

**Tentative Rulings for April 16, 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)**

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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.*

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

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(Tentative Rulings begin at the next page)

# **Tentative Rulings for Department 501**

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(46)

**Tentative Ruling**

Re: **Marcos Rojas v. City of Fresno**  
Superior Court Case No. 22CECG01337

Hearing Date: April 16, 2025 (Dept. 501)

Motion: by Defendant Central California Enterprise for Orders Deeming Matters in Requests for Admissions, Set One, Admitted and Imposing Monetary Sanctions

**Tentative Ruling:**

To deny defendant Central California Enterprise's motion for an Order Deeming Matters in Requests for Admissions, Set One, Admitted, as defendant has served responses and the motion is therefore moot.

To impose sanctions in the total amount of \$442.50 against plaintiff Marcos Rojas, in favor of defendant Central California Enterprise. Within thirty (30) days of service of the order by the clerk, plaintiff Marcos Rojas shall pay sanctions to defendant Central California Enterprise's counsel.

**Explanation:**

If a party fails to serve a timely response to requests for admission propounded upon that party, the requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for a monetary sanction. (Code. Civ. Proc., § 2033.280, subd. (b).) Objections are waived including those based on privilege and work product. (*Id.*, subd. (a).) The court shall make this order, unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220. (*Id.*, subd. (c).)

The court intends to deny the motion by defendant Central California Enterprise (CCE) for an order deeming matters admitted, as plaintiff Marcos Rojas indicates he served responses to the requests for admissions on defendant CCE on March 12, 2024. (Opp., 2:12-13.) Defendant CCE confirms that responses were received. (Reply, 3:4.) Thus, though untimely, it is not disputed that plaintiff has provided defendant CCE with responses to the discovery. Defendant CCE makes a passing comment that the responses received are not in substantial compliance, but does not demonstrate this and instead focuses its reply on the matter of sanctions. Therefore, the court finds the motion to be moot, as responses were received.

*Monetary Sanctions*

Pursuant to Code of Civil Procedure section 2033.280, subdivision (c), it is *mandatory* to impose a monetary sanction on the party whose failure to serve a timely

response to requests for admission necessitated this motion requiring the court to issue an order. (Code Civ. Proc., § 2033.280, subd. (c).) Although delayed responses may defeat this motion, they will *not* avoid monetary sanctions.

Defendant Central California Enterprise was within its rights to bring this motion because responses were not received within the established timeframe. Therefore, defendant CCE is entitled to sanctions. However, the sanctions amount may be reduced. The court will allow 1.5 hours for preparing the motion billed at the attorney's rate of \$255.00/hour, and also recovery of the \$60.00 filing fee. Sanctions will be in the total amount of \$442.50.

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** 4/14/2025.  
(Judge's initials) (Date)

(36)

**Tentative Ruling**

Re: **Hoffman v. Perez**  
Superior Court Case No. 24CECG01697

Hearing Date: April 16, 2025 (Dept. 501)

Motion: Default Prove-Up

**Tentative Ruling:**

To continue the matter to Tuesday, June 10, 2025, at 3:30 p.m., in Department 501, to allow plaintiff an opportunity to file a supplemental declaration providing *admissible* evidence of defendant's financial condition. Alternatively, plaintiff may file supplemental briefing on whether the ordinary rule requiring the consideration of defendant's wealth is inapplicable to Penal Code section 496. All paperwork must be filed no later than ten court days prior to the next hearing.

**Explanation:**

This is plaintiff's second application for default judgment. The previous application was denied because plaintiff calculated the interest sought based on both the principal and treble damages, and did not establish the contractual or statutory basis for an award of attorneys' fees. Plaintiff has now recalculated the interest sought based only on the principal, and establishes that she is entitled to attorneys' fees pursuant to Penal Code section 496. Additionally, plaintiff has limited her request for attorneys' fees in accordance with the Superior court of Fresno County, Local Rules, rule 2.8.3.

Evidence showing a defendant's financial condition is a prerequisite to an award of punitive damages, since the court must consider the wealth of the defendant in determining the amount necessary to impose the appropriate punitive effect. (*Adams v. Murakami* (1991) 54 Cal.3d 105, 109-116.) The plaintiff bears the burden of presenting evidence of the defendant's financial condition. (*Id.* at pp. 119-123; see Evid. Code, § 500.) This includes showing not just the defendant's financial assets, but financial liabilities as well. (*Baxter v. Peterson* (2007) 150 Cal.App.4th 673, 680-681 [punitive damages reversed when plaintiff failed to present evidence of defendant's financial liabilities].) This burden cannot be waived by a defendant's failure to object to a plaintiff's inadequate showing, because of the public interest in meaningful judicial oversight of punitive damage awards. (*Tomaselli v. Transamerica Ins. Co.* (1994) 25 Cal.App.4th 1269, 1283.) Therefore, this requirement is present even in the context of a default judgment.

Accordingly, the court finds it appropriate to continue the matter to allow plaintiff an opportunity to file a supplemental declaration providing *admissible* evidence of defendant's financial condition. Alternatively, plaintiff may file supplemental briefing on whether the ordinary rule requiring the consideration of defendant's wealth is

inapplicable to Penal Code section 496. All paperwork must be filed no later than ten court days prior to the next hearing.

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** 4/14/2025.  
(Judge's initials) (Date)

(34)

**Tentative Ruling**

Re: **Cordoba v. American Honda Motor Co., Inc.**  
Superior Court Case No. 22CECG02890

Hearing Date: April 16, 2025 (Dept. 501)

Motion: by Defendant for Summary Adjudication

**Tentative Ruling:**

To grant summary adjudication of the third cause of act in favor of defendant American Honda Motor Co., Inc. To grant summary adjudication of plaintiff's claim for punitive damages in favor of defendant American Honda Motor Co., Inc.

**Explanation:**

Defendant American Honda Motor Co., Inc., moves for summary adjudication of plaintiff's third cause of action alleging fraudulent concealment and the punitive damages sought in connection with the fraud-based cause of action. The moving papers raise four issues demonstrating the third cause of action lacks merit as plaintiff cannot establish certain required elements of the fraudulent concealment cause of action. Defendant need only prove that one of these elements cannot be established to demonstrate summary adjudication is appropriate for the third cause of action. (Code Civ. Proc. § 437c, subd. (o)(1).)

Issue 1. Plaintiff's Third Cause of Action for Fraudulent Inducement-Concealment fails as a matter of law because plaintiff cannot prove that AHM owed her a duty of disclosure because there was no direct transaction between the parties in which information could be disclosed.

“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.’ ” (*Hoffman v. 162 North Wolfe LLC* (2014) 228 Cal.App.4th 1178, 1185–1186, 175 Cal.Rptr.3d 820.) 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. (*Id.* at pp. 1186–1187, 175 Cal.Rptr.3d 820.) Fraud, including concealment, must be pleaded with specificity. (*Linear Technology Corp. v. Applied Materials, Inc.* (2007) 152 Cal.App.4th 115, 132, 61 Cal.Rptr.3d 221.) (*Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828, 843-844.)

The transactional relationship contemplated as giving rise to a duty to disclose “must necessarily arise from direct dealings between the plaintiff and the defendant; it

cannot arise between the defendant and the public at large." (*Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, 311.)

Here, plaintiff alleges she entered into an express written contract with defendant – the New Vehicle Limited Warranty, she leased the vehicle from an authorized dealership which is alleged to be defendant's agent for purposes of selling vehicles to customers, and before the purchase of the vehicle reviewed defendant's advertising and relied upon statements made during the sales process by defendant's agents. (FAC, ¶¶ 9, 84-85, 88.) Similar allegations were found sufficient by the *Dhital* court for purposes of pleading a claim for fraudulent concealment: "At the pleading stage (and in the absence of a more developed argument by Nissan on this point), we conclude plaintiffs' allegations are sufficient. Plaintiffs alleged 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. In light of these allegations, we decline to hold plaintiffs' claim is barred on the ground there was no relationship requiring Nissan to disclose known defects." (*Dhital supra*, 84 Cal.App.5th at p. 844.) Defendant challenges plaintiff's ability to support her allegations of a transactional relationship with evidence.

Defendant does not dispute the existence of the express written warranty of the vehicle leased by plaintiff. Defendant argues plaintiff's allegation that the warranty is reflects a transactional relationship between the parties is not supported. The warranty is created by statute, Civil Code section 1790, et seq., and there was no bargaining or discussion of terms of the warranty prior to plaintiff's lease of the vehicle. (UMF Nos. 9-10, 19-22.) This is sufficient to demonstrate there was no direct transactional relationship between the parties with the creation of the warranty contract.

Defendant asserts the dealership employees who interacted with plaintiff in the lease of her vehicle are not its agents as a matter of law. (*Williams v. Yamaha Motor Corp., U.S.A.* (C.D.Cal 2015) 2015 WL 13626022, \*6, emphasis added, [Song-Beverly case] citing *Herremans v. BMW of N. Am., LLC, No.* (C.D.Cal. 2014) 2014 WL 5017843, at \*6; *Arnson v. General Motors Corp.* (N.D. Ohio 1974) 377 F.Supp. 209, 213-14 ["[T]he weight of authority, including decisions reviewing similar dealer agreements and dealership operations, support[s] the view that a franchised automobile dealer, with regard to the sale of new vehicles, is an independent merchant and not an agent of the manufacturer. ... As a matter of law no agency relationship exists between the manufacturer and the dealer."].) Further, defendant has demonstrated there is no dispute as to the absence of information that the dealership was acting as an agent for defendant at the time plaintiff leased the vehicle. (UMF No. 8.)

As for the advertising by defendant, plaintiff testified contrary to her allegations that she did not review any advertising materials regarding the vehicle prior to leasing the vehicle from the dealership. (UMF Nos. 5-6.) Moreover, such materials are directed to the general public and are insufficient to support finding a transactional relationship. (*Bigler-Engler v. Breg, Inc., supra*, 7 Cal.App.5th at p. 311.)



The court finds defendant has met its burden to demonstrate there is no dispute as to plaintiff's inability to prove there was a transactional relationship between the parties giving rise to a duty to disclose the allegedly concealed facts.

Plaintiff has failed to submit a separate statement opposing the motion at bench demonstrating there is a dispute of material fact with regard to her ability to establish a transactional relationship giving rise to a duty to disclose. (Code Civ. Proc. § 437c, subd. (b)(3).) Plaintiff's opposition is limited to a statement that the parties agree she requires additional time to oppose the motion but she has failed to submit an affidavit pursuant to Code of Civil Procedure section 437c, subdivision (h), to support a request for continuance. The parties have not requested to continue the hearing on the motion by stipulation or otherwise, as is represented in plaintiff's opposition.

Accordingly, the court intends to grant the motion for summary adjudication as to Issue 1, which alone is sufficient to adjudicate the third cause of action in defendant's favor, as plaintiff cannot establish the necessary element of a duty to disclose the alleged defects to plaintiff.

Defendant likewise has demonstrated there is no dispute of material fact with respect to whether there is evidence of malice, fraud or oppressive conduct to support the claim for punitive damages. (UMF Nos. 42-44.) The court intends to grant the motion as to Issue 5 and find the claim for punitive damages fails.

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** 4/14/2025.  
(Judge's initials) (Date)