

Tentative Rulings for June 27, 2024
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.

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Tentative Rulings for Department 502

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(46)

Tentative Ruling

Re: **Alejandro Vasquez v. General Motors, LLC**
Superior Court Case No. 23CECG04590

Hearing Date: June 27, 2024 (Dept. 502)

Motion: Defendant General Motors, LLC's Demurrer and Motion to Strike Punitive Damages as to Plaintiffs' First Amended Complaint

Tentative Ruling:

To continue these motions to Thursday, August 1, 2024, at 3:30 p.m. in Department 502. The parties are ordered to conduct a meet and confer session, in person or by telephone, at least 20 days prior to the hearing, since defendant has presented a declaration indicating that efforts to meet and confer have been insufficient. If the meet and confer resolves the issues, defendant shall call the calendar clerk to take the motions off calendar. If it does not resolve the issues, defense counsel shall file a declaration, on or before Friday, July 19, 2024, stating the efforts made.

Explanation:

The parties must engage in good faith meet and confer, in person or by telephone, as set forth in Code of Civil Procedure sections 430.41 and 435.5. While failing to meet and confer cannot be grounds to grant or deny the motion to strike (Code Civ. Proc., §§ 430.41, subd. (a)(4)), this does not prevent the court from taking steps to enforce the statute's requirements before ruling on the merits of the motion.

Defense counsel's declaration is minimal and does not provide sufficient detail to evidence a good faith effort to meet and confer. Instead, the declaration states that "based on my experience with Plaintiffs' counsel, including *hundreds* of meet and confer discussions regarding the same issues presented in GM's Demurrer and Motion to Strike, the parties *will* reach an impasse." (Kay Decl., ¶ 2, emphasis added.) Efforts are insufficient when counsel stops trying to meet and confer after merely anticipating no resolution. It is not a plaintiff's burden to meet and confer with a defendant prior to this motion, and the burden cannot be shifted to them if defendant's efforts are insufficient.

The court's normal practice in such instances is to take the motion off calendar, subject to being re-calendared once the parties have met and conferred. However, given the current congestion in the court's calendar, the court will instead continue the hearing to allow the parties to meet and confer, and only if efforts are truly unsuccessful will it rule on the merits. After such good faith attempts, defendant shall file a declaration specifically detailing the efforts made.

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: **KCK** **on** **06/24/24** .
 (Judge's initials) (Date)

(35)

Tentative Ruling

Re: **Comforcare Franchise Systems, LLC v. Dahlia Home Care, Inc. et al.**

Superior Court Case No. 24CECG00550

Hearing Date: June 27, 2024 (Dept. 502)

Motion: By Defendants Dahlia Home Care, Inc., Bilaal Qinnab, and Dori Qinnab on Demurrer to Complaint

By Cross-Defendant Comforcare Franchise Systems, LLC on Demurrer to Cross-Complaint

Tentative Ruling:

To overrule defendants Dahlia Home Care, Inc., Bilaal Qinnab and Dori Qinnab's demurrer in its entirety as to the Complaint. (Code Civ. Proc. § 430.10, subd. (e).) Defendants Dahlia Home Care, Inc., Bilaal Qinnab and Dori Qinnab are directed to file an answer within ten days of service of the minute order by the clerk.

To sustain cross-defendant Comforcare Franchise Systems, LLC's demurrer as to the second, third, fourth, fifth, and sixth causes of action, with leave to amend. (Code Civ. Proc. § 430.10, subd. (e). Cross-Complainants shall serve and file an amended complaint within 10 days of the date of service of this minute order by the clerk. All new allegations shall be in **boldface**.)

Explanation:

Demurrer to Complaint

On February 7, 2024, Plaintiff Comforcare Franchises Systems, LLC ("Plaintiff") filed a Complaint stating four causes of action: (1) breach of contract – franchise agreement; (2) breach of contract – guaranty; (3) breach of contract – confidentiality agreement; and (4) accounting. As to the first three causes of action, the Complaint is stated as to defendant Bilaal Qinnab ("Bilaal")¹. As to the fourth cause of action, the Complaint is stated as to each of defendants Dahlia Home Care, Inc. ("Dahlia"), Dori Qinnab ("Dori") and Bilaal. Dahlia, Dori, and Bilaal (collectively "Defendants") demur to the fourth cause of action, for an accounting for failure to state facts sufficient to constitute a cause of action.²

On a demurrer a court's function is limited to testing the legal sufficiency of the complaint. A demurrer is simply not the appropriate procedure for determining the truth of disputed facts. (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113-114.) It is error to sustain a demurrer where plaintiff "has stated a

¹ With respect and for clarity, first names will be used.

² Defendants' Request for Judicial Notice is granted.

cause of action under any possible legal theory. In assessing the sufficiency of a demurrer, all material facts pleaded in the complaint and those which arise by reasonable implication are deemed true." (*Bush v. Cal. Conservation Corps* (1982) 136 Cal.App.3d 194, 200.)

In determining a 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.) On demurrer, the court must determine if the factual allegations of the complaint are adequate to state a cause of action under any legal theory. (*Barquis v. Merchants Collection Assn.* (1972) 7 Cal.3d 94, 103.) A plaintiff is not required to plead evidentiary facts supporting the allegation of ultimate fact; the pleading is adequate if it apprises defendant of the factual basis for plaintiff's claim. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.)

Here, Defendants challenge whether Dahlia and Dori are proper parties to the cause of action. Namely, Defendants submit that the Complaint fails to allege any relationship between Plaintiff and Dahlia or Dori.

Though Defendants argue that Dori, as a mere officer of Dahlia, is not subject to liability incurred by Dahlia, an accounting is not an action for damages, but of equity. (*Prakashpalan v. Engstrom, Lipscomb & Lack* (2014) 223 Cal.App.4th 1105, 1136-1137.) Equitable principles govern, and the plaintiff must show the legal remedy is inadequate. (*Id.* at p. 1137.) Some underlying misconduct in the part of the defendant must be shown to invoke the right to this equitable remedy. (*Ibid.*) A cause of action for accounting requires a showing that a relationship exists between the plaintiff and defendant that requires an accounting, and that some balance is due the plaintiff that can only be ascertained by an accounting. (*Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 179.) A plaintiff need not state facts that are peculiarly within the knowledge of the opposing party. (*Ibid.*)

Here, the Complaint identifies Dahlia as a California corporation, with Bilaal and Dori as officers and principals thereof. (Complaint, ¶ 2.) The Complaint alleges that certain agreements for franchising were entered into between Plaintiff and Bilaal, with later permission given to Bilaal to transfer his interest to Dahlia. (*Id.*, ¶ 6.) The Complaint alleges that the agreements contemplated royalties based on fees collected by the franchised business. (*Id.*, ¶ 23.) The Complaint alleges that the agreements required Bilaal to maintain certain records, which were to be made available to Plaintiff. (*Id.*, ¶ 32.) The Complaint alleges that Plaintiff has been refused information and access to pertinent financial information necessary to determine amounts owed under the agreements. (*E.g., id.*, ¶ 41.) Each defendant is alleged to have been agents of the other. (*Id.*, ¶ 8.) Each defendant is alleged to have been alter egos of corporate entities. (*Id.*, ¶ 9.)

Based on the above, the Complaint sufficiently states a cause of action for accounting as to Defendants. While Bilaal is alleged to have initially entered the agreement, the parties ultimately executed an addendum permitting Bilaal to transfer his interest to Dahlia, who is alleged to have two principals and officers, Bilaal and Dori. The Complaint thereafter sufficiently alleges that each of Defendants refused Plaintiff access to information related to these relationships, for which there are allegations that some balance is due to Plaintiff. The Complaint alleges that each of Defendants have

conducted misconduct in contra to the terms of the agreements upon which the Complaint is founded. Any further questions as to agency or alter egos will either be information peculiarly within the knowledge of Defendants, or the subject of discovery. Defendants' demurrer to the fourth cause of action of the Complaint, for an accounting, is overruled in its entirety. (Code Civ. Proc § 430.10, subd. (e).)

Demurrer to the Cross-Complaint

Cross-Defendant Comforcare Franchises Systems, LLC ("Cross-Defendant") brings the instant demurrer to Cross-Complainants Bilaal Qinnab and Dahlia Home Care, Inc.'s (collectively "Cross-Complainants") Cross-Complaint. The Cross-Complaint alleges six causes of action: (1) breach of contract; (2) breach of implied covenant of good faith and fair dealings; (3) unfair business practices; (4) fraud in the inducement; (5) fraud by misrepresentation; and (6) negligent misrepresentation. Cross-Defendant submits that each cause of action fails to state facts sufficient to constitute a cause of action.

Judicial Notice

Cross-Defendant generally relies on evidence submitted for consideration under judicial notice. Cross-Defendant submits that the contract attached to the Request for Judicial Notice is subject to notice as facts and propositions not reasonably subject to dispute. (Evid. Code § 452, subd. (h).) Assuming, *arguendo*, that the contract attached to the Request for Judicial Notice is the one referred to in the Cross-Complaint, the existence or enforceability of that contract is the subject of dispute on various bases as evidenced by the allegations of the Cross-Complaint. Moreover, even had the contract been judicially noticed, the notice is only that such a document exists. (*E.g.*, *Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 374 ["Taking judicial notice of a document is not the same as accepting the truth of its contents or accepting a particular interpretation of its meaning."]) Cross-Defendant, for example, does not demonstrate a situation where the evidence submitted for judicial notice are statements by the party whose pleadings are being challenged. (*Id.* at pp. 374-375.) Accordingly, the Request for Judicial Notice is denied.

Challenges Based on Contract

Cross-Defendant submits that each cause of action is untimely by way of contractual limitations. Each argument rests entirely on the consideration of the contract submitted for judicial notice. In light of the ruling on the Request for Judicial Notice, to the extent that arguments in the demurrer rely on outside evidence, these challenges, including all statute of limitations challenges as pled, are overruled in their entirety. (Code Civ. Proc. § 430.10, subd. (e).) This includes the arguments as to failing to state a claim due to contrary contractual language, lacking a contractual right to enforce an agreement, and failure to comply with dispute resolution procedures as agreed to by contract.

Breach of Contract

Cross-Defendant argues that the Cross-Complaint fails to state damages. Cross-Defendant submits that the alleged damages of failing to assist and install certain

software is speculative at best as to how that failure caused damages. However, as a pleading challenge, it is sufficient to allege that the acts referenced caused damages. To what extent was the duty created, how it was breached, the severity of the breach, and the damages that resulted therefrom exceed the scope of a pleading challenge. Cross-Defendant is apprised of what it is called to answer, that the claim rests on an alleged contractual duty to provide certain services for the software, and the failure to do so caused damages. (Cross-Complaint, ¶¶ 14-16, 21, 22.) The demurrer to the first cause of action for breach of contract is overruled.

Breach of Implied Covenant

Cross-Defendant argues that this cause of action is merely a restated claim for a breach of contract. Namely, Cross-Defendant notes that the alleged breach of the implied covenant was for refusing the support Cross-Complainants' operation of their business including assistance, marketing, protection of intellectual property in an exclusive area, and by charging exorbitant fees. (Cross-Complaint, ¶¶ 27.)

A breach of the implied covenant involves something beyond a breach of the contractual duty itself. (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1394.) The conduct of the defendant, whether it breaches a consensual contract term or not, must demonstrate a failure or refusal to discharge contractual responsibilities, prompted not by an honest mistake, bad judgment or negligence, but rather by a conscious and deliberate act, which unfairly frustrates the agreed common purposes and disappoints the reasonable expectations of the other party thereby depriving that party of the benefits of the agreement. (*Id.* at p. 1395.) What conduct meets these criteria will depend on the contractual purposes and reasonably justified expectations of the parties. (*Ibid.*) Where a breach of contract claim is alleged, a breach of the implied covenant serves only as a separate basis to obtain tort recovery. (*Ibid.*)

Here, the terms of the contract referenced are not stated in the Cross-Complaint. As pled, no conclusions can be drawn as to what matters were explicitly duties assigned by the contract, as opposed to matters that were not. The demurrer to the second cause of action for breach of implied covenant of good faith and fair dealings is sustained, with leave to amend. (Code Civ. Proc. § 430.10, subd. (e).)³

Unfair Business

Cross-Defendant argues that the Cross-Complaint fails to state a cause of action as to unfair business practices because the facts alleged in support are not pleaded with particularity. A plaintiff alleging unfair business practices must state with reasonable particularity the facts supporting the statutory elements of the violation. (*Khoury v. Maly's of Cal., Inc.* (1993) 14 Cal.App.4th 612, 619.)

³ Cross-Defendant argues that Dahlia Home Care, Inc. lacks the ability to bring a breach of contract action but again relies on the contract submitted for judicial notice. The demurrer to the second cause of action on this ground is overruled. (Code Civ. Proc. § 430.10, subd. (e).)

Here, the Cross-Complaint relies on Business and Professions Code section 17200, which provides that “unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Business and Professions Code section 17500 *et seq.* The Cross-Complaint instead makes reference to Business and Professions Code section 16600. Business and Professions Code section 16600 provides that every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.

The Cross-Complaint generally concludes that some portion of the contract violates Business and Professions Code section 16600. (Cross-Complaint, ¶¶ 31-32.) The Cross-Complaint fails to allege what portion of the contract violates Business and Professions Code section 16600. The opposition does not make the issue any clearer. As Cross-Defendant argues, the Cross-Complaint insufficiently pleads a violation of another law. Moreover, as Cross-Defendant correctly notes, a claim under Business and Professions Code section 17200 has limited remedies. (*Lee v. Luxottica Retail North America, Inc.* (2021) 65 Cal.App.5th 793, 800.) Injunctive relief and restitution, but not damages are recoverable. (*Ibid.*) Lost market share, lost business opportunity and lost profits are not recoverable as restitution under an unfair business claim absent a legal right to that stream of future income. (*Id.* at p. 807.) Here, the Cross-Complaint appears only to seek damages as a remedy for this cause of action. (Cross-Complaint, ¶ 34.)

For the above reasons the demurrer to the third cause of action for unfair business practices is sustained, with leave to amend. (Code Civ. Proc. § 430.10, subd. (e).)

Fraud Causes of Action

Cross-Defendant submits that the fourth, fifth, and sixth causes of action are subject to the economic loss rule. The economic loss rule precludes recovery in tort for negligently inflicted purely economic losses, which means financial harm unaccompanied by physical or property damage. (*Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905, 922.) In other words, not all tort claims for monetary losses between contractual parties are barred. (*Id.* at p. 923.) Those claims are barred only when they arise from, or are not independent of, the parties' underlying contract. (*Ibid.*) Specifically, tort damages are permitted in contract cases where the contract was fraudulently induced. (*Robinson Helicopter Co., Inc. v. Dana Cor.* (2004) 34 Cal.4th 979, 989-990.) The duty that gives rise to the tort is completely independent of the contract or arises from conduct which is both intentional and intended to harm. (*Erlich v. Menezes* (1999) 21 Cal.4th 543, 551-552 *citing Las Palmas Associates v. Las Palmas Center Associates* (1991) 235 Cal.App.3d 1220, 1238-1239.)

Here, the conduct alleged were representations by Cross-Defendant that (1) the geographic area of practice outlined in the contract was vetted and determined to be a profitable venture; and (2) that Cross-Defendant would support and assist in the start-up and operation. (Cross-Complaint, ¶¶ 36, 41, 45.) As with the other causes of action, the lack of specificity as to the terms and duties of the contract render any effort to evaluate whether the duties allegedly breached in the allegations were already duties created by contract as inconclusive. Accordingly, the Cross-Complaint fails to demonstrate how these causes of action are not subject to the economic loss rule.

