

Tentative Rulings for March 13, 2025
Department 502

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.

24CECG01136 *Jana Williams v. The Basslake Corp.* is continued to Tuesday, April 29, 2025, at 3:30 p.m. in Department 502.

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Tentative Rulings for Department 502

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Tentative Ruling

Re: **Fast N Esy Investments, LLC v. Puneet Arora/LEAD CASE**
Superior Court Case No. 24CECG02965

Hearing Date: March 13, 2025 (Dept. 502)

Motion: Demurrer to Complaint

Tentative Ruling:

To sustain the general and special demurrer to the complaint, with leave to amend. (Code Civ. Proc. §430.10, subd. (e), (f).) Plaintiff is granted 10 days' leave to file the First Amended Complaint, which will run from service of the clerk of the minute order. New allegations/language must be set in **boldface** type.

Defendant's Request for Judicial Notice is granted.

Explanation:

Defendant Puneet Arora demurs generally to the complaint filed September 18, 2024 by Vikram Vohra, Fresno Superior Court Case No. 24CECG04076, now consolidated with *Fast N Esy Investments, LLC v. Puneet Arora*, Fresno Superior Court Case No. by plaintiff Vikram Vohra alleging a single cause of action for breach of contract. Attached to the complaint are five exhibits titled "Binding Agreement" whereby parties Vinay Vohra, Vikram Vohra, and Puneet Arora agreed to amend "existing Corporation officer's terms and conditions" for five corporations: Fast N Esy 4 Corporation (Exh. A), Fast N Esy 9 Corporation (Exh. B), Fast N Esy 18 Corporation (Exh. C), Fast N Esy 23 Corporation (Exh. D), and Fast N Esy 25 Corporation (Exh. E.) The agreements allow for the Vohras parties, at their discretion and with 60 days' notice to require Arora to "return all 'contributed assets'" which requires Arora to "pay/contribute his share of the cost of new or existing inventory, cash needed to operate, and working capital, by making payment to 'Vohras'." The complaint alleges demand for payment pursuant to the contracts was made and defendant is in breach of the contract. (Complaint ¶ 11.)

A cause of action for damages for breach of contract is comprised of the following elements: (1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff. (*Careau & Co. v. Security Pacific Business Center* (1990) 222 Cal.App.3d 1371, 1388; 4 Witkin, Cal. Procedure (6th ed. 2024) Pleading §525.)

Defendant argues the complaint is subject to demurrer for failure to allege a valid contract based on the lack of consideration within the Binding Agreements, failure to allege plaintiff's performance or excuse from performance, and failure to state plaintiff's damages.

There is no clear consideration for the required payments within the agreements attached to the complaint. The complaint does not include allegations that plaintiff

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Tentative Ruling

Re: **GGG Investments Group, LLC v. Wells Fargo Bank, N.A.**
Superior Court Case No. 24CECG02705

Hearing Date: March 13, 2025 (Dept. 502)

Motion: Demurrer by Defendant Wells Fargo Bank, N.A. to First Amended Complaint

Tentative Ruling:

To sustain the defendant's demurrer to the first cause of action with leave to amend; to overrule the demurrer to the second cause of action; and to sustain the demurrer to the third cause of action without leave to amend. The plaintiff is granted 20 days' leave to file a Second Amended Complaint, which shall run from service by the clerk of the minute order. New language must be set in **boldface** type.

Explanation:

The plaintiff, GGG Investments Group, LLC (Plaintiff), alleges in its first amended complaint (FAC) that an unknown third party fraudster initiated four electronic transfers totaling \$80,000 from Plaintiff's bank account deposited with the defendant, Wells Fargo Bank, N.A. (Defendant). Defendant refunded \$35,000 of the fraudulent transactions. To recover the remaining \$45,000, Plaintiff alleges causes of action for: violation of the federal Electronic Funds Transfer Act (EFTA) and California Commercial Code; breach of contract; and negligence. Defendant demurs to the FAC and each of its causes of action for failure to state a cause of action.

Discussion

Meet and Confer

Defendant's counsel filed and served a declaration stating he met and conferred with Plaintiff's counsel by telephone at least five days before a responsive pleading was due to be filed, but was unable to reach an agreement resolving the matters raised by the demurrer. This satisfies the requirements of Code of Civil Procedure sections 430.41 for the demurring party to meet and confer in person or by telephone with the opposing party.

Demurrer to First Cause of Action

In its first cause of action, Plaintiff alleges violations of two statutory schemes--the EFTA (15 U.S.C. § 1693 et seq.) and the California Commercial Code provisions for Funds Transfers (Cal. U. Com. Code, § 11101, et seq.). Based on the authorities cited by Defendant in its demurrer, Plaintiff withdraws its claim under the EFTA, and has agreed to amend its complaint to remove this claim.

Defendant cites *Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 795 for the general rule that a statutory cause of action must be pleaded with particularity. "Simply stating that the 'payment orders received by Defendants were not authorized by Plaintiffs' is not sufficient to show that Defendants failed to employ commercially reasonable security measures vis-à-vis these transactions." (*Chen v. JPMorgan Chase Bank, N.A.* (C.D. Cal. 2024) 745 F.Supp.3d 1025, 1032–1033 [granting defendant banks' motions to dismiss with leave to amend].) The court sustains Defendant's demurrer to Plaintiff's statutory causes of action with leave to amend to include the necessary specificity to state a cause of action under the California Commercial Code and to withdraw the federal claim under the EFTA.

Demurrer to Second Cause of Action

The parties agree that the elements a plaintiff must plead in an action for breach of contract are: (1) the contract; (2) the plaintiff's performance or excuse for nonperformance; (3) the defendant's breach; and (4) resulting damages. Plaintiff meets the requirements to plead the first element by attaching a copy of the contract and incorporating it by reference. (*Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 993 [plaintiff may plead contract by legal effect or by its terms].)

Defendant contends Plaintiff fails to allege the element of breach because Plaintiff fails to identify the precise contractual provision Defendant breached. In its reply, Defendant notes the contract specifically states Plaintiff agreed to Defendant's commercially reasonable security procedures. Plaintiff counters that in addition to alleging Defendant failed to implement commercially reasonable security procedures to prevent unauthorized funds transfers, it also alleges Defendant failed to use those commercially reasonable security procedures to protect Plaintiff from unauthorized electronic withdrawals. (FAC, ¶¶ 6, 21, 23, ex. A, p. 19 [contractual provision in section for "Funds Transfer Security Procedure," that requires Defendant to verify authenticity of instruction to send a funds transfer].) The court finds Plaintiff's allegation that Defendant failed to use (the agreed-upon) commercially reasonable security procedures meets the requirement to plead the element of breach.

Defendant also contends Plaintiff's breach of contract claim fails as a matter of law because Plaintiff failed to meet a notice deadline stated in the contract's "Return of ACH debit entries" section, in the paragraph at the top of page 19, which provides:

Business accounts only: Under the ACH rules, the Bank can seek **return** of an unauthorized non-consumer ACH debit entry until midnight of the business day following the business day the Bank posted the ACH debit to your account. To ensure the Bank is able to meet this return deadline, you must notify us no later than 3:00 p.m. Central Time on the business day following the business day the bank posted the ACH debit entry to your account. If you don't notify us in a timely manner of the unauthorized non-consumer ACH debit entry, we won't be able to **return it without cooperation and agreement of the originating bank and the originator of the debit entry**. Any other further effort to recover the funds must occur solely between you and the originator of the entry.

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Tentative Ruling

Re: **John Roe 9 v. Riverdale Assembly of God Inc.**
Superior Court Case No. 22CECG01315

Hearing Date: March 13, 2025 (Dept. 502)

Motion: By Defendant The General Council of the Assemblies of God
for Summary Judgment

Tentative Ruling:

To grant. Defendant The General Council of the Assemblies of God is directed to submit a proposed judgment consistent with this order within five days of service of the minute order by the clerk.

Explanation:

On May 20, 2022, plaintiff John Roe 9 ("Plaintiff") filed a Second Amended Complaint for six causes of action: (1) negligence; (2) childhood sexual assault pursuant to Code of Civil Procedure section 340.1; (3) negligent supervision/failure to warn; (4) negligent hiring/retention; (5) intentional infliction of emotional distress; and (6) breach of statutory duty under Civil Code section 51.7. The Complaint is brought against, among others, defendant The General Council of the Assemblies of God ("Defendant"). Plaintiff alleges that between 1991 and 1994, he attended Riverdale Christian Academy where he was sexually assaulted and groomed by James Davis. Defendant now seeks summary judgment.

A trial court shall grant summary judgment where there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc. §437c, subd. (c); *Schacter v. Citigroup* (2009) 47 Cal.4th 610, 618.) The issue to be determined by the trial court in consideration of a motion for summary judgment is whether or not any facts have been presented which give rise to a triable issue, and not to pass upon or determine the true facts in the case. (*Petersen v. City of Vallejo* (1968) 259 Cal.App.2d 757, 775.)

The moving party bears the initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he or she carries this burden, the burden shifts to plaintiff to make a prima facie showing of the existence of a triable issue. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849.) A defendant has met his burden of showing that a cause of action has no merit if he has shown that one or more elements of the cause of action cannot be established, or that there is a complete defense to that cause of action. (*Ibid.*) Once the defendant has met that burden, the burden shifts to the plaintiff to show a triable issue of one or more material facts exists as to the cause of action or a defense thereto. (*Ibid.*)

