Tentative Rulings for March 11, 2025
Department 501

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) ***The above rule also applies to cases listed in this "must appear" section.***

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

Begin at the next page

(36)

Tentative Ruling

Re: ***Garcia, et al. v. Rowe, M.D., et al.***
Superior Court Case No. 23CECG03279

Hearing Date: March 11, 2025 (Dept. 501)

Motion: by Defendant Valley Children's Hospital for Summary Judgment

Tentative Ruling:

To grant defendant Valley Children's Hospital's Motion for Summary Judgment. (Code Civ. Proc., § 437c, subd. (c).) Moving party 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:

As the moving party, defendant Valley Children's Hospital ("VCH") bears the initial burden of proof to show that plaintiffs cannot establish one or more elements of their cause of action or to show that there is a complete defense. (Code Civ. Proc., § 437c, subd. (p)(2).) Only after the moving party has carried this burden of proof does the burden of proof shift to the other party to show that a triable issue of one or more material facts exists – and this must be shown via specific facts and not mere allegations. (*Id.*)

Where the moving party produces competent expert opinion declarations showing that there is no triable issue of fact on an essential element of the opposing party's claim (e.g. that a medical defendant's treatment fell within the applicable standard of care), the opposing party's burden is to produce competent expert opinion declarations to the contrary. (*Ochoa v. Pacific Gas & Elec. Co.* (1998) 61 Cal.App.4th 1480, 1487.)

In determining whether any triable issues of material fact exist, the court must strictly construe the moving papers and liberally construe the declarations of the party opposing summary judgment. (*Barber v. Marina Sailing, Inc.* (1995) 36 Cal.App.4th 558, 562.) Any doubts as to whether a triable issue of material fact exists are to be resolved in favor of the party opposing summary judgment. (*Ibid.*)

Lastly, "[f]ailure to file opposition including a separate statement of disputed material facts by not less than 14 days prior to the motion 'may constitute a sufficient ground, in the court's discretion, for granting the motion.'" (*Cravens v. State Bd. of Education* (1997) 52 Cal.App.4th 253, 257, quoting Code of Civil Procedure § 437c(c).)

Here, the Complaint is based on a theory of medical negligence. Dr. Christian Hochstim's opinion is sufficient to shift the burden as to the existence of a triable issue of fact to plaintiffs, as to the entirety of the Complaint. Plaintiffs, however, neither filed an

opposition nor an opposing statement of material fact(s), thus tacitly affirming the merits of VCH's motion. (*Cravens v. State Bd. of Education* (1997) 52 Cal.App.4th 253, 257.)

Therefore, the motion for summary judgment is granted.

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

Tentative Ruling
Issued By: DTT on 3/7/2025.
(Judge's initials) (Date)

(37)

Tentative Ruling

Re: ***Diane Hensley v. Paula Bremel***
Superior Court Case No. 23CECG05289

Hearing Date: March 11, 2025 (Dept. 501)

Motion: 1) Defendant North Anna Gardens Homeowners Association No. 4's Demurrer; 2) Defendant Philadelphia Indemnity Insurance Company's Demurrer; 3) Defendant DH Adjusting, LLC's Demurrer and Motion to Strike

Tentative Rulings:

Demurrer by defendant North Anna Gardens Homeowners Association No. 4: To sustain the demurrer to the second cause of action, *with leave to amend*. Plaintiff is granted 10 days' leave to file a Third Amended Complaint, which will run from service by the clerk of the minute order. New allegations/language must be set in **boldface** type.

Demurrer by defendant Philadelphia Indemnity Insurance Company: To sustain the demurrer to the ninth cause of action, *without leave to amend*. Plaintiff is to remove Philadelphia Indemnity Insurance Company from this cause of action in any Third Amended Complaint.

Demurrer by defendant DH Adjusting, LLC: To sustain the demurrer to the thirteenth and fifteenth causes of action, *without leave to amend*. To sustain the demurrer to the fourteenth cause of action, *with leave to amend*. Plaintiff is granted 10 days' leave to file a Third Amended Complaint, which will run from service by the clerk of the minute order. New allegations/language must be set in **boldface** type.

To strike defendant DH Adjusting, LLC from the prayer for relief, paragraph 5, for punitive damages. To deny the motion to strike as to attorney's fees.

Explanation:

DEMURRERS

The function of a demurrer is to test the sufficiency of a plaintiff's pleading by raising questions of law. (*Plumlee v. Poag* (1984) 150 Cal.App.3d 541, 545.) The test is whether plaintiff has succeeded in stating a cause of action; the court does not concern itself with the issue of plaintiff's possible difficulty or inability in proving the allegations of his complaint. (*Highlanders, Inc. v. Olsan* (1978) 77 Cal.App.3d 690, 697.) In assessing the sufficiency of the complaint against the demurrer, we treat the demurrer as admitting all material facts properly pleaded, bearing in mind the appellate courts' well established policy of liberality in reviewing a demurrer sustained without leave to amend, liberally construing the allegations with a view to attaining substantial justice among the parties. (*Glaire v. LaLanne-Paris Health Spa, Inc*. (1974) 12 Cal.3d 915, 918.)

In ruling on a demurrer, whether plaintiff will be able to prove his or her case at trial is not considered. (*Griffith v. Department of Public Works* (1956) 141 Cal.App.2d 376, 381.) A demurrer admits the truth of all material factual allegations in the complaint. The question of plaintiff's ability to prove those allegations, or the possible difficulty in making such proof does not concern the reviewing court. (*Perdue v. Crocker National Bank* (1985) 38 Cal.3d 913, 922.) On demurrer, the court assumes the truth of the facts alleged in the complaint and the reasonable inferences that may be drawn from those facts. (*Miklosy v. Regents of University of California* (2008) 44 Cal. 4th 876, 883.) A demurrer is not the appropriate procedure for determining the truth of disputed facts or what inferences should be drawn when competing inferences are possible. (*Crosstalk Productions, Ltd. v. Jacobson* (1998) 65 Cal.App.4th 631, 635.)

North Anna Gardens

Defendant[1] demurs to the second cause of action for intentional tort which Plaintiff has now amended to assert as fraudulent concealment. Fraud requires, "(1) a misrepresentation, which includes a concealment or nondisclosure; (2) knowledge of the falsity of the misrepresentation, i.e., scienter; (3) intent to induce reliance on the misrepresentation; (4) justifiable reliance; and (5) resulting damages." (*Cadlo v. Owens-Illinois, Inc.* (2004) 125 Cal.App.4th 513, 519.) "Each element in a cause of action for fraud or negligent misrepresentation must be factually and specifically alleged." (*Ibid*.)

In order to plead fraudulent concealment, a plaintiff must allege "(1) concealment or suppression of a material fact; (2) by a defendant with a duty to disclose the fact; (3) the defendant intended to defraud the plaintiff by intentionally concealing or suppressing the fact; (4) the plaintiff was unaware of the fact and would have acted differently if the concealed or suppressed fact was known; and (5) plaintiff sustained damage as a result of the concealment or suppression of the material fact." (*Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1, 40.) A duty to disclose may arise where "(1) it is imposed by statute; (2) the defendant is acting as plaintiff's fiduciary or is in some other confidential relationship with plaintiff that imposes a disclosure duty under the circumstances; (3) the material facts are known or accessible only to defendant, and defendant knows those facts are not known or reasonably discoverable by plaintiff (i.e., exclusive knowledge); (4) the defendant makes representations but fails to disclose other facts that materially qualify the facts disclosed or render the disclosure misleading (i.e., partial concealment; or (5) defendant actively conceals discovery of material fact from plaintiff (i.e., active concealment)." (*Ibid*.)

Plaintiff provides three events of fraudulent concealment: (1) failure to disclose perilous condition of underground piping (SAC, ¶ 177), (2) failure to disclose regarding potentially inadequate insurance coverage (SAC, ¶ 180), and (3) failure to disclose that Defendant did not submit repair estimate to its insurer (SAC, ¶ 180B). In order for the Court to find that fraudulent concealment has been adequately pled, each of the requisite elements must be sufficiently pled for at least one of these three events. In the event each element is pled in a mixture to the events alleged, this will be insufficient.

[1] Where the court refers to "defendant", the defendant referenced is captured in the heading for each section.

Defendant asserts that plaintiff has failed to allege defendant's duty to disclose. A fiduciary relationship exists for a homeowners association with its members, regarding the homeowner's unit. (*Ostayan v. Nordhoff Townhomes Homeowners Assn., Inc*. (2003) 110 Cal.App.4th 120, 126.) The homeowners association's duties are established both by statute and the association's governing documents. (*Id*. at p. 127.) For the alleged failure to disclose the perilous condition, plaintiff has not alleged the basis of the duty beyond the fact that defendant was a homeowners association and that plaintiff owned the unit at issue. (SAC, ¶¶ 2, 4.) Here, the court can make reasonable inferences that a duty existed, as described in *Ostayan*, based on the fiduciary relationship between a homeowners association and its member, with regard to the unit, or condition thereof. For the alleged failure to disclose inadequate insurance coverage, plaintiff alleges a duty arises here because the governing documents required defendant to obtain insurance coverage and that implies a requirement to disclose where said coverage may prove inadequate. (SAC, ¶¶ 77-80.) Here, reading the allegations liberally, plaintiff has sufficiently alleged that the governing documents give rise to a duty to disclose regarding insurance coverage. For the alleged failure to disclose that defendant did not submit a repair estimate to defendant's insurer, plaintiff has not alleged facts to support a duty to disclose here. Thus, plaintiff has sufficiently alleged the duty to disclose as to the first and second alleged events, but not for the third.

Defendant also asserts that it cannot be expected to disclose information for which it lacked knowledge. For the alleged failure to disclose the perilous condition of the water pipes, plaintiff has alleged that defendant had knowledge. (SAC, ¶ 47.) To the extent defendant claims it lacked such knowledge, the truth of plaintiff's allegations will not be determined on demurrer. Defendant has not asserted a failure to plead its knowledge as to the second or third events of alleged fraudulent concealment.

Last, defendant asserts that plaintiff has insufficiently pled regarding reliance and/or causation. Reliance in the context of fraudulent concealment is pled when defendant's conduct causes plaintiff's conduct, to a plaintiff's detriment. (*Cadlo v. Owens-Illinois, Inc., supra*, 125 Cal.App.4th at p. 519.) A "mere assertion of 'reliance' is insufficient." (*Ibid*.) Here, for each of the alleged fraudulent concealment events, plaintiff has not alleged her conduct in detrimental reliance on defendant. For the alleged failure to disclose the perilous condition, plaintiff has not alleged what she did or failed to do as a result of not knowing about the water pipes. For the alleged failure to disclose regarding potentially inadequate insurance coverage, plaintiff has alleged that she obtained her own insurance policy without any knowledge of any existing policy purchased by defendant. (SAC, ¶ 50.) As such, plaintiff has alleged that she acted entirely on her own to obtain her own insurance policy. For the alleged failure to disclose that defendant did not submit a repair estimate to its insurer, plaintiff has not alleged how she would have altered her behavior had she been informed that defendant was not intending to submit a repair estimate.

The court sustains the demurrer, with leave to amend as to the following: (1) defendant's duty to disclose as to the alleged failure to disclose that defendant did not submit a repair estimate to its insurer, and (2) detrimental reliance for each of the alleged fraudulent concealment events.

Philadelphia Indemnity

Defendant demurs to the ninth cause of action for fraud. Fraud requires "(a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.'" (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638, citations omitted.) Furthermore, "[e]ach element of a fraud count must be pleaded with particularity so as to apprise the defendant of the specific grounds for the charge and enable the court to determine whether there is any basis for the cause of action, although less specificity is required if the defendant would likely have greater knowledge of the facts than the plaintiff." (*Chapman v. Skype Inc*. (2013) 220 Cal.App.4th 217, 231.) Defendant argues that there is no duty for insurers to make disclosures to potential third-party beneficiaries of the policy. (See Ins. Code, §§ 330-361.) The court previously sustained a demurrer as to this cause of action, with leave to amend, because plaintiff had failed to allege defendant's duty to disclose by an insurer to a potential third party beneficiary. (See Minute Order, October 10, 2024.) Plaintiff's amendments still do not allege the factual basis of defendant's duty to disclose regarding third party beneficiaries. To the extent plaintiff asserts that defendant had exclusive knowledge giving rise to a duty to disclose, the allegations in the Second Amended Complaint indicate that several parties had knowledge regarding the governance of the homeowners association. (SAC, ¶ 306.) As such, plaintiff has not alleged exclusive knowledge. The court sustains the demurrer, without leave to amend, as it appears that amendment will not cure the defect here.

DH Adjusting

Defendant demurs as to the three causes of action alleged against it: the thirteenth cause of action for intentional tort, or alternatively negligence; the fourteenth cause of action for aiding and abetting; and the fifteenth cause of action for conspiracy to defraud. Defendant asserts that none of these causes of action can be pursued against it because each relies on some duty owed by defendant to plaintiff and such duty cannot exist because defendant is an independent adjuster.

The court in *Sanchez v. Lindsey Morden Claims Services, Inc.* (1999) 72 Cal.App.4th 249, 253, found that a duty to the insured should not be imposed for insurer-retained adjusters. The court noted that imposition of such a duty would "subject the adjuster to conflicting loyalties." (*Ibid*.) It would not be appropriate to expect an adjuster to "argue both sides" where the coverage amount or loss is disputed between the insurer and the insured. (*Ibid*.) The court found "[a] new duty to the insured would conflict with that duty, and interfere with its faithful performance." (*Ibid*.) The court also noted that California courts have "refused to extend liability for *bad faith*, the predominant insurer tort, to agents and employees of the insurer." (*Id*. at pp. 254-255, emphasis in original.)

First, plaintiff attempts to argue that she has not alleged that defendant is an independent adjuster and that the court is not otherwise in a position to take judicial notice of such. This is inaccurate. Plaintiff has alleged, "Either or both PII or Allstate commissioned a third party adjuster, namely DH Adjusting, LLC, to adjust the claim of Plaintiff." (SAC, ¶ 96.) Plaintiff has also alleged, "On information and belief, PII contracted with DH Adjusting to adjust the loss of Plaintiff, or alternatively to make it appear as if the

loss was being adjusted." (SAC, ¶ 416.) Thus, plaintiff has alleged that defendant is an independent adjuster. Furthermore, plaintiff's attempts to alternatively allege that defendant was an agent do not change this.

Next, plaintiff postulates that the ruling in *Sanchez* is not applicable here where plaintiff asserts negligence, intentional tort, aiding and abetting, and conspiracy against defendant. Plaintiff hypothesizes about circumstances where an adjuster might act independently of their role as an adjuster and commit acts causing a plaintiff injury. Notably, none of these hypothetical acts (i.e., stealing documents in the course of an inspection or destroying portions of the home) are alleged to have occurred here.

Last, plaintiff argues that she has sufficiently alleged the required elements for each cause of action. Plaintiff concedes that duty is a required element for negligence, but argues that she has sufficiently alleged such duty. This is abjectly false. The court in *Sanchez* makes clear that no such duty can exist to plaintiff where defendant here was an independent adjuster.

For plaintiff's aiding and abetting argument, she asserts that there is no duty requirement for pleading. Aiding and abetting requires (1) knowledge another's conduct constitutes a breach of duty, and (2) giving substantial assistance or encouragement to the other to so act, or (3) giving substantial assistance to the other to accomplish a tortious result where the person's own conduct constitutes a breach of duty to the third person. (*IIG Wireless, Inc. v. Yi* (2018) 22 Cal.App.5th 630, 653-654.) Here, plaintiff argues that defendant knew Philadelphia Indemnity, believed it had further obligations to provide more funds pursuant to a policy, but intended to refuse. (SAC, ¶ 441.) Plaintiff then alleges that defendant provided substantial assistance "by failing and refusing to adjust Plaintiff's loss after the inspection of 7/28/23 and by failing and refusing to adjust the estimate of Bresee." (SAC, ¶ 443.) However, these allegations are based on factual representations which do not support the allegations claimed by plaintiff. Plaintiff alleged that defendant was commissioned by someone other than plaintiff to adjust plaintiff's claim (SAC, ¶ 96); that plaintiff obtained her own estimate for the repairs (SAC, ¶ 108); that following this estimate defendant has refused to adjust the loss (SAC, ¶¶ 110-111); that defendant provided information averse to plaintiff's independent estimate (SAC, ¶ 115); and that defendant participated in a further inspection of the unit (SAC, ¶¶ 116-117). Plaintiff has also alleged that "DHA at the time it presented its conclusion as to the amount of Plaintiff's loss to PII and/or Allstate knew that the recipient insurer would rely on that conclusion to the detriment of Plaintiff." (SAC, ¶ 139.) First, the asserted facts do not allege defendant's knowledge failure of either insurance company to pay more would amount to a breach of the insurance companies' duties. Second, the asserted facts do not allege a failure or refusal to adjust the loss. Rather, they allege that defendant acted as an adjuster for one or more of the insurance companies and that plaintiff disputes the amount based on another opinion. As such, plaintiff has not sufficiently alleged aiding and abetting.

Defendant demurs to the fifteenth cause of action for conspiracy. Civil conspiracy requires (1) formation, (2) operation of the conspiracy, and (3) damage resulting therefrom. (*Doctors' Co. v. Superior Court* (1989) 49 Cal.3d 39, 44.) Where an alleged conspirator "was not personally bound by the duty violated by the wrongdoing" civil conspiracy is not met. (*Ibid*.) As already discussed, defendant does not owe such a duty

to plaintiff here. (*Sanchez v. Lindsey Morden Claims Services, Inc.*, *supra*, 72 Cal.App.4th at p. 253.) Thus, plaintiff cannot assert conspiracy as against this defendant.

The court sustains defendant's demurrer as to the thirteenth, fourteenth and fifteenth causes of action. Leave to amend is only granted as to the fourteenth cause of action. Plaintiff cannot amend to cure the defects as to the thirteenth and fifteenth causes of action.

STRIKE

A motion to strike may be used to address defects in pleadings otherwise not challengeable by a demurrer. (See Code Civ. Proc., § 435.) A motion to strike can be used to attack either a portion or the entirety of a pleading. (*Ibid.)* Here, defendant DH Adjusting seeks to strike the prayers for attorney's fees and punitive damages. Regarding the punitive damages, these are only requested as to this defendant based on the fifteenth cause of action. In light of the court sustaining the demurrer to this cause of action, without leave to amend, punitive damages against this defendant are unavailable as a remedy.

Turning to the issue of attorney's fees, these are requested based on the thirteenth, fourteenth, and fifteenth causes of action. In light of the court sustaining the demurrer to the thirteenth and fifteenth causes of action, without leave to amend, attorney's fees against this defendant are unavailable as to these. However, for the fourteenth cause of action, the court is granting plaintiff leave to amend. The court is not inclined to strike the prayer for attorney's fees as to the fourteenth cause of action, at this time, based on the tort of another doctrine. This doctrine provides for attorney's fees where a plaintiff must obtain counsel to prosecute or defend an action against a third party because of a tort of the defendant. (*Gray v. Don Miller & Associates, Inc.* (1984) 35 Cal.3d 498, 505.)

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: DTT on 3/7/2025.
(Judge's initials) (Date)