Tentative Rulings for December 18, 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.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 502

Begin at the next page

(03)

Tentative Ruling

Re:	***George Talatinian v. Mai Thao*** Superior Court Case No. 23CECG03659
Hearing Date:	December 18, 2024 (Dept. 502)
Motion:	Defendant Havandjian's Motion to Compel Initial Responses to Form Interrogatories and Request for Monetary Sanctions Defendant Havandjian's Motion to Deem the Requests for Admission to be Admitted and Request for Monetary Sanctions

Tentative Ruling:

To grant defendant Havandjian's motion to compel initial responses to the form interrogatories, set two, served on plaintiff on August 28, 2024. Plaintiff shall serve verified responses without objections to the form interrogatories within ten days of the date of service of this order.

To grant defendant's motion to deem plaintiff to have admitted the truth of the matters in the requests for admission, set one, served on him on August 28, 2024, unless plaintiff serves verified, code-compliant responses to the requests before the hearing.

To find that plaintiff has waived all objections to the form interrogatories and requests for admissions.

To grant monetary sanctions against plaintiff in the total amount of $462.38. Plaintiff shall pay monetary sanctions to defendant within 30 days of the date of service of this order.

Explanation:

Since plaintiff has not responded to the form interrogatories, he is subject to an order compelling him to respond to the discovery. (Code Civ. Proc., §§ 2030.290, subd. (a).) Furthermore, plaintiff is deemed to have waived all objections to the unanswered discovery requests. (*Ibid*.) He is also subject to monetary sanctions for his willful failure to respond to discovery. (Code Civ. Proc., §§ 2030.290, subd. (c).)

Likewise, plaintiff's failure to respond to the request for admissions means that he has waived the right to object to the requests. (Code Civ. Proc., § 2033.280, subd. (a).) He is also subject to an order deeming him to have admitted the truth of the matters in the requests, as well as the genuineness of any documents in the requests. (Code Civ. Proc., § 2033.280, subd. (b).) In addition, the court must also impose sanctions against plaintiff for his willful failure to respond to the discovery requests. (Code Civ. Proc., § 2033.280, subd. (c).) Therefore, the court intends to find that plaintiff has waived all objections to the requests for admissions, including objections based on privilege, find

that plaintiff has admitted the truth of the matters in the requests, and order plaintiff to pay monetary sanctions to defendant.

On the other hand, the court intends to reduce the requested amount of sanctions to a more reasonable amount. Defendant seeks $573.57 per motion based on three hours of attorney time billed at $171.19 per hour, plus $60 in filing fees per motion. However, given the relatively simple and straightforward nature of the motions and the lack of any opposition, it would be excessive to award $1,147.14 in sanctions to defendant for both motions. Instead, the court will grant a total of $462.38, based on two hours of attorney time billed at $171.19 plus $120 in filing fees.

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 12/10/24.
(Judge's initials) (Date)

(35)

Tentative Ruling

Re: ***Noemi Peraza Lopez v. Nobel Credit Union***
Superior Court Case No. 24CECG00076/COMPLEX

Hearing Date: December 18, 2024 (Dept. 502)

Motion: (1) By Plaintiff Noemi Peraza Lopez for Final Approval of Class Action Settlement
(2) By Plaintiff Noemi Peraza Lopez for Attorney Fees, Costs and Service Award

Tentative Ruling:

To grant final approval of the class action settlement. To set a status conference for Tuesday, July 8, 2025, 3:30 p.m. in Department 502.

To grant the motion for an award of attorney fees and costs in the amount of $50,000; a service award to plaintiff Noemi Peraza Lopez in the amount of $5,000; and settlement administration costs in the amount of $10,000.

Explanation:

Final Approval

1. Class Certification

The court has already granted the motion for preliminary approval and certification of the class and found that the class is sufficiently numerous and ascertainable to warrant certification for the purpose of approving the settlement. There is no reason for the court to reconsider its decision granting certification of the class. Therefore, the court certifies the class for the purpose of final approval of the settlement.

2. Settlement

a. Legal Standards

"When, as here, a class settlement is negotiated prior to formal class certification, there is an increased risk that the named plaintiffs and class counsel will breach the fiduciary obligations they owe to the absent class members. As a result, such agreements must withstand an even higher level of scrutiny for evidence of collusion or other conflicts of interest than is ordinarily required under Rule 23(e) before securing the court's approval as fair." (*Koby v. ARS National Services, Inc.* (9th Cir. 2017) 846 F. 3d 1071, 1079.)

"[I]n the final analysis it is the Court that bears the responsibility to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting

to establish and collect on those claims by pursuing litigation. The court has a fiduciary responsibility as guardians of the rights of the absentee class members when deciding whether to approve a settlement agreement . . . The courts are supposed to be the guardians of the class." (*Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal. App. 4th 116, 129.)

"[T]o protect the interests of absent class members, the court must independently and objectively analyze the evidence and circumstances before it in order to determine whether the settlement is in the best interests of those whose claims will be extinguished . . . [therefore] the factual record must be before the . . . court must be sufficiently developed." (*Id*. at p. 130.) The court must be leery of a situation where "there was nothing before the court to establish the sufficiency of class counsel's investigation other than their assurance that they had seen what they needed to see." (*Id*. at p. 129.)

b. Fair and Reasonable

Previously, the parties submitted the Settlement Agreement and Release, which contemplated a release of the claims brought by this action in exchange for $159,000.00. The gross settlement will not be subjected to attorney fees or costs, incentive payments, or the costs to administer the settlement. The court preliminarily approved these terms, and notice to the putative class of these amounts was given.

In addition, class counsel are highly experienced in complex litigation, and provided information as to their assessments of the strength of Plaintiff's case, the risk, expense and complexity of the litigation, the risk of maintaining class action status, and the extent of discovery completed. Thus, class counsel's opinion that the settlement is fair, adequate, and reasonable is entitled to considerable deference. There is also no evidence that the settlement is the product of collusion. Therefore, the court continues to find that the proposed settlement amount is fair, adequate and reasonable.

Based on the above, the court grants the motion for final approval of the settlement.

Fees, Costs, and Service Award

Plaintiff Noemi Peraza Lopez ("Plaintiff") seeks an award of fees, costs, and service award. Plaintiff requests $50,000 in attorney fees and costs; $10,000 in administration costs; and $5,000 as a service award.

As noted above, ordinarily, the court has a duty to the class to objectively analyze the evidence and circumstances in awarding these amounts when they are borne by the class. As the class does not bear these burdens, the court assumes no particular duty on behalf of the class.

Based on the terms of the settlement agreement setting forth the above amounts in favor of Plaintiff, and based on the lack of opposition by defendant Noble Credit Union,

the motion is granted as sought: attorney fees and costs in the amount of $50,000[1]; service award in the amount of $5,000; and settlement administrator costs in the amount of $10,000.

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 ___12/16/24___.
(Judge's initials) (Date)

[1] The court notes that, generally, it may not rubberstamp a request for attorney fees, and must determine the number of hours reasonably expended. (*Donahue v. Donahue* (2010) 182 Cal.App.4th 259, 271.) The court has discretion to grant attorney fees in class actions based on the percentage of the total recovery. (*Laffitte v. Robert Half Int'l, Inc.* (2016) 1 Cal.5th 480, 503-504.) The court agrees with Plaintiff's conclusion that the common fund of the settlement amounts to $224,000; and that the fee request, inclusive of costs, reflects 22.3 percent of the common fund. This is lower than typical fee requests, which do not include costs of suit. The court further acknowledges the contingent nature of the representation, as well as the results achieved. Accordingly, the court finds that the attorney fees and costs are reasonable as sought.

(34)

Tentative Ruling

Re: ***James Fair v. American Honda Motor Company, Inc.***
Superior Court Case No. 23CECG02755

Hearing Date: December 18, 2024 (Dept. 502)

Motion: by Plaintiffs for an Order Compelling Defendant's Further Responses to Special Interrogatories and Requests for Production of Documents

Tentative Ruling:

To deny the motion to compel a further response to Special Interrogatory Nos. 13, 14, 19, and 20. To grant the motion to compel a further response to Special Interrogatory No. 21. To grant the motion to compel a further response to Special Interrogatory Nos. 15-18, 22-26, subject to limitations described below.

To grant the motion to compel further response to Request for Production Nos. 25 and 36. To grant the motion to compel a further response to Request for Production Nos. 26, 27, 32, 33, 37, and 38, subject to the limitations described below. To deny the motion to compel a further response to Request for Production No. 35.

Defendant American Honda Motor Company, Inc. shall serve further verified responses on Plaintiffs within 20 days from the date of service of the order by the clerk.

Explanation:

Plaintiffs seek to compel defendant American Honda Motor Company, Inc.'s ("Honda") further responses to Special Interrogatory Nos. 13-26 and Requests for Production Nos. 25-27, 32, 33, and 35-38. Plaintiffs assert the disputed requests fall into two categories: (1) those seeking information and documents related to Honda's written policies and procedures for handling warranty claims, and (2) those seeking information and documents related to Honda's knowledge of the existence of similar audio system-related defects in vehicles of the same year, make and model as plaintiffs' vehicle. The court agrees with plaintiffs that such information and documents are generally relevant and discoverable. (*Kwan v. Mercedes-Benz of North America, Inc.* (1994) 23 Cal.App.4th 174, 185-186.) However, certain of the requests at issue do not fall into either category or do so only subject to limitations as to the breadth of the request.

Special Interrogatories

Each answer in the response must be "as complete and straightforward as the information reasonably available to the responding party permits. If an interrogatory cannot be answered completely, it shall be answered to the extent possible." (Code Civ. Proc., § 2030.220, subd. (a), (b).) "Where the question is specific and explicit, an answer which supplies only a portion of the information sought is wholly insufficient. Likewise, a party may not provide deftly worded conclusionary answers designed to evade a series

of explicit questions." (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 783.) Discovery requests are generally afforded liberal construction. (See Code of Civ. Proc., § 2017.010; *Williams v. Superior Court* (2017) 3 Cal.5th 531, 541.)

When the responding party answers with objections, and a motion to compel is filed, the burden is on the objecting party to establish whatever facts are necessary to justify the objection. (*Coy v. Superior Court* (1962) 58 Cal.2d 210, 220-221; *Fairmont Ins. Co. v. Superior Court* (2000) 22 Cal.4th 245, 255.)

Plaintiffs argue Special Interrogatory Nos. 13-19 seek information related to audio system defects in vehicles of the same year, make and model and plaintiffs' vehicle. However, interrogatory nos. 13, 14, and 19, seeking information as to the number of vehicles sold in California, general information regarding databases maintained by defendant, and extended warranty information for 2019 or 2020 Honda Pilots, do not fall into this category. Plaintiffs have not made other persuasive arguments as to the relevance of this information in the context of their Song-Beverly claims. The relevance and overbroad objections are sustained and motion for further response is denied as to Special Interrogatory Nos. 13, 14 and 19.

Special Interrogatory Nos. 15-18 request information regarding other vehicles of the same year, make and model as plaintiffs that have experienced crackling and/or popping noises coming from the vehicle. Defendant's overbraod objection is well-taken, as multiple systems within the vehicle could potentially make noises fitting this description. Accordingly, the court will limit the further response to Special Interrogatory Nos. 15-18, to those complaints involving crackling and/or popping noises emitted by the audio system.

Plaintiffs categorize Special Interrogatory Nos. 20-26 as seeking information related to Honda's policies and procedures for handling breach of warranty claims.

Interrogatory nos. 20 and 21 request to know whether Honda has a system in place to identify vehicles presented for repairs (no. 20) or to identify vehicles that may be subject to its affirmative duty to repurchase (no. 21.) Defendant objects that the "system" is vague because it is not defined and argues plaintiffs should particularize the type of system before defendant responds. This is a straightforward yes or no question regardless of whether the system is a database or business system. However, as drafted Interrogatory No. 20 would encompass tracking of all vehicles presented for repairs or maintenance without regard to their relationship to warranty repairs that are the subject of plaintiffs' complaint. The overbroad objection to Interrogatory no. 20 is sustained and no further response is ordered. The objections are overruled and a further response is ordered to Special Interrogatory no. 21.

Interrogatory nos. 22-26 seek information and the identity of documents relating to Honda's policies regarding compliance with the Song-Beverly Consumer Warranty Act. Defendant objects that the request is overbroad as seeking compliance information to all its duties within Song-Beverly rather than those upon which plaintiffs' claims are based. The court agrees that the request is overbroad and will limit the further response to policies regarding compliance with Civil Code section 1793.3 within the Song-Beverly Consumer Warranty Act.

Requests for Production of Documents

A motion to compel must "set forth specific facts showing good cause justifying the discovery sought by the inspection demand." (Code Civ. Proc., § 2031.310, subd. (b)(1).) Absent a privilege issue or claim of attorney work product, that burden is met simply by a fact-specific showing of relevance. (*Glenfed Dev. Corp. v. Superior Court* (1997) 53 Cal.App.4th 1113, 1117.) If "good cause" is shown by the moving party, the burden is then on the responding party to justify any objections made to document disclosure. (*Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98.)

Plaintiffs describe Request Nos. 25-27, 32 and 33 as requesting documents related to Honda's knowledge of similar complaints in vehicles of the same year, make and model and plaintiffs' vehicle. The declaration of Andrew Dickenson includes the repair records to support the complaints described and includes documents received from Honda in discovery describing similar complaints. (Dickenson Decl., ¶¶ 4-5, Exh. 1.)

Defendant objects to Request nos. 25 and 26 on the basis that Honda's investigation into the cause of crackling and popping complaints is not relevant to the plaintiffs' claims. The court is satisfied with plaintiffs' arguments, supported by the Dickerson declaration, that defendant's investigation into similar complaints is relevant to whether Honda knew it would be unable to conform the plaintiffs' vehicle to the warranty.

"For discovery purposes, information is relevant if it 'might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement.' Admissibility is not the test and information, unless privileged, is discoverable if it might reasonably lead to admissible evidence. The phrase 'reasonably calculated to lead to the discovery of admissible evidence' makes it clear that the scope of discovery extends to any information that reasonably might lead to other evidence that would be admissible at trial. 'Thus, the scope of permissible discovery is one of reason, logic and common sense.' These rules are applied liberally in favor of discovery." (*Lipton v. Superior Court* (1996) 48 Cal.App.4th 1599, 1611–1612, internal citations and italics omitted.)

The relevance objections are overruled.

Defendant additionally objects to Request nos. 26, 27, 32, and 33 as overbroad and including all complaints of crackling or popping noises from any system with the vehicle. The documents sought are relevant, but as phrased go beyond the nonconformities of the audio system alleged by plaintiff. The motion to compel a further response is granted as to Request nos. 25, 26, 27, 32 and 33 but limited to complaints involving crackling and/or popping noises emitted by the audio system in vehicles of the same year, make and model as plaintiffs' vehicle.

Request nos. 35-38 request documents related to defendant's policies and procedures and systems Honda may have in place to identify vehicles presented for repairs or that may be subject to repurchase. Generally, the requests seek relevant, discoverable documents. However, Request no. 35, as phrased, seeking documents related to a possible system that would track whether any vehicle is presented to any authorized repair facility on more than one occasion is significantly more broad in scope than a policy or procedure related to compliance with defendant's obligations under

Civil Code section 1793.3. Defendant's objection to Request no. 35 as overbroad is sustained and no further response will be ordered.

Request no. 36 is better tailored to plaintiffs' claims and the request for a further response is granted.

Request nos. 37 and 38 seek the documents related to defendant's policies regarding compliance with the Song-Beverly Consumer Warranty Act generally. Defendant objects that the requests are overbroad because they are not limited to the provisions of Song-Beverly upon which plaintiffs' claims are based. The court agrees that the requests are overbroad and will limit the further response to policies regarding compliance with Civil Code section 1793.3 within the Song-Beverly Consumer Warranty Act.

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 12/16/24 .
(Judge's initials) (Date)

(46)

Tentative Ruling

Re:	***Frank Saviez v. Frank Dias, JR*** Superior Court Case No. 24CECG02686
Hearing Date:	December 18, 2024 (Dept. 502)
Motion:	Default Prove-Up

Tentative Ruling:

To grant plaintiff's request for judicial notice.

To deny entry of default judgment, without prejudice.

Explanation:

A defaulting defendant admits only facts well pled in the complaint. (*Molen v. Friedman* (1998) 64 Cal.App.4th 1149, 1153-1154.) It is erroneous to grant a default judgment where the complaint fails to state a cause of action. (*Rose v. Lawton* (1963) 215 Cal.App.2nd 18, 19-20; *Williams v. Foss* (1924) 69 Cal.App. 705, 707-708.) Where a cause of action is stated in the complaint, a plaintiff merely needs to introduce evidence establishing a prima facie case for damages. (*Johnson v. Stanhiser* (1999) 72 Cal.App.4th 357, 361.) Plaintiff Frank Saviez raises causes of action for (1) breach of contract, (2) fraud, (3) financial elder abuse, and (4) accounting. The court does not find the first two causes of action to be well-pled.

Breach of Contract

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.)

Here, plaintiff attaches the parties' agreement to his complaint, as well as a copy of an invoice and two photocopied checks to evidence payment by plaintiff to defendant. The first two elements are met. However, the facts as pled are insufficient to meet the additional two elements.

Defendant's Breach. The agreement attached to the complaint describes the proposed setup, assembly, transport, and permits required for setting up the subject mobile home and getting it to plaintiff's property. The agreement signed by the parties does not describe what is supposed to happen with the payments once received. The agreement does not describe any responsibility of the defendant to open escrow or purchase the mobile home, only mentioning assembly and transport. The complaint only states that "Defendant breached the Agreement by failing and refusing to deposit monies previously paid to Defendant into escrow to purchase the Mobile Home."

(Compl., ¶ 16.) The complaint states that after payments were made, "Defendant represented he would then deposit [the money] into escrow to purchase the Mobile Home that Defendant would then assemble following the purchase." (*Id*., ¶ 9.) The "breach" alleged in the complaint differs from the duties set forth for defendant in the agreement.

When a contract is incorporated by reference into the complaint, any recitals in the document contrary to allegations in the complaint must be given precedence. (See *Kalnoki v. First American Trustee Servicing Solutions, LLC* (2017) 8 Cal.App.5th 23, 39, [facts appearing in attached exhibits control over contradictory factual allegations in operative complaint].) Based on what is asserted by the agreement, and the conclusory allegations of "breach" in the complaint, the element of breach is not well-pled.

Resulting Damages to Plaintiff. Pursuant to the agreement, plaintiff was supposed to pay $118,800.00 at the time of the order, $118,800.00 seven days prior to production, $58,900.00 at the time of delivery, and $10,000.00 upon completion, totaling $306,500.00. Plaintiff paid both deposits of $118,800.00, totaling $237,600.00.

Plaintiff alleges in his complaint that two separate payments of $118,000.00 were paid to defendant, totaling $236,000.00 (which plaintiff writes incorrectly as "Three Hundred and thirty-six thousand dollars ($236,000)" in various places throughout the complaint and this application for default judgment). Plaintiff seeks recovery of $176,000.00 that is allegedly unaccounted for, stating that $60,000.00 was deposited into escrow. When providing proof of payment, plaintiff attaches copies of the checks made to defendant, and both checks are in the amount of $118,800.00, totaling $237,600.00. Plaintiff does not explain where the additional $1,600.00 is. With these discrepancies in the damages sought (i.e. amount paid vs. amount pled), the resulting damage to plaintiff is not well-pled.

Fraud

"In California, fraud must be pled specifically; general and conclusory allegations do not suffice." (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) This means that it is "[a] plaintiff's burden in asserting a fraud claim…[to] 'allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written.'" (*Ibid*.)

The complaint alleges only that: "Defendant knew that Plaintiff was in desperate need of Defendant's assistance and Defendant hatched a plan to take advantage of Plaintiff's situation," (Compl., ¶ 19) and "Defendant represented to Plaintiff that if Plaintiff paid Defendant the total sum of Two Hundred and thirty-six thousand dollars ($236,000) Defendant would use that money to purchase the Mobile Home which Defendant would then construct." (*Id*., ¶ 20.) Plaintiff then alleges that defendant knew these representations to be false and intended plaintiff would rely upon them, and plaintiff did rely on such representations without knowing their falsity. (*Id*., ¶ 21.) These allegations are general and conclusory rather than specific, and do not describe with specificity what was said or written to make plaintiff believe and rely on defendant's assistance.

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 12/17/24.
(Judge's initials) (Date)