

Tentative Rulings for September 28, 2023

Department 501

**Unless otherwise ordered, all oral argument in Department 501
will be presented in person or telephonically (not through Zoom).**

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 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 501

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Tentative Ruling

Re: **William Clay v. JOHN DOE 1**
Superior Court Case No. 21CECG03687

Hearing Date: September 28, 2023 (Dept. 501)

Motion: by Defendant ZN Hospitality for Orders Compelling Further Responses from Plaintiff William Clay and Imposing Monetary Sanctions

Tentative Ruling:

To deny the motion in its entirety.

Plaintiff's counsel is to pursue the appropriate motion so that either a personal representative or successor in interest can be substituted into this matter for decedent plaintiff. (See Code Civ. Proc., §§ 377.31 et seq.)

If a timely request for oral argument is made, such argument will be entertained on Friday, September 29, 2023 at 10:00 a.m.

Explanation:

On February, 28, 2023, defendant took plaintiff's deposition. During the deposition, an issue arose regarding production of documents. As follow up to the deposition, defendant has requested plaintiff produce certain of plaintiff's social media messages, emails, and text messages. Plaintiff has passed away since his deposition was taken and prior to producing the requested documents. Plaintiff's counsel and defense counsel entered into a stipulation to stay discovery until June 19, 2023, as a result of plaintiff's death on April 4, 2023.

Knowing that plaintiff was deceased, defendant filed a motion to compel plaintiff to produce the documents requested. On July 19, 2023, this court continued the hearing on the motion so that a personal representative or successor in interest could be substituted into the matter and for supplemental briefing on the power of the court to compel said substituted individual regarding this pending discovery. No successor in interest or personal representative has been brought into the case at this time. However, the court is prepared to address the merits of having either the deceased plaintiff or a successor in interest or personal representative compelled to produce the requested materials.

First, defendant acknowledges this motion was filed after plaintiff's death and requests compliance by the personal representative or successor in interest. Thus, the question is whether a successor in interest or personal representative could be subject to any motion to compel here. Defendant requests the following documents be produced:

- 1) A copy of the homepage(s) of any of plaintiff's social media accounts;

(03)

Tentative Ruling

Re: **GBT Roadline, LLC v. Midline Insurance Services, Inc.**
Superior Court Case No. 21CECG03688

Hearing Date: September 28, 2023 (Dept. 501)

Motion: by Plaintiffs for Default Judgment

Tentative Ruling:

To deny plaintiffs' motion to enter default judgment, without prejudice.

If a timely request for oral argument is made, such argument will be entertained on Friday, September 29, 2023 at 10:00 a.m.

Explanation:

Plaintiffs have not provided evidence to support all of their claimed damages, so the court cannot enter judgment at this time. Plaintiffs have alleged that there was a contract between the parties in which defendants were to procure insurance coverage for plaintiffs' trucking business and add new drivers to the policy as soon as plaintiffs requested that the driver be added. Plaintiffs hired a new driver, Gurnoor Singh, on October 31, 2020.

Plaintiffs informed defendants that they needed Singh added to the policy, but defendants failed to add him to the policy or notify plaintiffs that Singh was not qualified and could not be added. In fact, defendants continued to represent to plaintiffs that Singh had been added to the policy in a timely manner. However, when Singh was involved in an accident and the truck, trailer and cargo were damaged, the insurance company denied coverage because Singh had not been added to the policy until after the accident. Plaintiffs have been unable to obtain insurance coverage for the accident and the loss of the truck, trailer, and cargo. Defendant Kaur then admitted that she had not added Singh to the policy until after the accident and offered to pay over \$31,000 for the lost cargo, but her check subsequently bounced. Therefore, plaintiffs contend that they are entitled to default judgment against defendants.

However, while defendants have admitted to the facts alleged against them in the Complaint by failing to answer and defaulting, plaintiffs have not adequately proven up their claimed damages. Plaintiffs allege in their points and authorities brief that they suffered losses of (1) \$65,000 for the loss of the truck, (2) \$80,000 for the loss of the trailer, (3) \$31,096.20 for the loss of the cargo, (4) storage and towing bills of \$54,000, (5) ongoing business losses of \$11,000 per month, for a total of \$396,000 since the date of the accident. (See Points and Authorities brief, p. 6, lines 9-20.) However, plaintiffs offer no declarations or documentary evidence to support most of these claimed damages. Statements in the points and authorities brief are not evidence, as they are not sworn under penalty of perjury.

Plaintiff's CEO, Bichattar Singh, has provided his declaration stating that plaintiffs have lost \$396,000 in income from the loss of the truck, which was earning \$11,000 per month before the accident. (Singh decl., ¶¶ 10 and 23.) However, his declaration is not signed under penalty of perjury, so it is not admissible evidence. In any event, the declaration says nothing about the other claimed damages, including the damages for loss of the truck, trailer, and cargo, as well as the claimed storage and towing fees. As a result, plaintiffs have not proven up all of their claimed damages, and the court cannot grant judgment in their favor.

Plaintiffs have also requested an award of attorney's fees in the amount of \$4,545.56. However, they have not submitted a copy of the agreement between the parties or shown that the agreement included an attorney's fees clause. Without an attorney's fees clause, there is no basis for the requested attorney's fees. (Civil Code § 1717, subd. (a); Code Civ. Proc. § 1021.) Also, even if there was an agreement for fees, plaintiff's counsel has not stated how he calculated the requested amount of fees. If the amount is based on hourly billings, then counsel should present a declaration stating the hours spent on the case, the tasks performed, and his hourly rate. If the request is based on Appendix A to the Fresno Superior Court Local Rules, counsel should state how the request was calculated under the fee schedule. Therefore, plaintiffs have not proven up their request for attorney's fees. As a result, the court intends to deny the motion to enter default judgment without prejudice.

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** 9/26/2023 _____.
(Judge's Initials) (Date)

(37)

Tentative Ruling

Re: **Granite Mountain Charter School v. Yosemite Valley Charter School**

Superior Court Case No. 22CECG01468

Hearing Date: September 28, 2023 (Dept. 501)

Motion: Defendant Charter Impact, LLC's Demurrer to the First Amended Complaint

Tentative Ruling:

To sustain defendant Charter Impact, LLC's demurrer to the First Amended Complaint on the ground that there is exclusive concurrent jurisdiction in another California court. The action in this case is ordered stayed pending a determination of Los Angeles Superior Court Case Number 20STCV33816.

If a timely request for oral argument is made, such argument will be entertained on Friday, September 29, 2023 at 10:00 a.m.

Explanation:

A defendant may make a plea in abatement pursuant to Code of Civil Procedure section 430.10, subdivision (c). This section provides for a demurrer based on "another action pending between the same parties on the same cause of action." (Code Civ. Proc., § 430.10, subd. (c).) The rule of exclusive concurrent jurisdiction is similar to that of abatement. (*People ex rel. Garamendi v. American Autoplan, Inc.* (1993) 20 Cal.App.4th 760, 770.) Statutory pleas in abatement require the pending action be between the same parties and on the same causes of action. (*Ibid.*) Whereas "the rule of exclusive concurrent jurisdiction does not require absolute identity of parties, causes of action or remedies sought in the initial and subsequent actions." (*Ibid.*) When two courts have concurrent jurisdiction, the first to assume said jurisdiction has exclusive and continuing jurisdiction over the matter. (*People ex rel. Garamendi v. American Autoplan, Inc., supra*, 20 Cal.App.4th at p. 769; *Plant Insulation Co. v. Fibreboard Corp.* (1990) 224 Cal.App.3d 781, 786.)

The rule is based on "public policies of avoiding conflicts that might arise between courts if they were free to make contradictory decisions or awards relating to the same controversy, and preventing vexatious litigation and multiplicity of suits." (*Plant Insulation Co. v. Fibreboard Corp., supra*, 224 Cal.App.3d at p. 787.) The rule of exclusive concurrent jurisdiction may be grounds for abatement, however, abatement is inappropriate "where the first action cannot afford the relief sought in the second." (*Ibid.*) A plea in abatement should be granted only where a judgment in the first action results in a complete bar to the second action. (*Ibid.*) The rule of exclusive concurrent jurisdiction is similar to abatement, but may be applied more expansively. (*Id.* at p. 788.) A key consideration is whether the priority court has the power to bring all the necessary parties before it. (*Ibid.*) The remedies need not be identical as long as "the court

exercising original jurisdiction has the power to litigate all the issues and grant all the relief to which any of the parties might be entitled under the pleadings." (*Ibid.*)

Where abatement or the rule of exclusive concurrent jurisdiction applies, the court should sustain the demurrer and stay the action, not dismiss it. (*People ex rel. Garamendi v. American Autoplan, Inc.*, *supra*, 20 Cal.App.4th at p. 771; *Plant Insulation Co. v. Fibreboard Corp.*, *supra*, 224 Cal.App.3d at p. 792.)

Here, there is no dispute that some of the same parties are involved in both the Los Angeles and the Fresno matters and that the same causes of action are at issue for defendant Charter Impact, LLC in both cases. There are additional defendants named here that are not a party to the Los Angeles matter, Yosemite Valley Charter School and Laurie Goodman, and additional causes of action alleged against them. The funds at issue here are part of the funds at issue in the Los Angeles matter. On January 19, 2023, this court found that Charter Impact and Provenance were necessary parties here and that it would not be feasible for this court to determine the status of the funds at issue without the context of the overall funds within the network. This court also found that proceeding without Charter Impact and Provenance would pose a risk of inconsistent obligations. The Los Angeles matter is currently poised to address the context of the overall funds within the network. The Los Angeles matter is the first filed matter regarding these disputed funds, as such, it assumed jurisdiction first. The Los Angeles matter has exclusive and continuing jurisdiction.

Therefore, the court intends to sustain the demurrer based on exclusive concurrent jurisdiction. The matter is stayed pending a final resolution of Los Angeles Superior Court Case Number 20STCV33816.

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 9/26/2023.
(Judge's initials) (Date)

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Tentative Ruling

Re: **Ryann Mazzola v. Hesham Elzaaym**
Superior Court Case No. 23CECG00687

Hearing Date: September 28, 2023 (Dept. 501)

Motion: Defendant's Demurrer to the Complaint

Tentative Ruling:

To overrule. Defendant shall file responsive pleadings within twenty (20) days from the date of this order.

If a timely request for oral argument is made, such argument will be entertained on Friday, September 29, 2023 at 10:00 a.m.

Explanation:

Defendant contends in his first ground asserted for demurrer that “[t]he complaint is just stating allegations without one proof, no evidence was given that supports those allegations whatsoever.” (See Demurrer at p. 2:4.) However, in deciding a demurrer, “the facts alleged in the pleading are deemed to be true, however improbable they may be.” (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) In other words, the court does not concern itself with the issue of plaintiff’s possible difficulty or inability in proving the allegations of their complaint. (*Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 572; *Highlanders, Inc. v. Olsan* (1978) 77 Cal.App.3d 690, 697.) Furthermore, the complaint is liberally construed (*Rodas v. Spiegel* (2001) 87 Cal.App.4th 513, 517; Code Civ. Proc., § 452), which “means that the reviewing court draws inferences favorable to the plaintiff, not the defendant.” (*Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1238.) Accordingly, defendant’s demurrer - which primarily asserts arguments of inadequate proof and evidence - is not the proper proceeding to determine whether plaintiff has proved her claim.

In addition, “[a] demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures.” (*Khoury v. Maly’s of California, Inc.* (1993) 14 Cal.App.4th 612, 616.) Also, the purpose of specificity required to sufficiently allege fraud is to provide notice of the charges levied and enable the court to “weed out meritless” claims. (*West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 793.) Accordingly, to the extent defendant asserts uncertainty or vagueness, the complaint is sufficient because it alleges facts that plaintiff detrimentally relied on defendant’s intentional and false representations concerning the subject vehicle. (See *Croeni v. Goldstein* (1994) 21 Cal.App.4th 754, 758 [elements of fraud].)

Similarly, to the extent defendant argues plaintiff failed to satisfy the notice requirement under the Consumers Legal Remedies Act (“Act”) (see Civ. Code, § 1782), such notice is not required where, as here, injunctive relief is the sole remedy sought under

the Act. (*Flores v. Southcoast Automotive Liquidators, Inc.* (2017) 17 Cal.App.5th 841, 850.) Also, standing is established where, as here, a consumer alleges they suffered damages by the defendant's unlawful "methods, acts, or practices." (Civ. Code, § 1780; *Hansen v. Newegg.com Americas, Inc.* (2018) 25 Cal.App.5th 714, 724 ["To have standing to assert a claim under the CLRA, a plaintiff must have "suffer[ed] any damage as a result of the ... practice declared to be unlawful.""] (Citation.).])

Finally, the court notes that although defendant is pursuing his defense in propria persona, self-represented litigants "are not entitled to special exemptions from the California Rules of Court or Code of Civil Procedure." (*Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1284.)

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 9/26/2023.
(Judge's initials) (Date)