

Judge Mosbarger – Law & Motion – Wednesday, February 11, 2026 @ 9:00 AM

TENTATIVE RULINGS

***This Calendar will be heard by Judge Benson.**

1 21CV02508 AMUNDSEN, JOAN ET AL V. MCBRIDE, KEITH ET AL

EVENT: Defendant State Farm General Insurance Company's Motion to Bifurcate Issue of Punitive Damages

The Motion is unopposed and is granted. Counsel for the Defendant shall prepare and submit a form of order within two weeks.

2. 22CV02187 A, C V. COUNTY OF BUTTE

EVENT: Plaintiff's Motion for Leave to File Second Amended Complaint

Defendant's Request for Judicial Notice is granted. Even in light of the broad application generally given to this type of Motion, there are procedural issues that could lead to a denial pursuant to California Rules of Court Rule 3.1324. Here, the Court finds that Plaintiffs have failed to satisfy these procedural requirements. First, Plaintiff has failed to state what allegations are to be added "by page, paragraph, and the line number." Instead, Plaintiff only speaks in generalities as to the additional factual allegations to be added in relation to Plaintiff's placement in the Rist home. This violates California Rules of Court, Rule 3.1324(a)(3). Additionally, Plaintiff fails to indicate why the requested amendment was not made earlier when the facts giving rise to the alleged inaccuracies arose during Plaintiff's deposition, which occurred in May 2023. (See, Motion at Page 3, Line 20 through Page 4, Line 2; and Declaration of Lauren Britt ¶4, Exhibit A, Deposition of A.C. Vol 1, 84:19-25; 85:1-11; 87:15-20.) This violates California Rules of Court, Rule 3.1324(b)(4).

However, the Court in its discretion has considered the merits of the Motion. The Court finds that Plaintiff's proposed amendment does not merely "correct a mistake" in her prior pleadings but instead seeks to make a significant change this action to include an entirely new foster placement, an additional perpetrator, and would necessitate additional discovery, and likely the filing of an amended Cross-Complaint. Additionally, the Court finds that the new allegations sought to be included in the proposed Second Amended Complaint are time-barred and do not relate back to the original claim, and thus the addition of such allegations are not in the furtherance of justice.

Finally, the Court finds that the delay by Plaintiff to include a claim with respect to her time in the Rist Home was unreasonably delayed and the prejudice weighs in favor of the Defendant and against granting leave to amend.

The Motion is denied. Counsel for the Defendant shall prepare and submit a form of order consistent with this ruling within two weeks.

3. **22CV02594 MOFFITT, DEREK C ET AL V. MOFFITT, TERESA L ET AL**

EVENT: Demurrer of Plaintiff/Cross-Defendants Derek C. Moffitt and Sandi Moffitt to Amended Cross-Complaint

To establish a claim for conversion, the plaintiff must plead three elements: “(a) plaintiff's ownership or right to possession of personal property, (b) defendant's disposition of property in a manner inconsistent with plaintiff's property rights, and (c) resulting damages.” *Voris v. Lampert* (2019) 7 Cal.5th 1141, 1150. Here, Cross-Complainants have done so. [See, First Amended Cross-Complaint at ¶¶14, 15, 16, 18]. The Court notes that a demurrer cannot be sustained to only part of a cause of action. *Daniels v. Select Portfolio Servicing, Inc.* (2016) 236 Cal.App.4th 1150, 1167 [“Ordinarily, a general demurrer may not be sustained, nor a motion for judgment on the pleadings granted, as to a portion of a cause of action.”]. Again, the Court finds that the Cross-Complainants have sufficiently stated a cause of action for conversion and the demurrer to the Second Cause of Action for Conversion is overruled.

Whether the Court uses the cases cited by Cross-Complainants or Cross-Defendants, the elements required to state a cause of action for fraud by concealment are: (1) concealment of a material fact; (2) knowledge of falsity of the material fact; (3) the intent to defraud (to induce reliance), (4) justifiable reliance, and (5) resulting damage. See, *Seeger v. Odell* (1941) 18 Cal.2d 409, 414; *South Tahoe Gas Co. v. Hofmann Land Improvement Co.* (1972) 25 Cal.App.3d 750, 765; *Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, 868; *Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 748. Here, the Court finds that Cross-Complainants have failed to sufficiently allege several of the required elements, including that the Cross-Defendants have intentionally concealed or suppressed the fact with the intent to defraud the Cross-Complainants, that the Cross-Complainants were unaware of the fact(s) and would not have acted as they did if they had known of the concealed or suppressed fact(s), and as a result of the concealment or suppression of the fact, the Cross-Complainants sustained damage. Therefore, the Demurrer to the Third Cause of Action for Fraud by Concealment is sustained, with leave to amend.

The elements of a cause of action for breach of fiduciary duty are the existence of a fiduciary relationship, its breach, and damage proximately caused by that breach. *Knox v. Dean* (2012) 205 Cal.App.4th 417, 432. Here, Cross-Complainant has sufficiently stated a cause of action for breach of fiduciary duty. See, First Amended Cross-Complaint at ¶¶30, 35-41. The demurrer to the Fourth Cause of Action for Breach of Fiduciary Duty is overruled.

A cause of action for elder abuse/neglect under *Welfare and Institutions Code* §15657 “must be pleaded with particularity.” *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790. Here, the Court finds that Cross-Defendants have sufficiently and with particularity, stated a cause of action for elder abuse [See, First Amended Cross-Complaint at ¶¶44-50], and the demurrer to the Fifth Cause of Action for Elder Abuse is overruled.

As to the unjust enrichment cause of action, the Court finds that Cross-Complainants have alleged an independent legal basis for seeking restitution and therefore the unjust enrichment cause of action has been sufficiently plead pursuant to California case law. See e.g., *Melchior v. New Line Productions, Inc.* (2003) 106 Cal.App.4th 779, 793; *Hernandez v. Lopez* (2009) 180 Cal.App.4th 932; *Hooked Media Group, Inc. v. Apple Inc.* (2020) 55 Cal.App.5th 323; *Elder v. Pacific Bell Telephone Co.* (2012) 205 Cal.App.4th 841. As such, the Demurrer to the Sixth Cause of Action for Unjust Enrichment is overruled.

Declaratory relief is recognized as a distinct cause of action rather than merely a remedy. *Code of Civil Procedure* §1060 explicitly provides for declaratory relief as a cause of action. This statutory framework establishes declaratory relief as a standalone cause of action, provided the plaintiff can demonstrate two essential elements: (1) a proper subject of declaratory relief, and (2) an actual controversy involving justiciable questions relating to the rights or obligations of a party. *Childhelp, Inc. v. City of Los Angeles* (2023) 91 Cal.App.5th 224. To survive a demurrer, a complaint for declaratory relief must allege facts showing the existence of an actual controversy that is definite and concrete, involving adverse legal interests. The controversy must not be hypothetical, conjectural, or anticipated to occur in the future. *Childhelp, Inc., supra*; *Otay Land Co. v. Royal Indemnity Co.* (2008) 169 Cal.App.4th 556. Here, Cross-Complainants have sufficiently stated a cause of action for declaratory relief [See, First Amended Cross-Complaint at ¶¶58-60], and the Demurrer to the Seventh Cause of Action for Declaratory Relief is overruled.

In regard to the aiding and abetting causes of action, and the Eleventh Cause of Action for Elder Abuse, the Court finds that these causes of action are not alleged against the demurring Defendants, Derek Moffitt or Sandi Moffitt, and therefore the demurring Defendants lack standing to challenge these causes of action. The Demurrer to the Eighth Cause of Action for Aiding and Abetting Conversion, the Ninth Cause of Action for Aiding and Abetting Fiduciary Duty, the Tenth Cause of Action for Aiding and Abetting Elder Abuse, and the Eleventh Cause of Action for Elder Abuse are overruled.

Any amended Cross-Complaint shall be filed and served within 20 days' notice of this ruling. Counsel for the Cross-Defendants shall prepare and submit a form of order consistent with this ruling within two weeks.

4. 25CV00433 NAIL, RHIANNON V. GENERAL MOTORS, LLC

EVENT: Plaintiff Rhiannon Nail's Motion for Attorney Fees, Costs and Expenses Pursuant to California Civil Code Section 1794.4(D)

The Proof of Service indicates that the Motion was served electronically on January 16, 2026, which is only 17 Court days' notice. Pursuant to *Code of Civil Procedure* §1010.6(3)(B), one additional Court days' notice is required for electronic service. Thus, notice here is insufficient. However, a substantive opposition having been filed without objection as to notice, the Court deems the issue of notice waived and has reached the merits of the Motion.

The Court agrees with Defendant that Plaintiff's counsel has the burden of showing that the fees were allowable, reasonably necessary to the conduct of the litigation, and reasonable in amount. See, *Morris v. Hyundai Motor Am.* (2019) 41 Cal.App.5th 24, 34, as modified (Oct. 11, 2019), rev. denied (Jan. 2, 2020) [internal quotations and citations omitted]. The Court finds that Plaintiff has done so.

Although the general rule is that the reasonable hourly rate is the prevailing rate for similar work in the community where the court is located, where local counsel was unavailable or hiring local counsel was impracticable, a trial court must consider out-of-area market rates in calculating the lodestar amount. *Caldera v. Department of Corrections & Rehabilitation* (2020) 48 Cal.App.5th 601, 605, 609-611 (Caldera); *Center for Biological Diversity v. County of San Bernardino* (2010) 188 Cal.App.4th 603, 608-609, 618-619 (Center for Biological Diversity); *Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 397-399 (Horsford); see *Marshall v. Webster* (2020) 54 Cal.App.5th 275, 284-287; *In re Tobacco Cases I* (2013) 216 Cal.App.4th 570, 581-583; *Environmental Protection Information Center, supra*, 190 Cal.App.4th at p. 248. Here, the Court finds that Plaintiff has sufficiently established the reasonableness of the out-of-area market rates.

In regard to the requested costs, the Court finds that Plaintiff has provided a breakdown and explanation as to the costs are included in the Memorandum of Costs and has provided sufficient substantiation for such costs except for \$60.00. As such, the Court taxes the sum of \$60.00 and costs are awarded to Plaintiff in the amount of \$829.93.

Based on the above, the Court awards attorney's fees in the amount of \$14,563.50, and costs in the amount of \$829.93. Counsel for the Plaintiff shall submit a form of order consistent with this ruling within two weeks.

5. 25CV01904 GREEN, JUDITH V. CITY OF CHICO

EVENT: City of Chico's Demurrer to Plaintiff's Complaint

Plaintiff having filed a First Amended Complaint, the demurrer is moot and is off calendar.

6-7. 25CV03660 DORAN, CRYSTAL T V. VOLKSWAGEN GROUP OF AMERICA, INC ET AL

EVENT: (1) Defendant Volkswagen Group of America, Inc.'s Demurrer to the First Amended Complaint

(2) Defendant Chico Volkswagen/Chico Mazda's Demurrer to the First Amended Complaint

As discussed in *Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828, Plaintiff's Sixth Cause of Action - Fraudulent Inducement-Concealment alleges presale conduct by Defendant (concealment) that is distinct from Defendant's alleged subsequent conduct in breaching its warranty obligations. The Court finds that only the

latter conduct requires the transactional relationship as discussed in *Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1. “The elements of common law fraud in California are (1) a misrepresentation of a material fact (false representation, concealment, or nondisclosure); (2) knowledge of falsity; (3) intent to defraud; (4) justifiable reliance; and (5) resulting damage.” *Collins v. eMachines* (2011) 202 Cal.App.4th 249, 259. “The facts constituting the fraud, including every element of the cause of action, must be alleged ‘factually and specifically’” to survive demurrer. *Apollo Capital Fund, LLC v. Roth Capital Partners, LLC* (2007) 158 Cal.App.4th 226, 240 [citing *Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 216-17]. Here, the Court finds that the Sixth Cause of Action for Fraudulent Inducement – Concealment has been sufficiently pled [FAC ¶¶59-60, 63, 65, 67-69], and the Demurrer is overruled. Defendant Volkswagen Group of America, Inc.’s Demurrer to Plaintiff’s First Amended Complaint is overruled in its entirety. Counsel for the Plaintiff shall prepare and submit a form of order consistent with this ruling within two weeks.

In regard to Defendant Chico Volkswagen/Chico Mazda’s Demurrer, to sufficiently plead a cause of action for negligent repair, a plaintiff must allege duty, breach, causation, and damages. See *Burgess v. Super. Ct.* (1992) 2 Cal.4th 1064, 1072. *Lytle v. Ford Motor Co.* (E.D.Cal. 2018) 2018 WL 4793800; citing *Burgess v. Superior Court* (1992) 2 Cal.4th 1064, 1072. The Court finds that Plaintiff has done so here. [See FAC does appear to be sufficient in this regard. See, FAC at ¶54 (duty), ¶55 (breach), ¶¶ 27-29, 35, 41, 51 (damage), and ¶56 (causation)]. As to the Economic Loss Rule, it is “improper” to “recast” a breach of contract cause of action as a tort claim under the economic loss doctrine. *BFGC Architects Planners, Inc. v. Forum/Mackey Constr., Inc.*, (2004) 119 Cal.App.4th 848, 853. “That judicially created doctrine bars recovery in negligence for pure economic losses when such claims would disrupt the parties’ private ordering, render contracts less reliable as a means of organizing commercial relationships, and stifle the development of contract law.” *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905, 915 (“[T]he rule functions to bar claims in negligence for pure economic losses in deference to a contract between litigating parties.”). The doctrine extends to all tort-based claims “when they arise from—or are not independent of—the parties’ underlying contracts.” *Id.* at 633; *Aas v. Superior Court* (2000) 4 Cal.4th 627, 643 (“[A] person may not ordinarily recover in tort for the breach of duties that merely restate contractual obligations”). Here, the Court finds that the alleged facts suggest that Defendant’s duty, if any, to repair the vehicle derives/derived from Plaintiff’s contract and warranties rather than from an independent duty owed to Plaintiff and thus the Fifth Cause of Action for Negligent Repair, is barred by the Economic Loss Rule. The Demurrer is sustained. The Court grants leave to amend. Any Amended Complaint shall be filed and served within 20 days’ notice of this Order. Counsel for the Defendant shall prepare and submit a revised form of order consistent with this ruling within two weeks.

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8. **25CV04973 IN RE WRIGHT, J**

EVENT: Verified Petition for Approval of Transfer of Payment Rights

Based upon the information submitted by the Petitioner, the Court has determined that the transfer does not comply with the requirements of Insurance Code §10137, including that it is not in the best interests of the Payee. The Petition is therefore denied without prejudice.