Tentative Rulings for April 16, 2025
Department 403

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.***

24CECG00362 ***Erickson v. Guerrero, et al.***

24CECG04502 ***Jordan v. Padilla, et al.***

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 403

Begin at the next page

(20) **Tentative Ruling**

Re: ***Estate of Jae-Luv Smith and Keona Smith v. County of Fresno et al.***
Superior Court Case No. 22CECG00120

Hearing Date: April 16, 2025 (Dept. 403)

Motion: By Plaintiffs for Summary Adjudication

Tentative Ruling:

To grant summary adjudication of issues 1-3, as specified below.

Explanation:

This is a wrongful death action arising from the death of Jae-Luv Smith, caused by the physical abuse and neglect of his great-aunt and great-uncle, Crystal and Patrick Johnson. The First Amended Complaint ("FAC") alleges that Jae-Luv had been tortured and beaten to death by Crystal and Patrick Johnson. Patrick Johnson was criminally charged with murder, and Crystal Johnson was criminally charged with felony child abuse and endangerment. (FAC ¶ 9.) Plaintiffs, the Estate of Jae-Luv, with his biological mother as his successor-in-interest, sue the County of Fresno and two social workers employed by the Department of Social Services, Richard Plantz and Julie Donnelly. The FAC asserts causes of action for (1) Violation of Child Abuse and Neglect Reporting Act; (2) Breach of Mandatory Duties; and (3) Breach of Duties Arising under Special Relationship.

Plaintiffs move for summary adjudication of three issues of duty: (1) defendants' duty to cross-report to law enforcement the physical abuse referrals that were submitted to defendant on 12/16/2016 and 2/27/2020; (2) defendant's duty to make in-person contact with the child Jae-Luv Smith within 10 days of receiving the 10-day response referral that was submitted to defendant in 2016; and (3) defendant's duty to make immediate in-person contact with Jae-Luv in response to the immediate response physical abuse referral that was submitted to defendant in 2020.

A motion for summary adjudication asks the court to adjudicate the merits of a particular cause of action, affirmative defense, issue of duty or claim for damages, including a punitive damage request. (See Code Civ. Proc., § 437c, subd. (f).) Courts may summarily adjudicate "that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs." (Code Civ. Proc., § 437c, subd. (f)(1); see *Linden Partners v. Wilshire Linden Assocs.* (1998) 62 Cal.App.4th 508, 518.)

The motion is based on the following undisputed facts: On 12/16/2016, someone contacted Fresno child protective services and reported a suspicion that Jae-Luv and his two siblings were being physically abused by Mr. and Ms. Johnson. (Plaintiffs' Undisputed Material Fact ["UMF"] 1.) The County categorized this report as a 10-day physical abuse referral. (UMF 2.) On 2/27/2020 someone called in another report for physical abuse

concerning Jae-Luv. (UMF 3.) The County categorized this report as an immediate response ("crisis") physical abuse referral. (UMF 4.)

Defendants appear to dispute UMF 1 to the extent the screener narrative completed by the hotline social worker who took the call stated it was a report of physical neglect, as opposed to physical abuse. However, plaintiffs accurately state the fact. The "EMERGENCY RESPONSE REFERRAL INFORMATION" form being discussed in the deposition cited in support of UMF 1 indicates that the "ABUSE CATEGORY" is "PHYSICAL ABUSE". (See Booth Decl., Exh. A (Plantz Depo.) at pp. 48: 12-15, 49, 13-20, Exh. 1.) The screener narrative is provided by the County with the opposition. Richard Plantz, the assigned investigating social worker, testified that the screener narrative says, "This will be a non-crisis referral per Penal Code 11165.3 physical neglect." (Plantz Depo., 52:12-28, 5322-7, 53:19-54:1, 55:10-12, Ex. 2, p. 2 to Plantz depo.) Defendants' characterization of the evidence is also incomplete and misleading, as right after the quoted reference to physical neglect, the screener narrative states, "Minor children, age 8, 5 and 4, are allegedly being hit, pushed and whipped by their maternal aunt and uncle." (*Ibid.*) That constitutes physical abuse.

Defendants respond to UMF 2 by stating that the Hotline social worker who took the December 16, 2016, call and completed the screener narrative determined the report to be a "noncrisis referral" for "physical neglect." Again, though, as pointed out above, this was clearly a report of physical abuse.

Accordingly, plaintiff's UMF 1-4 are therefore undisputed, or at least there is no evidence supporting defendants' purported disputes of these facts.

Issue 1

Plaintiffs seek an adjudication that defendants had a duty to cross-report to law enforcement the physical abuse referrals that were submitted to defendant in 2016 and 2020.

Penal Code section 11166, subdivision (j)(1) (which is part of the Child Abuse and Neglect Reporting Act ("CANRA")) provides:

> A county probation or welfare department shall immediately, or as soon as practicably possible, report by telephone, fax, or electronic transmission to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or reasonably suspected instance of child abuse or neglect, as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2, or reports made pursuant to Section 11165.13 based on risk to a child that relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse, which shall be reported only to the county welfare or probation department. A county probation or welfare department also shall send by fax or electronic transmission a written report thereof within 36 hours of

> receiving the information concerning the incident to any agency to which it makes a telephone report under this subdivision.

The parties are in agreement that there is no duty to cross-report allegations of general neglect.

Section 11165.6 defines "Child abuse or neglect" as including "physical injury or death inflicted by other than accidental means upon a child by another person"... "the willful harming or injury of a child or the endangering of the person or health of a child" "and unlawful corporal punishment or injury..." "Neglect" as defined by the State Department of Social Services Regulations ["Regulation"] is "the failure to provide a person with necessary care and protection. In the case of a child, the term refers to the failure of a parent(s)/guardian(s)/ or caretaker(s) to provide for the care and protection necessary f01 the child's healthy growth and development. Neglect occurs when children are physically or psychologically endangered." (Regulation 31-002(n)(1).)

"One of the stated fundamental goals of CANRA is to increase communication and the sharing of information relating to child abuse and neglect among the agencies responsible for the welfare of children. (Pen. Code, § 11166.3, subd. (a).) To accomplish this, CANRA designates certain agencies to accept reports of alleged child abuse or neglect and to cross-report the information contained therein to other agencies." (*B.H. v. County of San Bernardino* (2015) 62 Cal.4th 168, 174.) The duty to cross-report is "mandatory and ministerial," and the failure to cross-report "can support a finding of breach of a mandatory duty, elements required to establish public entity liability." (*Id*. at p. 175.) An injured minor may bring a civil action where " 'a breach of the mandated reporter's duty to report child abuse' " causes the minor's injuries. (*Id.* at p. 189, fn. 6.)

The County selectively references portions of the record relating to the December 2016 report. It claims,

> As it pertains to the December 2016, the Hotline social worker (Fredrickson), determined that the call was to be classified as a "non-crisis referral for physical neglect." [Emphasis added; (See defs' resp to pls' UMF 2) The information provided to the Hotline social worker was that the reporting party "wants to make sure her daughter and the two other children are alright." There were also general accusations that the children "were being abused." Based on the information from the reporting party, the Hotline social worker determined the referral was for "physical neglect", not "physical abuse" as argued by plaintiffs. As stated by the plaintiffs in their moving papers, such a referral is not required to be cross-reported.

(Oppo. 7:9-18.)

In making this argument, defendants clearly ignore references in the same evidence showing that it was a report of physical abuse. The County of Fresno clearly categorized the 12/16/2016 referral as a "physical abuse" referral throughout the applicable documents. The Emergency Response Referral Information form repeatedly identifies the abuse category as "Physical Abuse." (See Exh. 1 to Plantz Depo.) The corresponding Delivered Service Log also clearly states that this referral was "in regards to Physical Abuse." (See Dillahunty Decl., Exh. A and Exh. 3 thereto.)

Being that the report was of physical abuse, it necessarily follows that the County had a duty to cross-report the 12/16/2016 report. As defendants point out in the opposition, "Penal Code section 11166(j)(1) provides in part that a County welfare department is to cross-report '***every known or reasonably suspected instance of child abuse or neglect*** as defined by Section 11165.6.'" (See Opp. 6:18-20, emphasis added.)

The court intends to grant the request for adjudication of issue 1: defendants had a duty to cross-report to law enforcement the physical abuse referrals that were submitted to defendant in 2016 and 2020. Defendants do not contend otherwise as to the 2020 report.

Issues 2 and 3

Plaintiffs also seek summary adjudication of "(2) defendant's duty to make in-person contact with the child Jae-Luv Smith within 10 days of receiving the 10-day response referral that was submitted to defendant in 2016; and (3) defendant's duty to make immediate in-person contact with Jae-Luv in response to the immediate response physical abuse referral that was submitted to defendant in 2020."

California Department of Social Services ("CDSS") regulations that "plainly constitute mandatory requirements" are mandatory duties for purposes of public entity liability under Government Code section 815.6. (*Scott v. County of Los Angeles* (1994) 27 Cal.App.4th 125, 142.) In *Scott*, the court held that CDSS regulation 31-320, which requires County social workers to make face-to-face contact with children in their care at least once a month, establishes a mandatory duty that is designed to protect children from harm. (*Id*. at pp. 141-142.) Whether a social worker has exercised reasonable diligence in attempting to fulfill this mandatory duty is a question of fact that goes to the defendant's breach of the duty; it has no bearing on whether a CDSS regulation actually constitutes a mandatory duty. (*Id*. at p. 146.)

Plaintiffs contend,

> The CDSS regulations at issue in this case set forth mandatory response times within which an investigating social worker must make initial in-person contact with an alleged child abuse victim. See CDSS regulations 31-101.3, 31-110.3, 31-115.1, 31-120.1. When a reporting party calls the child abuse hotline to report allegations of abuse or neglect, the County is required to complete the Emergency Response Protocol [fn], through which it determines whether an investigation into the reported allegations is required. See CDSS regulation 31-105.2. If an investigation is required, then the assigned investigating social worker ***must*** make face-to-face contact with the alleged child abuse victim. See CDSS regulation 31-002(e)(7) (defining "emergency response in-person investigation" as "face to face response by a social worker…"). The County must determine at the outset whether such in-person contact must be made immediately or within 10 calendar days, and then the investigating social worker must comply with this timeframe. See CDSS regulations 31-110.3, 31-120.1 and 31-125.2.

(MPA 6:5-15.)

Here, the County of Fresno received an emergency response referral alleging physical abuse of Jae-Luv Smith and his siblings on 12/16/2016. The County social worker who completed the Emergency Response Protocol determined that this was a 10-day response referral. (See Booth Decl., Exh A at Exh. 1.) Pursuant to CDSS regulations 31-120.1 and 31-125.2 and Welfare and Institutions Code section 16501(f), the investigating social worker had a mandatory duty to make in-person contact with Jae-Luv Smith within 10 days.

Defendants do not appear to dispute that this was their mandatory duty. Rather, they argue that they exercised reasonable diligence in responding and trying to connect with the family. (Oppo. 9:6-16.) Defendants focus primarily on satisfaction or breach of duty, but not what the duty is, which is what plaintiffs want adjudicated.

Regarding the 2/17/2020 referral, the moving papers point out that pursuant to CDSS regulation 31-115.11 and Welfare and Institutions Code section 16501, subdivision (f), if an Emergency Response Protocol indicates that an immediate response is required, then investigating social worker must commence her investigation *immediately*. Referrals categorized as "immediate response" involve "imminent danger to a child, such as physical pain, injury, disability, severe emotional harm or death." (See CDSS reg. 31-115.11.) This means that the social worker must, among other things, make immediate in-person contact with an alleged child abuse victim. (See CDSS regulation 31-125.2.)

In the opposition defendants do not dispute that this is a mandatory duty. Rather, they argue that they exercised "reasonable diligence" in the discharge of their duties. That is a separate issue that is beyond the scope of this motion. Since the motion is effectively unopposed with regards to the duties plaintiffs seek to establish with this motion, the court intends to grant summary adjudication of issues 2 and 3.

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: lmg on 4-14-25 .
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***Fenn v. American Honda Motor Co., Inc.***
Superior Court Case No. 22CECG03462

Hearing Date: April 16, 2025 (Dept. 403)

Motion: by Plaintiffs to Compel Compliance

Tentative Ruling:

To order the matter off calendar for Plaintiffs' failure to comply with Fresno Superior Court Local Rules, Rule 2.1.17.

Explanation:

The Superior Court of Fresno County, Local Rules, rule 2.1.17 requires a party to request a pretrial discovery conference and obtain the court's permission prior to filing a motion under Code of Civil Procedure, sections 2016.010 through 2036.050, unless the motion is to compel an initial response, a deposition of a party or subpoenaed person who has not timely served an objection, compliance with initial disclosures, or to quash or compel compliance with a subpoena served on a nonparty. (Super. Ct. Fresno County, Local Rules, rule 2.1.17(A).)

In the present case, plaintiffs move to compel defendant's compliance pursuant to Code of Civil Procedure section 2031.320 with the court's prior order requiring further responses to discovery. The motion does not fall within one of the exceptions to this court's local rule. Accordingly, plaintiffs were required by the local rule to request a pretrial discovery conference and receive an order granting permission to move forward with this motion to compel compliance.

Moreover, the issue appears moot as defendant has served further responses to Special Interrogatories and Requests for Production. (Schuler Decl., ¶ 7.)

Accordingly, the motion will not be heard, and is ordered off calendar.

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: lmg on 4-14-25.
(Judge's initials) (Date)

(41)

Tentative Ruling

Re: ***Walter Rodriguez v. Julio Sebastian***
Superior Court Case No. 22CECG03929

Hearing Date: April 16, 2025 (Dept. 403)

Motion: Default Prove-up

Tentative Ruling:

To grant. The court intends to sign and enter the proposed judgment submitted on April 7, 2025. No appearances are necessary.

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: lmg on 4-14-25.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re:	***Vasquez v. JDB Properties, Inc. et al.*** Superior Court Case No. 24CECG03402
Hearing Date:	April 16, 2025 (Dept. 403)
Motion:	By Defendants JDB Properties, Inc. and DBH Family Limited Partnership to Strike Portions of the Verified Complaint

Tentative Ruling:

To grant and strike the following portions from the Verified Complaint, with leave to amend:

(1) Page 3, Line 26, to Page 4, Line 1 as to the statement "The property damage and economic losses caused by the fire are the result of the ongoing custom and practice of Defendants of consciously disregarding the safety of the public";
(2) Page 4, Line 3 as to the statement "Defendants have continued to act in conscious disregard for the safety of others";
(3) Page 4, Line 25 as to the words "wantonly, unlawfully, carelessly, recklessly";
(4) Page 5, Line 4 to Line 5 as to the statement "Plaintiffs seek the recovery of punitive and exemplary damages against Defendants;
(5) Page 5, Line 14 as to the words "wantonly, unlawfully, carelessly, recklessly";
(6) Page 5, Line 21 to Line 22 as to the statement "Plaintiffs seek the recovery of punitive and exemplary damages against Defendants;
(7) Page 6, Line 18 to Line 19 as to the words "was done knowingly, willfully, intentionally or with reckless disregard for the rights of the plaintiff";
(8) Page 7, Line 5 as to the statement "Defendants' conduct was malicious, oppressive, and fraudulent warranting punitive damages";
(9) Page 7, Line 23 to Page 8, Line 3 as to the statements "Defendants' conduct was willful and wanton, and with a conscious attempt and disdain for the disastrous consequences that Defendants knew could occur as a result of their dangerous conduct. Accordingly, Defendants acted with malice towards Plaintiff which is an appropriate predicate for an award of exemplary/punitive damages";
(10) Page 8, Line 15 to Line 19 as to the statement "Further, the conduct alleged against Defendants in this complaint was despicable and subjected Plaintiffs to cruel and unjust hardship in conscious disregard of their rights, constituting oppression, for which Defendants must be punished by punitive and exemplary damages in an amount according to proof"; and
(11) Page 9, paragraph 6, stating a prayer for punitive/exemplary damages.

Plaintiffs Olivia Vasquez and Miguel Vasquez shall serve and file an amended complaint within 10 days of service of the order by the clerk. All new allegations shall be in **boldface type**.

Explanation:

On August 9, 2024, plaintiffs Olivia Vasquez and Miguel Vasquez (collectively "Plaintiffs") filed a verified Complaint. Among other things, the Complaint includes various statements or references to punitive damages, as well as a prayer for punitive damages. Defendants JDB Properties, Inc. and DBH Family Limited Partnership (collectively "Defendants") now seek to strike the allegations in support of, and prayer for punitive damages from each of the six causes of action for: (1) negligence; (2) premises liability; (3) breach of fiduciary duty; (4) negligent infliction of emotional distress; (5) trespass; and (6) violation of Health and Safety Code section 13007.

Pleadings are to be construed liberally with a view to substantial justice between the parties. (Code Civ. Proc. § 452.) The allegations in the complaint are considered in context and presumed to be true. (*Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255.)

While not cited in the Complaint, there is no general dispute that the claim for punitive damages rests on Civil Code section 3294. 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.

Defendants submit that the Complaint fails to support the claim for punitive damages with sufficient specificity of facts, relying only on conclusory statements.

Mere legal conclusions of oppression, fraud or malice are insufficient and therefore may be stricken. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) However, if looking to the complaint as a whole, sufficient facts are alleged to support the allegations, then a motion to strike should be denied. (*Ibid*.) Allegations that include conclusions of law or that are considered to be ultimate facts will stand if sufficient facts are alleged to support them. (*Ibid.*) Stated another way, if the facts and circumstances are set out clearly, concisely, and with sufficient particularity to apprise the opposite party of what is called on to answer, such is sufficient to support a claim for punitive damages. (*Lehto v. Underground Const. Co.* (1977) 69 Cal.App.3d 933, 944.)

Malice means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. (Code Civ. Proc. § 3294, subd. (c)(1).) Conscious disregard for the safety of another may be sufficient where the defendant is aware of the probable dangerous consequences of his or her conduct and he or she willfully fails to avoid such consequences. (*Pfeifer v. John Crane, Inc.* (2013) 220 Cal.App.4th 1270, 1299.) Malice may be proved either expressly through direct evidence or by implication through indirect evidence from which the jury draws inferences. (*Ibid.*)

Upon careful review of the Complaint, the Complaint fails to state facts sufficient to support the conclusions drawn with regards to punitive damages. The factual allegations are constrained to the Statement of the Case on pages 2 and 3 of the Complaint. The alleged facts are that a fire occurred on March 14, 2024, caused by a homeless suspect, at Defendants' neighboring property, which traveled to Plaintiffs' property. (Complaint, p. 2.) Certain damages to Plaintiffs' property as a result of the fire were alleged, as well as medical complications. (*Id.*, p. 3.) The Complaint finishes with an allegation that the homeless person lingers, and that the fire authorities have been alerted. (*Ibid.*)

None of the above facts support the conclusions drawn of fraud, malice or oppression. The Complaint alleges that the fire which caused Plaintiffs' damages was started by a homeless suspect. The allegations here do not directly speak to any act or omission by Defendants, conduct that would be measured against the rights or safety of others. The allegations do not state facts that show awareness of probable dangerous consequences and intentional acts that lead to those consequences.

Plaintiffs oppose, but do not directly address the issue of fact specificity. Rather, Plaintiffs submit that a pleading challenge is not subject to evidence. While correct, this does not absolve the Complaint from stating factual allegations, rather than legal conclusions, that, deemed as true on a pleading challenge, would support the prayer for punitive damages. (*See generally* Code Civ. Proc. § 436, subd. (a).)

For the above reasons, the motion to strike is granted, as to the portions of the Complaint indicated in the ruling portion, with leave to amend.[1]

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: lmg on 4-14-25.
(Judge's initials) (Date)

[1] Defendants further challenge the portions of the Complaint as insufficiently pled to seek punitive damages against an employer. Nothing in the Complaint suggests that the homeless suspect was the employee of Defendants, or that there is an employer-employee relationship for any of the parties involved. The Complaint merely alleges that Defendants owned the property from which the fire originated. (Complaint, p. 5.)

(41)

Tentative Ruling

Re: ***Braxton Berkley v. FCA US, LLC.***
Superior Court Case No. 24CECG04232

Hearing Date: April 16, 2025 (Dept. 403)

Motions: (1) Demurrer by Defendant FCA US, LLC (FCA) to Fifth Cause of Action of Complaint;
(2) Demurrer by Defendant Clovis Chrysler Dodge Jeep Ram (Clovis) to Sixth Cause of Action of Complaint

Tentative Ruling:

To sustain FCA's demurrer to the fifth cause of action, with leave to amend; and to sustain Clovis's demurrer to the sixth cause of action with leave to amend. The plaintiff is granted 20 days' leave to file the First 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, Braxton G. Berkley (Plaintiff), alleges he entered into a warranty contract with FCA on December 16, 2020, regarding a 2020 Ram 2500 vehicle, "which was manufactured and/or distributed by . . . FCA." (Comp., p. 2:10-11.) Problems with the vehicle ensued, specifically "that the 2020 Ram 2500 vehicles equipped with the 6.7L engine have one or more defects that can result [in] loss of power, stalling, engine running rough, engine misfires, failure or replacement of the engine (the 'Engine Defect')." (Comp., p. 3:11-13.) Plaintiff alleges these safety defects have been known to FCA and concealed to consumers like Plaintiff.

Meet and Confer

Defendants' counsel, Arya Shirani, submits declarations to establish that Shirani sent meet-and-confer letters for this case to comply with the requirements of Code of Civil Procedure section 430.41. Shirani describes previous meet-and-confer letters regarding "other cases shared between our law firms with similar deficiencies," and states, "Plaintiff's counsel has neither responded nor acknowledged defense counsel's dozens of attempts to meet and confer in any case in which . . . FCA is represented by this law firm." (See, e.g., FCA memo., p. 7 [Shirani decl. dated Dec. 12, 2024, ¶ 2, ex. A].)

Shirani's meet-and-confer declarations fail to establish the requirement to meet and confer in person, by telephone, or by video conference. But Code of Civil Procedure section 430.41, subdivision (a)(4) provides that this "shall not be grounds to overrule or sustain the demurrer." In light of the parties' inability to resolve their differences without judicial assistance in the many factually-similar cases shared between the two law firms, the court has considered the merits of the defendants' demurrers. However, in the future,

Plaintiff's counsel is advised to meet and confer in person, by telephone, or by video conference, as required by the statute, when asked to do so by opposing counsel.

Demurrer by FCA to Fifth Cause of Action – Fraudulent Concealment

FCA demurs to the fifth cause of action for fraudulent concealment. Plaintiff opposes the demurrer by contending 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 (*Dhital*). But the court in *Dhital* specifically held that "[f]raud, including concealment, must be pleaded with specificity. [Citation.]" (*Id.* at pp. 843-844.) As with all fraud claims, the necessary elements of a claim based on concealment or suppression are: (1) a misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity; (3) intent to defraud; (4) justifiable reliance; and (5) resulting damage. (*Id.*, at p. 843.)

In addition, a fraud claim based on concealment must involve a defendant with a legal duty to disclose the fact. (*Hoffman v. 162 North Wolfe LLC* (2014) 228 Cal.App.4th 1178, 1186 (*Hoffman*).) For example, "[s]uppression 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." (*Dhital, supra,* 84 Cal.App.5th at p. 843, citing *Hoffman, supra,* 228 Cal.App.4th at pp. 1186-1187.)

More recently, the California Supreme Court clarified that to plead successfully a claim for fraudulent concealment, a plaintiff must plead, with specificity:

> (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) the 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, italics added.)

The First District Court of Appeal in *Dhital* determined the plaintiffs there sufficiently pleaded a cause of action for fraudulent concealment arising from the relationship between the parties and the plaintiffs' allegations that:

> [T]he 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.) To establish the duty of disclosure, the court held the plaintiffs sufficiently alleged a buyer-seller relationship between the plaintiff and the manufacturer by alleging "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, as in *Dhital*, Plaintiff generally alleges the engine defects exist in numerous vehicles, including the one Plaintiff purchased; FCA knew of the defects and the hazards they posed; FCA 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. (Compl. ¶¶ 58-66.) Notably, however, Plaintiff fails to allege from whom he purchased the vehicle and whether the seller was FCA's agent. Therefore, Plaintiff fails to allege facts to establish a duty to disclose.

Also, unlike the plaintiffs in *Dhital*, Plaintiff here fails to allege any detailed facts specific to his purchase. Instead, he alleges the same general facts, copied and pasted from the form complaints filed by his counsel against FCA in other lawsuits. (Compare allegations in *Dhital, supra,* 84 Cal.App.5th at p. 833 [plaintiffs identified selling dealership, described repair attempts, and alleged plaintiffs eventually stopped using vehicle because it posed safety risk to them and others].) Accordingly, the court sustains the demurrer to the fifth cause of action.

Demurrer by Clovis to Sixth Cause of Action – Negligent Repair

Clovis demurs to the sixth cause of action for negligent repair. Plaintiff cites *Burgess v. Superior Court* (1992) 2 Cal.4th 1064, 1072, for the well-settled rule that the elements of any tort based on negligence are: duty, breach of duty, causation, and damages. Plaintiff also cites *Semole v. Sansoucie* (1972) 28 Cal.App.3d 714, 719, where the court explained:

> It has also been stated that "[t]he particularity required in pleading facts depends on the extent to which the defendant in fairness needs detailed information that can be conveniently provided by the plaintiff; less particularity is required where the defendant may be assumed to have knowledge of the facts equal to that possessed by the plaintiff."

(*Ibid.*, citing *Jackson v. Pasadena City School Dist*. [1963] 59 Cal.2d 876, 87.)

Plaintiff also cites a federal district court case, where the plaintiff alleged the defendant repaired the plaintiff's vehicle on numerous occasions and that the repairs failed to comply with relevant industry standards, causing plaintiff damage. In ruling that the plaintiff sufficiently alleged a cause of action for negligent repair, the district court noted the plaintiff's complaint included allegations about the circumstances of each repair. (*Lytle v. Ford Motor Company* (E.D. Cal., Oct. 2, 2018) 2018 WL 4793800, at p. 2.)

Here, Plaintiff uses boilerplate conclusory language to allege "Plaintiff delivered the Subject Vehicle to . . . Clovis for substantial repair on at least one occasion." (Comp.,

¶ 68.) Plaintiff fails to allege the circumstances of any repairs, and fails to inform Clovis if Plaintiff is claiming only one negligent repair or more than one. Plaintiff also fails to allege how the negligent repair or repairs caused Plaintiff to suffer damages.

Under the economic loss rule, the type of damages Plaintiff alleges determine whether Clovis can be held liable in tort in addition to breach of contract. The California Supreme Court recently explained the economic loss rule as follows:

> A tort remedy arises, not based on an agreement between the parties, but because the defendant has violated a societal duty that the law itself imposes on everyone. A tortfeasor is held liable not for violating a contract, but for violating an independent legal duty. [¶] But to be held liable in tort, a defendant must commit a tort. If all the defendant has allegedly done is violate the terms of the parties' contract, depriving the plaintiff of the benefits the contract ensures, the defendant's liability is limited by the contract. Broader tort liability only arises if a defendant violates an independent legal duty and the type of harm that ensues was not reasonably contemplated or accounted for by the contractual parties.

(*Rattagan v. Uber Technologies, Inc., supra,* 17 Cal.5th at p. 37.)

In a lemon law case, the economic loss rule requires allegations of personal injury or physical property damage, apart from the defective vehicle, to justify recovery in tort, rather than in contract. Therefore, to recover for negligent repair, Plaintiff must allege facts to show Clovis committed a tort by violating an independent legal duty not based on the duties arising from the repair contract between the parties. For these reasons, the court sustains the demurrer by Clovis to the sixth cause of action.

Leave to Amend

"The denial of leave to amend is appropriate only when it conclusively appears that there is no possibility of alleging facts under which recovery can be obtained." (*Cabral v. Soares* (2007) 157 Cal.App.4th 1234, 1240.) Generally, it is the opposing party's responsibility to request leave to amend, and to show how the pleading can be amended to cure its defects. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Although Plaintiff fails to show how the complaint can be amended, the court grants leave to amend since this is the original complaint. (See *McDonald v. Superior Court* (1986) 180 Cal.App.3d 297, 303-304 ["[l]iberality in permitting amendment is the rule" unless complaint "shows on its face that it is incapable of amendment"].)

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: lmg on 4-15-25.
(Judge's initials) (Date