28 Cal.4th at p. 258.)

Under the "reasonably prudent person standard," an attorney gets the benefit of relief under section 473, subdivision (b) only where the mistake might be made by a person with no special training or skill. (*Pazderka v. Caballeros Dimas Alang, Inc.* (1998) 62 Cal.App.4th 658, 671 (*Pazderka*).) For example, an attorney's failure to include a provision for attorney fees and costs in an offer to compromise is not the type of mistake "'ordinarily made by a person with no special training or skill.'" (*Ibid.*; *Premium Commercial Services Corp. v. Nat. Bank of Cal.* (1999) 72 Cal.App.4th 1493, 1496-1497 [trial court abused its discretion by setting aside section 998 settlement based on counsel's mistaken belief that offer included provision for attorney fees and costs].)

Thus, had Plaintiff requested relief based on a mistake, to prevail, she would have the burden to show the Release contained a ministerial mistake "anyone could have made." (*Zamora, supra,* 28 Cal.4th at p. 258.) But the preparation or review of a Release is not a clerical task ordinarily performed by a person without legal training. If an attorney fails to meet the professional standard of care, the appropriate relief is via an attorney malpractice action. (*Ibid.*)

The entire one-page Release does not contain language ordinarily used by a person with no special training or skill. Unlike *Zamora,* the mistake here is more than a clerical error. Furthermore, the law favors settlements:

> It is important to recognize there is a strong public policy favoring settling of disputes. (*Zhou v. Unisource Worldwide* (2007) 157 Cal.App.4th 1471, 1475.) "We note that there is a well-established policy in the law to discourage litigation and favor settlement. Pretrial settlements are highly favored because they diminish the expense of litigation." (*Nicholson v. Barab* (1991) 233 Cal.App.3d 1671, 1683.) Additionally, "Freedom of contract is an important principle, and courts should not blithely apply public policy reasons to void contract provisions." (*VL Systems, Inc. v. Unisen, Inc.* (2007) 152 Cal.App.4th 708, 713.) [Fn.] The power to void a contract should be exercised only where the case is free from doubt. (*City of Santa Barbara v. Superior Court* (2007) 41 Cal.4th 747, 777, fn. 53.)

(*Kaufman v. Goldman* (2011) 195 Cal.App.4th 734, 745–746 [upholding settlement agreement negotiated with advice of counsel].)

Here there is neither an allegation nor evidence of fraud or undue influence, and the Release is not unconscionable. As the court explained in *Pazderka*:

> Permitting the court to unravel such [settlement] agreements based on mistake or evidence of no intent, as the trial court did here, would

> contravene the policy objectives of section 998. [¶] . . . . [¶] Our conclusion is consistent with the Supreme Court's holding that a " 'valid compromise agreement has many attributes of a judgment, and in the absence of a showing of fraud or undue influence is decisive of the rights of the parties thereto and operates as a bar to the reopening of the original controversy.' (*Shriver v. Kuchel* (1952) 113 Cal.App.2d 421, 425.)" (*Folsom [v. Butte County Assn of Governments* (1982)] 32 Cal.3d [668,] 677.) Here, there is no evidence of fraud or undue influence; thus, the court abused its discretion in vacating the judgment and granting rescission.

(*Pazderka, supra,* 62 Cal.App.4th at pp. 672-672.)

In summary, the court finds Plaintiff fails to meet her burden to raise a triable issue of material fact. But this does not leave Plaintiff without a remedy. As the court restated in *Pazderka*:

> Although our conclusion may seem harsh, it will advance the clear purpose of section 998, which is to encourage the settlement of lawsuits prior to trial [citation]. If courts could set aside compromise agreements on the grounds of mistake, section 998 judgments would spawn separate, time-consuming litigation. It bears repeating: Section 473, subdivision (b), was not intended to permit attorneys "to escape the consequences of their professional shortcomings" (*Hejmadi, supra,* 58 Cal.App.4th at p. 685) or to insulate them from malpractice claims.

(*Pazderka, supra,* 62 Cal.App.4th at p. 672.) For these reasons and the additional reasons stated in Defendant's papers, the court grants Defendant's motion for summary judgment.

Request for Continuance

The court denies Plaintiff's request for a continuance because Plaintiff fails to show good cause. Under Code of Civil Procedure section 437c, subdivision (h), "[i]f 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."

In order to obtain a continuance under subdivision (h), the party seeking the continuance must submit a declaration stating (1) the facts to be obtained are essential to oppose the motion; (2) the declarant has reason to believe such facts may exist; and (3) the reasons why the party needs additional time to obtain these facts. (*Jade Fashion & Co., Inc. v. Harkham Industries, Inc*. (2014) 229 Cal.App.4th 635, 656 [affirming trial court's denial of continuance where submitted declaration failed to specify potential facts that could be obtained or why facts essential].) Continuance of a summary judgment hearing is not mandatory when no declaration is submitted or when the submitted declaration fails to make the necessary showing. (*Menges v. Department of Transportation* (2020) 59 Cal.App.5th 13, 25 [trial court properly exercised discretion to

deny untimely continuance request that failed to follow proper procedure and lacked essential basis].)

In the present case, Plaintiff has requested a continuance to conduct further discovery and to obtain her own deposition transcript. The only information submitted in support of her request for a continuance is the last paragraph of her counsel's declaration. Plaintiff's counsel states it is his understanding that Plaintiff, in her deposition, denied under oath executing any instrument to release Defendant from liability for the subject motor vehicle accident. Counsel does not suggest Plaintiff denied executing the Release. He fails to explain how a fact regarding a mistake or evidence of Plaintiff's lack of intent is essential for the opposition. (*Pazderka, supra,* 62 Cal.App.4th at pp. 672-672 [mistake or evidence of no intent insufficient to unravel settlement agreement].) Thus, Plaintiff fails to explain what facts she needs to obtain, why those facts are essential to support her opposition, and why she could not obtain the facts earlier through the exercise of diligence. Therefore, the court denies the request for a continuance.

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: ____________jyh_______________ on _____1/21/25_______________.
(Judge's initials) (Date)