Superior Court of California
County of San Benito

Tentative Decisions for April 7, 2025

Courtroom #1: Judge J. Omar Rodriguez

CU-24-00064 Rose v. Duckhorn Wine Company

Based on the representation made in the Case Management Statement, the Case Management Conference is continued to July 14, 2025 at 10:30 a.m.

CU-24-00146 Ruiz v. Alpha Teknova, Inc.

The unopposed Application for Approval of Attorneys' Fees and costs, Settlement Administration Fees, and Class Representative's Incentive Award is GRANTED as requested.

The Court finds that the Settlement Class is properly certified for settlement purposes only. The Notice provided to the Settlement Class conforms with the requirements of California Code of Civil Procedure section 382, California Civil Code section 1781, California Rule of Court Rules 3.766 and 3.769, the California and United States Constitutions, and any other applicable law, and constitutes the best notice practicable under the circumstances, by providing individual notice to all Settlement Class Members who could be identified through reasonable effort, and by providing due and adequate notice of the proceedings and of the matters set forth therein to the Settlement Class Members. The Notice fully satisfied the requirements of due process.

The Court finds the Settlement was entered into in good faith, that the Settlement is fair, reasonable and adequate, and that the Settlement satisfies the standards and applicable

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requirements for final approval of this class action settlement under California law, including Code of Civil Procedure section 382 and California Rules of Court Rule 3.769.

The Court approves the Gross Settlement Amount of Three Hundred Seventy-Two Thousand Five Hundred Dollars ($372,500). Zero (0) Settlement Class Members have objected to the terms of the Settlement. Zero (0) Settlement Class Members have requested exclusion from the Settlement. Upon entry of this Order, compensation to the participating members of the Settlement Class and Aggrieved Employees shall be affected pursuant to the terms of the Settlement Agreement.

In addition to any recovery that Plaintiff may receive from the Net Settlement Proceeds, and in recognition of the Plaintiff's efforts on behalf of the Settlement Class, the Court hereby approves the payment of an Incentive Award and General Release Payment to Plaintiff Andrew Ruiz in the amount of Fifteen Thousand Dollars ($15,000). This shall be paid from the Gross Settlement Amount.

The Court approves the payment of attorneys' fees to Class Counsel, Gaines & Gaines, APLC, in the sum of One Hundred Thirty Thousand Three Hundred Seventy-Five Dollars ($130,375), and the reimbursement of litigation expenses in the sum of Eight Thousand Six Hundred Forty-One Dollars and Seventeen Cents ($8,641.17). This shall be paid from the Gross Settlement Amount.

The Court approves and orders payment in the amount of Seven Thousand Nine Hundred Fifty Dollars ($7,950) to Phoenix Settlement Administrators for performance of its settlement administration services. This shall be paid from the Gross Settlement Amount.
12. The Court approves and orders payment in the amount of Fifteen Thousand Dollars ($15,000) to the California Labor and Workforce Development Agency for its 75% share of PAGA penalties. This shall be paid from the Gross Settlement Amount.

Upon the entry of this Order and Judgment, and subject to the occurrence of the Effective Date, Plaintiff, all participating Settlement Class Members and all Aggrieved Employees shall be bound by the release of claims and other obligations set forth in the Settlement Agreement, as applicable.

This Court shall retain jurisdiction with respect to all matters related to the

administration and consummation of the settlement, and any and all claims, asserted in, arising out of, or related to the subject matter of the lawsuit, including but not limited to all matters related to the settlement and the determination of all controversies relating thereto.

CU-24-00147 Espinola vs. Van

The court GRANTS the Motion to Set Aside the Default entered against Defendant Van. The Defendant will file and serve the proposed Answer, appended to the motion, forthwith.

Pursuant to California Code of Civil Procedure section §473(b) the court has authority to set aside default and default judgment when the entry of the same was caused by the mistake, inadvertence, surprise, or neglect of the defendant's attorney. Similarly, the default and default judgment may be set aside when it was caused by the mistake, inadvertence, surprise, or excusable neglect of the defendant or some other third party. The distinction is that the set aside of the default for the mistake, inadvertence, surprise, or neglect of an attorney is, upon proper declaration of the attorney, mandatory, whereas set side in the other instance is discretionary for the court. Additionally, a default and default judgment may be set aside when the default or default judgement is void. (Cal. Code Civ. Proc. §473(d).) A motion premised on Code of Civil Procedure section 473(b) must be filed within six months after the entry of the default judgment (when premised on attorney error, et al.), or within a reasonable time up to six months after the entry of default when based on the defendant's or other's mistake, inadvertence, surprise or excusable neglect. When the default judgment is void, *e.g.*, for lack of personal or subject matter jurisdiction, or failure to comply with the requirements for the entry of default, there is no deadline save for the two-year deadline after entry of judgement if the basis if lack of proper service. In this instance, the judgment would be void and must be set aside.

When addressing a request for discretionary relief, the motion must be supported by a declaration showing the mistake, inadvertence, surprise or excusable neglect (Cal. Code Civ. Proc. §473(b).) The motion must be accompanied by a copy of the answer or other responsive pleading that the Defendant proposes to file in the action if the motion is granted. (*Ibid.*) the motion must also comply with the Civil Law and Motion Rules (Cal. Rule of Court Rule

3.1103(a)(2)) and be accompanied by a supporting memorandum (Cal. Rule of Court Rule 3.1113.) In making ruling on the motion for relief, the proponent must present competent evidence and the affidavit must contain facts within the witnesses personal knowledge, not hearsay, opinions, or conclusions. (*Roman v. Usary Tire & Serv. Ctr.* (1994) 29 Cal. App. 4th 1422, 1427.)

Improper service is also ground for set aside, as summons not served in conformity with statutory requirements is void. (*Calvert v. Al Binali* (2018) 29 Cal. App. 5th 954, 961-962.) Pursuant to Code of Civil Procedure section 473(d), the court must set aside a default judgment that is valid on its face but void as a matter of law due to improper service. (*Ellard v. Conway* (2001) 94 Cal. App. 4th 540, 544.) Plaintiffs have a variety of means to serve the Defendant. Strict compliance with the provision for service of process contained in the Code of Civil Procedure are not required, but substantial compliance is. (*Ramos v. Homeward Residential, Inc.* (2014) 223 Cal. App. 4th 1434, 1442-1443.) Generally, substantial compliance occurs when, though not properly identified in a proof of service, the person to be served did in fact actually receive the summons. (*Id.* at 1443.) But notably service of process cannot be upheld solely on the basis that the defendant received actual notice of the action where there has been a complete failure by the plaintiff to comply with the statutory requirements for service. *(Abers v. Rohrs* (2013) 217 Cal. App. 4th 1199, 1206 [fact that improperly served summons and complaint were forwarded to defendant's attorney who notified defendant of suit does not overcome defects in validity of service].)

Here, it appears that the First Amended Complaint was served on Defendant Van by substituted service at 1333 Geneva Ave, San Francisco, California on September 14, 2024, with mail service to that address performed the same day; proof of service filed October 7, 2024. The person who was served personally at 4367 Ustick Road, Modesto, California 95358 was Junjie Huang; the proof of service was filed November 27, 2024. As a result of these facts, it is not clear whether the declaration filed by Mr. Van purporting that there was no effective service upon him at 4367 Ustick Road, Modesto, California , references the proof of service filed on October 7, 2024. Therefore the argument that Mr. Van was not properly served at the address in Modesto is without merit. The record does not indicate he was served

at that address, but rather by substituted service at the address in San Franciso. While improper service is a ground for set aside, that does not appear to be the situation here.

This leaves the discussion to whether there was surprise, inadvertence, mistake, or excusable neglect. Here, Defendant asserts in his declaration that starting in July 2024 he began suffering from significant health problems for which he pursued treatment and testing. He was ultimately diagnosed with gastric cancer in December 2024 and is undergoing treatment. (Van dec ¶4.) "Inadvertence" and "excusable neglect" are virtually synonymous. (*Barnes v. Witt* (1962) 207 Cal. App. 2nd 441.) This is a common basis to seek relief and a common reason why a default and default judgment is set aside. To constitute excusable neglect there needs to be facts demonstrating that the neglect was reasonable under the circumstances. Illness which disables a party from responding or appearing in court would be deemed excusable neglect. As a result of the facts presented in this paragraph, the Court grants Defendant's motion.

CU-24-00156 Gomonet vs. Pacific Scientific Energetic Materials Company, LLC

Defendant's Demurrer to the Second and Third Causes of Action in the First Amended Complaint ("FAC") are SUSTAINED with leave to amend. Plaintiff will amend her complaint and file and serve it upon Defendant within 20 days from the date of this ruling. The Case Management is continued to June 16, 2025 at 10:30 a.m.

A demurrer generally serves to test the legal sufficiency of the complaint's factual allegations. (*Genis v. Schainbaum* (2021) 66 Cal.App.5th 1007, 1014.) It does not test the factual accuracy or truth of the facts alleged. The court must assume the truth of all properly pled allegations. The process of a demurrer does not serve to test the merits of the Plaintiff's case. (*Tenet Health System Desert Inc. v. Blue Cross of CA*. (2016) 245 Cal.App.4th 821, 834.) 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.) In making this determination, the court may consider all material facts pleaded in the complaint and matters of which the judge may take judicial notice, but not contentions, deductions, or conclusions of fact or law. (Cal. Code of Civ. Proc.§430.30 (a); *Richtek USA, Inc. v. uPI SemiConductor Corp.* (2015) 242

Cal.App.4th 651, 658.) 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.3rd 94, 103.)

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.) 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. California Conservation Corps* (1982) 136 Cal.App.3rd 194, 200.) A judge must treat the demurrer as an admission of all material facts properly pled in the challenged pleading or that reasonably rise by implication, however improbable they are. (*Collins v. Thurmond* (2019) 41 Cal. App 5th 879, 894.) "(T)he plaintiff must show the complaint alleges facts sufficient to establish every element of each cause of action." (*Rakestraw v. Cal. Physicians' Serv*. (2000) 81 Cal.App.4th 39, 43.) "If the complaint fails to plead, or if the defendant negates, any essential element of a particular cause of action," the demurrer should be sustained. (*Ibid*.) 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.)

When the complaint is defective, great liberality should be exercised in permitting a plaintiff to amend the complaint if there is a reasonable possibility that the defect can be cured by amendment. (*Scott v. City of Indian Wells* (1972) 6 Cal.3d 541, 549.) Leave to amend may be denied where in all probability that no amount of amendment will cure the defects, rendering the process futile. (*Foroudi v. Aerospace Corp*. (2020) 57 Cal. App. 5th 992, 1000.)

To establish a prima facie case of a hostile work environment, the plaintiff must show that (1) plaintiff is a member of a protected class; (2) plaintiff was subjected to unwelcome harassment; (3) the harassment was based on plaintiff's protected status; (4) the harassment interfered with plaintiff's work performance by creating an intimidating, hostile, or offensive work environment; and (5) defendants are liable for the harassment. (*Ortiz v. Dameron Hospital Assn.* (2019) 37 Cal.App.5th 568, 581.)

"(T)he exercise of personnel management authority properly delegated by an employer to a supervisory employee might result in discrimination, but not in harassment.'" (*Roby v. McKesson Corp*. (2009) 47 Cal.4th 686, 706, citing *State Dept. of Health Services v. Superior Court* (2003) 31 Cal.4th 1026, 1040–1041.) As it pertains to *discrimination*, in the case of an institutional or corporate employer, the institution or corporation itself must have taken some official action with respect to the employee, such as hiring, firing, failing to promote, adverse job assignment, significant change in compensation or benefits, or official disciplinary action. (*Ibid*.) "By contrast, harassment often does not involve any official exercise of delegated power on behalf of the employer." (*Ibid*.) "(T)he exercise of personnel management authority properly delegated by an employer to a supervisory employee might result in discrimination, but not in harassment…Thus, harassment focuses on situations in which the social environment of the workplace becomes intolerable because the harassment (whether verbal, physical, or visual) communicates an offensive message to the harassed employee." (*Ibid*.) Pursuant to FEHA, harassment in the workplace occurs when there is "discriminatory intimidation, ridicule, and insult" which is "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." (*Kelly-Zurian v. Wohl Shoe Co*. (1994) 22 Cal. App. 4th 397, 409.)

Here, although the FAC alleges that defendant engaged in pervasive conduct creating a hostile work environment, the FAC only references the following acts: Defendant denied promoting Plaintiff; Defendant promoted a younger and less experienced employee on the basis that Plaintiff was not ready for the promotion without further explanation; and after Plaintiff was on disability, Defendant delayed her return to work. While Plaintiff pleads she is a member of a protected class, the FAC fails to adequately allege facts to support the existence of harassment **since** the incidents complained of fall within the scope of job duties of a type necessary to business and personnel management.

CU-24-00205 Watson vs. Bright Future Recovery, Inc. et al

Defendant's Petition to Compel Arbitration is GRANTED. Plaintiff is ordered to submit her First through Eighth Causes of Action to mandatory arbitration. This action shall

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be stayed pending the completion of arbitration as to Plaintiff's First through Eighth Causes of Action. The Case Management Calendar is continued to November 10, 2025 at 10:30 a.m.

The Federal Arbitration Act ("FAA") compels judicial enforcement of written employment arbitration agreements (*Circuit City Stores Inc. v. Adams* (2001) 532 U.S. 105, 109, 111.) Where the employer and employee are subject to a mandatory and binding arbitration agreement the court is compelled to order the parties to arbitration on motion or petition of either party. (*Armendariz v. Foundation Health Psychcare Services, Inc*. (2000) 24 Cal.4th 83, 98.) There is a strong public policy favoring arbitration, (*Moncharsch v. Heily& Blase* (1992) 3 Cal.4th 1, 9) and in claims by an employee against an employer, whether based on statute, common law, or otherwise, the parties must proceed to a binding arbitration where there is a valid agreement between the parties to arbitrate employment-related claims. (*Armindariz*, supra, 24 Cal.4th at 83.)

Petitions to compel arbitration must allege that there is 1) an agreement arbitrate; 2) a controversy within the scope of the arbitration agreement; and 3) refusal by the responding party to arbitrate. (*City of Hope v. Bryan Cave* (2002) 102 Cal. App.4th 1356, 1369.) The statute created a summary proceeding to resolve motions or petitions to compel arbitration. (Cal. Code of Civ. Proc. §§ 1281.2, 1290.2; *Engalla v. Permanente Medical Grp., Inc*. (1997) 15 Cal.4th 951, 972.) In such summary proceedings, the trial court sits as a trier of fact, weighing all the affidavits, declarations, and other documentary evidence, as well as oral testimony received at the court's discretion to reach its final determination. No jury trial is available for a petition to compel arbitration. (*Ibid*.) The party seeking to compel arbitration bears the burden of proving the existence of a valid arbitration agreement by the preponderance of the evidence; the party opposing bears the burden of proving by a preponderance of the evidence any fact necessary to its defense. (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal. 4th 394, 413.) There is strong policy in favor of the arbitrability of contracts. (*Eriksen, Arbuthnot, McCarthy, Kearney & Walsh, Inc. v. 100 Oak St.* (1983) 35 Cal. 3d. 312, 323.) Under both the Federal Arbitration act and the California Arbitration act, given the public policy objectives of the acts, "any doubts regarding arbitrability of a dispute are resolved in favor of arbitration." (*Valencia v. Smyth* (2010) 185 Cal. App. 4th 153, 176.) Section 1281.2 of the Code of Civil Procedure mandates the Court to

compel the parties to an arbitration agreement to submit claims between them to arbitration in accordance to the terms and conditions of the arbitration agreement. The court in evaluating a petition to compel arbitration is confined to determining whether the party seeking arbitration identifies a claim which, facially, is governed by the arbitration agreement. The court should grant the petition to compel arbitration, unless the clause is not susceptible of interpretation that it covers the dispute. (*Charles J. Rounds Co. v. Joint Council of Teamster, No. 42* (1971) 4 Cal.3rd 888, 892.)

Plaintiff argues that Defendant(s) are not able to enforce the arbitration agreement because they are not signatories of the arbitration agreement. "The United States Supreme Court has held that a litigant who is not a party to an arbitration agreement may invoke arbitration under the FAA if the relevant state contract law allows the litigant to enforce the agreement." (*Kramer v. Toyota Motor Corp.* (9th Cir. 2013) 705 F.3d 1122, 1128, citing *Arthur Andersen LLP v. Carlisle* (2009) 556 U.S. 624, 632.) California law allows a non-signatory to invoke arbitration under the doctrine of equitable estoppel even when a signatory "attempts to avoid arbitration by suing non-signatory defendants for claims that are based on the same facts and are inherently inseparable from arbitrable claims against signatory defendants." (*Metalclad Corp. v. Ventana Environmental Organizational Partnership* (2003) 109 Cal.App.4th 1705, 1713 (quotation marks and citation omitted).) We look to "the relationships of persons, wrongs and issues," and in particular, whether the claims are "intimately founded in and intertwined with the underlying contract obligations." (*Ibid*. (citation omitted); see also *Kramer*, 705 F.3d at 1128.) Where the claim is statutory, the facts relevant to the elements of the claim may be independent of the contract. (*Mattson Tech, Inc. v. Applied Mat'ls Inc.* (2023) 96 Cal. App. 5th 1159, 1157.) A non-signatory employer could enforce arbitration clause in agreement between employee and temporary staffing company that assigned the employee to the employer under principles of equitable estoppel. (*Franklin v. Cmty. Reg'l Med. Ctr*. (9th Cir 2021) 998 F.3d 867, 871–73; *Garcia v. Pexco*, LLC (2017) 11 CA5th 782, 786–87.) Arbitration agreements can be compelled where the parent company had sufficient control over the subsidiary's activities such that the subsidiary is an agent or instrumentality of the parent and the cause of action arise from that relationship. (Coehn v. TNP 2008 Participating Notes Program, LLC (2019) 31 Cal.App.5th 840, 865.)

Avila Heights Recovery, LLC is a treatment facility operating under the corporate entity of Bright Future Recovery, Inc. (i.e., an agent of Bright Future). Plaintiff worked at the Avila Heights location of Bright Future Recovery. Accordingly, any mention of Avila Heights, LLC in the arbitration agreement incorporates and references Plaintiff's employment with Bright Future, which can equitably estop Plaintiff from refusing to arbitrate, and Plaintiff cannot evade the requirement to arbitrate by suing a different entity. Plaintiff clearly understood that she was entering into an arbitration agreement with her employer; her continued employment constituted acceptance, and a party's acceptance may be implied in fact. (*Craig v. Brown & Root, Inc*. (2000) 84 Cal.App.4th 416, 420] (employee's continued employment constitutes acceptance of an arbitration agreement proposed by the employer or be effectuated by delegated consent).) Courts look at whether the employer intended to be bound by the arbitration provision. (Cruise v. Kroger Co. (2015) 233 Cal.App.4th 390, 397.)

The court in Gonzalez v. Nowhere Beverly Hills LLC (2024) 107 Cal.App.5th 111, 129 held, "It is unfair for a signatory to an employment agreement to avoid arbitration by suing non-signatories for claims that are based on the same facts and are inherently inseparable from arbitrable claims deriving from the agreement." As in Gonzalez, Plaintiff here made a strategic choice to sue Bright Future Recovery, Inc. instead. Defendant argues that Plaintiff cannot sidestep the arbitration agreement by suing them as opposed to suing Avila Heights Recovery, LLC, and the court agrees.

Plaintiff has the burden to prove the agreement is unconscionable and has failed to do so. Even applying the sliding scale of procedural and substantive unconscionability, the arbitration agreement cannot be found to be unconscionable and it is enforceable despite Plaintiff's attempts to evade her contractual agreement that she took three days to think about before signing. Plaintiff argues that the arbitration contract cannot be enforced as a contract of adhesion, citing *Baltazar v. Forever 21, Inc*. (2016) 62 Cal. 4th 1237. In *Baltazar* the court upheld the enforceability of a "take it or leave it" arbitration agreement, declining to rule the agreement was unconscionable even though the appellant had to sign it if he wanted the job. (Id. at 1245.) Here, those conditions do not exist. Plaintiff received the agreement after one year of employment after revisions to the employee handbook, and took three days to consider whether to sign or not. She was not given an ultimatum (e.g. "sign or lose your job.")

(Ashley dec ¶5). Nor did Plaintiff assert that she believed she would be let go if she did not sign. While a contract of adhesion was not the determinative factor, but whether there was duress, whether the signer was manipulated, or there was element of surprise. (*Id*. at 1245.) None of these factors are asserted here.

Considering the foregoing, the court grants the motion.

CU-24-00243 LaCorte vs. Clark Pest Control of Stockton, Inc.

Defendant's Demurrer is SUSTAINED without leave to amend as to the Second Cause of Action and OVERRULED as to the First, Third, Fourth and Fifth Causes of Action.

A demurrer generally serves to test the legal sufficiency of the complaint's factual allegations. (*Genis v. Schainbaum* (2021) 66 Cal.App.5th 1007, 1014.) It does not test the factual accuracy or truth of the facts alleged. The court must assume the truth of all properly pled allegations. The process of a demurrer does not serve to test the merits of the Plaintiff's case. (*Tenet Health System Desert Inc. v. Blue Cross of CA*. (2016) 245 Cal.App.4th 821, 834.) 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.) In making this determination, the court may consider all material facts pleaded in the complaint and matters of which the judge may take judicial notice, but not contentions, deductions, or conclusions of fact or law. (Cal. Code of Civ. Proc.§430.30 (a); *Richtek USA, Inc. v. uPI SemiConductor Corp.* (2015) 242 Cal.App.4th 651, 658.) 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.3rd 94, 103.)

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.) 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. California Conservation Corps* (1982) 136 Cal.App.3rd 194, 200.) A judge must treat the demurrer as an admission of all material facts properly pled in the challenged pleading or that

reasonably rise by implication, however improbable they are. (*Collins v. Thurmond* (2019) 41 Cal. App 5th 879, 894.) "(T)he plaintiff must show the complaint alleges facts sufficient to establish every element of each cause of action." (*Rakestraw v. Cal. Physicians' Serv*. (2000) 81 Cal.App.4th 39, 43.) "If the complaint fails to plead, or if the defendant negates, any essential element of a particular cause of action," the demurrer should be sustained. (*Ibid*.) 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.)

When the complaint is defective, great liberality should be exercised in permitting a plaintiff to amend the complaint if there is a reasonable possibility that the defect can be cured by amendment. (*Scott v. City of Indian Wells* (1972) 6 Cal.3d 541, 549.) Leave to amend may be denied where in all probability that no amount of amendment will cure the defects, rendering the process futile. (*Foroudi v. Aerospace Corp*. (2020) 57 Cal. App. 5th 992, 1000.)

First Cause of Action - Breach of Contract, Including Breach of the Implied Covenant of Good Faith and Fair Dealing

Defendant argues that the First Cause of Action fails because an implied covenant claim that duplicates a breach of contract claim is improper. However, the implied covenant of good faith and fair dealing acts "as a supplement to the express contractual covenants, to prevent a contracting party from engaging in conduct which (while not technically transgressing the express covenants) frustrates the other party's rights to the benefits of the contract.'" (*Thrifty Payless, Inc. v. The Americana at Brand, LLC* (2013) 218 Cal.App.4th 1230, 1244 (quotation omitted).) Where a contract vests a party with discretion, the implied covenant obligates that party to "exercise that discretion honestly and in good faith." (*Locke v. Warner Bros., Inc*. (1997) 57 Cal.App.4th 354, 367.) "When a pleader is in doubt about what actually occurred or what can be established by the evidence, the modern practice allows that party to plead in the alternative and make inconsistent allegations." (*Mendoza v. Continental Sales Co*. (2006) 140 Cal.App.4th 1395, 1402.) Because the implied covenant claim depends on a different set of facts than the breach of contract claim, namely Defendant's abuse of

contractual discretion, it does not merely restate that claim as Defendant contends. Moreover, while Defendant requests dismissal of the FAC in its entirety, it must be noted that Defendant's demurrer challenges only the implied covenant claim, not the breach of contract claim. Therefore, there are insufficient grounds to sustain the Demurrer as to the First Cause of Action.

Second Cause of Action for "Unjust Enrichment/Restitution"

Defendant argues that the Second Cause of Action fails because unjust enrichment (1) is not a separate cause of action in California, and (2) is not a proper claim where, as here, the plaintiff has an adequate legal remedy (such as a contract claim). The Court agrees that there is no cause of action for unjust enrichment. (*California. Rutherford Holdings LLC v. Plaza Del Rey* (2014) 223 Cal.App.4th 221, 231; *Levine v. Blue Shield of Cal*. (2010) 189 Cal.App.4th 1117, 1138.) As such, Plaintiff's Second Cause of Action fails and the Demurrer is sustained without leave to amend.

Third Cause of Action for "Money Had and Received"

Defendant argues that the Third Cause of Action fails because Plaintiff does not, and cannot, allege that Clark Pest Control received money intended for Plaintiff's benefit and has not given the money to her.

The elements of a money had and received claim are (1) defendant received money, (2) which money was received for plaintiff's use, and (3) defendant is indebted to plaintiff. (*Avidor v. Sutter's Place, Inc*.(2013) 212 Cal.App.4th 1439, 1454.) Here, Plaintiff alleges that a sum of money is due to her in the amount of the TIP warranty overcharges, and that this money was paid by mistake, which suffices to plead a money had and received claim. FAC ¶¶ 48–49. Therefore, the Demurrer is overruled as to the Third Cause of Action.

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Fourth Cause of Action for violation Business & Professions Code sections 17200 et seq. (the "UCL")

Defendant argues that the Fourth Cause of Action fails to allege any "unlawful, unfair, and/or fraudulent business act or practice" by Clark Pest Control and is redundant of its breach of contract cause of action.

"Section 17200 of the UCL defines 'unfair competition' as 'any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 … ' Therefore, an act or practice is 'unfair competition' under the UCL if it is forbidden by law or, even if not specifically prohibited by law, is deemed an unfair act or practice. (*Smith v. Wells Fargo Bank, N.A.* (2005) 135 Cal.App.4th 1463, 1479-1480.)

The FAC adequately states a UCL claim under the unlawful prong. "By proscribing 'any unlawful' business practice, Bus. & Prof. Code, § 17200, borrows violations of other laws and treats them as unlawful practices that the unfair competition law makes independently actionable." (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co*. (1999) 20 Cal.4th 163, 165.) Here, it is alleged that Defendant violated the UCL in that it violated the CLRA, Defendant engaged in a practice of overcharging, and breached the implied covenant of good faith and fair dealing.

The FAC adequately states a UCL claim under the unfair prong. Cases have employed three different criterion to determine whether a business practice is unfair under the UCL. (*Moran v. Prime Healthcare Management, Inc*. (2016) 3 Cal.App.5th 1131, 1150.)

> Cases have employed three different criterion to determine whether a business practice is "unfair" under the UCL. One states """(a)n 'unfair' business practice occurs when that practice 'offends an established public policy or when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.'""" … A second rule provides """the public policy which is a predicate to the action must be 'tethered' to specific constitutional, statutory or regulatory provisions."""" A third holds "'(a)n act or practice is unfair if the consumer injury is substantial, is not outweighed by any countervailing benefits to consumers or to competition, and is not an injury the consumers themselves could reasonably have avoided.'"

(*Ibid*. citations omitted.)

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Here, the allegations in the FAC are tethered to a statutory provision - the CLRA. The harm caused by Defendant's alleged overcharging practice is not outweighed by a benefit to consumers or competition and consumers cannot reasonably avoid the injury and the injuries are substantial as the practice results in as much as a 38% increase in monthly charges.

The FAC adequately states a UCL claim under the fraudulent prong. Under the "fraudulent" prong of the UCL, "it is necessary only to show that the plaintiff was likely to be deceived, and suffered economic injury as a result of the deception." (*Zhang v. Superior Court* (2013) 57 Cal.4th 364, 380.) Here, Plaintiff alleged that Defendant falsely represented that it would not increase the monthly TIP warranty charge under certain conditions, but Defendant unilaterally did so anyways and that Plaintiff reasonably relied on the representations. (FAC ¶¶52-53.)

Plaintiff's UCL claim is proper regardless of whether she has an adequate remedy at law. California law holds that "a systematic breach of certain types of contracts (e.g., breaches of standard consumer or producer contracts involved in a class action) can constitute an unfair business practice under the UCL." (*Smith v. Wells Fargo Bank, N.A.* (2005) 135 Cal.App.4th 1463, 1483.)

As a result of the foregoing, the Demurrer is overruled as to the Fourth Cause of Action.

Fifth Cause of Action - Violation of the Consumer Legal Remedies Act, California Civil Code sections 1750, et seq. (the "CLRA")

Defendant argues that the Fifth Cause of Action fails because Plaintiff's allegations do not support the existence of a violation of the cited CLRA provisions. Additionally, Defendant argues that the CLRA does not provide a remedy in this circumstance, i.e., a purported breach of a warranty contract involving a minor overcharge.

California Civil Code section 1770, make is illegal to engage is unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or that results in the sale or leave of goods or services to any consumer, including: representing that services have characteristics, uses or benefit that they do not have; advertising the services of another

by false or misleading representation of fact; or representing that a transaction confers or involves rights, remedies or obligations that it does not have.

Here, the FAC alleges that Defendant has represented that "goods or services" have "characteristics . . . that they do not have." Specifically, Defendant has represented in the Service Agreement that the TIP warranty charge would not increase during the initial coverage period or without consent, when its practices was to unilaterally increase this charge. (FAC ¶ 58.) This conduct also constitutes the advertising of "goods or services with intent not to sell them as advertised" and representing "that a transaction confers or involves rights . . . that it does not have or involve," i.e., the right to the monthly TIP warranty charge stated on the Service Agreement. (Cal. Civ. Code, §§ 1770(a)(9), (14).) As a result, the Demurrer as to the Fifth Cause of Action is overruled.

Defendant's Motion to Strike

Defendant argues that Plaintiff's Class Allegations should be stricken because the putative class is an impermissible fail-safe class that is defined based upon the ultimate liability in this case.

A fail-safe class is one "defined in terms of success on the merits." (*Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955, 977.) Noel v. Thrifty Payless, Inc. holds that a class should be defined "in terms of objective characteristics and common transactional facts" that make "the ultimate identification of class members possible when that identification becomes necessary," but does not squarely address whether a fail-safe class would satisfy these requirements. 7 Cal.5th at 980. (Similarly, "the Ninth Circuit has not expressly forbidden fail safe classes." Tinnin v. Sutter Valley Medical Foundation (E.D. Cal. 2022) 647 F.Supp.3d 864, 874–875; Melgar v. CSK Auto, Inc. (9th Cir. 2017) 681 Fed.Appx. 605, 607 ("We further note, though we do not hold, that our circuit's caselaw appears to disapprove of the premise that a class can be fail-safe.").) As a result, the motion to strike is denied.

CU-24-00254 Zurich American Insurance Company vs. Saavedra-Santiago, et al.

The Case Management Conference is continued to May 19, 2025 at 10:30 a.m. to be heard with the Motion to Consolidate.

CU-24-00270 Hoang vs. Sierra, et al

Plaintiff has met the prerequisites for the final hearing on the quiet title action to determine whether Judgment shall issue. Premised on the information and documentation provided in the complaint, Plaintiff has satisfied the requirements of the Code of Civil Procedure §761.020. The Complaint contains a description of the property at issue, avers that the title of Plaintiff requires determination, describes adverse claims to the title held by Plaintiff, the date as of which the quiet title determination is sought and prayer for relief. Proposed ruling: The matter is ripe for the court to take evidence and determine whether entry of judgment to quiet title in favor of Plaintiff shall be granted.

The evidentiary hearing will take place on April 25, 2025 at 8:30 a.m.

CU-25-00009 In the matter of Logan Dean Smith

The Petition for Change of Name is APPROVED as requested.

CU-25-00029 In the matter of Jason Phillip Greathead

The Petition for Change of Name is APPROVED as requested.

CU-25-00030 In the matter of Nicholas Joseph De la Cerda Echavarria

The Petition for Change of Name is APPROVED as requested.

END OF TENTATIVE DECISIONS

****Please contact Judicial Courtroom Assistant, Wendy Guerrero, at (831) 636-4057 x129 or wguerrero@sanbenitocourt.org with any objections or concerns.**