TENTATIVE RULINGS
Judge Lindsey E. Martínez, Dept. C24

"Civility is not about etiquette. This is not a matter of bad manners. Incivility slows things down, it costs people money – money they were counting on their lawyers to help them save. And it contravenes the Legislature's directive that 'all parties shall cooperate in bringing the action to trial[.]' (Code Civ. Proc., § 583.130.)" (*Masimo Corp. v. The Vanderpool Law Firm, Inc.* (2024) 101 Cal. App. 5th 902, 911; *see generally* OCBA Civility Guidelines.)

- The court encourages remote appearances to save time and reduce costs.
- All hearings are open to the public.
- You must provide your own court reporter and interpreter, if required.
- Call the other side and ask if they will submit to the tentative ruling. If everyone submits, call the clerk. The tentative ruling will become the order. If anyone does not submit, there is no need to call the clerk.
- The court will hold a hearing. The court may rule differently at the hearing. (*See Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

Hearing Date: May 11, 2026 at 1:30 pm
Rulings Posted: 5/8/26 at 3:30 pm

#	Case Name	Tentative
302	*Garcia vs. Orange County Collision Service*	The renewed Motion to Strike Defendant Orange County Collision Service's Answer to Complaint, filed on 2/13/26 by Plaintiff Jose Manuel Garcia (Plaintiff) is **DENIED**, as Plaintiff failed to provide proof of service for the motion. On the court's own motion, an OSC re: status of unrepresented entity defendant for 5/26/26 at 8:45am in Dept. C24. Plaintiff shall give notice.

303	*Ferranti vs. Zavala*	The court withholds a tentative ruling. Counsel shall appear for oral argument.
304	*Washington vs. Locke*	Before the court is an unopposed motion filed by defense counsel William L. Buus and Buus Law Group APC (Attorneys), requesting to be relieved as counsel of record for defendant Andy Locke, aka Andrew J. Locke. aka Andrew K. Locke (Client). The motion is **GRANTED**. Attorneys have largely complied with the requirements of California Rule of Court 3.1362, and filed and served forms MC-051 and MC-052 on Client and on the plaintiff. The court finds Attorneys have provided a valid and sufficient reason for requesting to be relieved as counsel for Client. As such, the court **GRANTS** the motion pending Attorneys filing a complete and up to date from MC-053. The form must include the trial date and any pending hearing dates, including the OSC Re Sanctions. The order relieving counsel shall not be effective until Attorneys file with the court a proof of service showing the signed orders granting the motion was served on Client. Until such time, Attorneys shall remain counsel of record. Attorneys shall give notice.
305	*Venegas vs. Ford Motor Company*	Plaintiff Roque Venegas' motion for leave to amend the complaint is GRANTED. The motion substantially complies with California Rules of Court, rule 3.1324, but Plaintiff failed to submit a proposed pleading as required under subsection (a). Nevertheless, the Court finds there was no prejudicial delay. (See Code of Civ. Proc. § 473, subd. (a)(1); *Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 761 [applying "a policy of great liberality in permitting amendments"].)

		Within five (5) days, Plaintiff shall file and serve a Doe amendment on Form L-0132 to add Shelby American, Inc. as a defendant. Plaintiff shall provide notice.
306	*Giannone vs. Chaba Thai Corporation*	Before the court is a motion for summary judgment (Motion) filed by defendant Chaba Coworking Suites, Inc., dba Chaba Traditional Thai & Sport Massage (Defendant) on plaintiff Brian Giannone's (Plaintiff) complaint. The Motion is **GRANTED**. **Objections to Plaintiff's Declaration:** Overrule as to Nos. 1-2 (Defendant did not produce the deposition testimony which allegedly contradicted Plaintiff's statements and Plaintiff made declaration based on personal experience). Sustain as to No. 3 (Lack of foundation, speculation, calls for expert testimony). **Objections to Pretty Declaration:** Not material to the disposition of the motion. (Code Civ. Proc.. § 437c, subd. (q).) The sole cause of action is negligence. "The elements of a cause of action for negligence are well established. They are '(a) a legal duty to use due care; (b) a breach of such legal duty; [and] (c) the breach as the proximate or legal cause of the resulting injury.' " (*Ladd v. Cty. of San Mateo* (1996) 12 Cal. 4th 913, 917.) There is an "obligation to conform to a certain standard of conduct for the protection of others against unreasonable risks." (*McGarry v. Sax* (2008) 158 Cal. App. 4th 983, 994 (*McGarry*).) A duty exists under the general negligence principles. (Civil Code § 1714; *McGarry, supra,* 158 Cal. App. 4th at 994.)

		Under Code of Civil Procedure section 437c, subdivision (p)(2), Defendant has the initial burden of showing there is no merit to one or more elements of negligence. Defendant did not conclusively negate the elements of duty and breach, however Defendant met its initial burden as to causation. As to causation, Defendant met its initial burden by producing the expert declaration of orthopedic surgeon Jeffrey E. Deckey, M.D. (Deckey), who opined that to a reasonable degree of medical probability that nothing Defendant or the massage therapist did or did not do caused or contributed to Plaintiff's alleged injuries. (Deckey Decl. ¶ 9.) Because medical causation in this matter is beyond common experience, expert testimony was required to create a triable issue of fact. (*Webster v. Claremont Yoga* (2018) 26 Cal.App.5th 284, 290.) Plaintiff failed to produce admissible expert evidence rebutting Deckey's opinions. Defendant established Plaintiff cannot prove causation, an essential element of negligence. Defendant shall give notice.
307	*Passi vs. Zhou*	Before the Court at present are: (1) the Demurrer filed on 1/2/26 by Defendants Xiao Yang and Geng Guanjin (Yang/Guanjin); and (2) the Demurrer filed on 1/5/26 by Defendant Fengsuo Zhou (Zhou). Both Demurrers are directed to the Third, Fourth and Fifth Causes of Action in the First Amended Complaint (FAC), as filed on 12/2/25 by Plaintiff Jouni Passi (Plaintiff). The Yang/Guanjin Demurrer is **SUSTAINED** with 15 days leave to amend. The Zhou Demurrer is **MOOT**. All three of the causes of action at issue appear to be based on allegations of fraud, but Plaintiff has failed to plead facts sufficient to support a fraud claim.

		The elements of a fraud claim are: (a) a misrepresentation (false representation, concealment or nondisclosure); (b) knowledge of falsity/scienter; (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage. (*Philipson & Simon v. Gulsvig* (2007) 154 Cal.App.4th 347, 363.) Every element must be alleged in full, factually and specifically. (*Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 157.) The pleading must state facts that show how, when, where, to whom, and by what means the misrepresentations were tendered. (Id.) Here, the FAC refers vaguely to "Defendants and/or Defendants' agents/representatives" along with their counsel and insurance carriers, accusing them collectively of hiding or "withholding" facts, "knowingly and intentionally" omitting facts, and having made a representation about applicable insurance coverage. (FAC, Attachment 3, at ¶¶ 2, 3; Attachment 4, at ¶¶ 1-4; Attachment 5, at ¶ 3.) But those allegations fail to specify who allegedly said or wrote what, to whom, when, and what was allegedly false or misleading. The FAC also does not articulate whether the fraud claim is based on an overt misrepresentation, or non-disclosure. Nor does it specify, if the claim is for nondisclosure, who had a duty to disclose the "concealed" fact, and what circumstances triggered that duty? In addition, to the extent that Plaintiff is attempting to assert a claim for rescission based on unilateral mistake, as the Opposition suggests, the FAC also does not adequately assert the factual basis for that claim. (See *Donovan v. RRL Corp.* (2001) 26 Cal.4th 261, 282.) The Yang/Guanjin Demurrer is therefore **SUSTAINED** as to the Third, Fourth and Fifth

		Causes of Action, with 15 days leave to amend. In light of that ruling, the Zhou Demurrer is **MOOT**. Yang/Guanjin shall give notice.
308	*Malchow vs. Secure One Capital Corporation*	Plaintiff Stephanie Malchow's motion to serve defendant Secure One Capital Corporation is CONTINUED to 5/26/26 at 1:30pm in Department C24. The notice of motion, memorandum of points and authorities and declaration are not properly signed. (See Code of Civ. Proc. § 128.7, subd. (a), § 2015.5; Cal. Rules of Court, rule 2.257(b).) Counsel's declaration also fails to state whether efforts were made to serve the corporation through its officers by mail and acknowledgment of receipt pursuant to Code of Civil Procedure section 415.30, subdivision (a) (in addition to attempts at personal service and substitute service). (See Corp. Code § 1702, subd. (a); Code of Civ. Proc. § 416.10, subd. (b).) Plaintiff shall file corrected and updated documents at least 10 days before the next hearing date. The court continues the OSC to 5/26/26 at 1:30pm.
309	*Norviel vs. FCA US LLC*	Defendant FCA US, LLC's (Defendant) demurrer to the first amended complaint (FAC) of plaintiff John Norviel (Plaintiff) is **OVERRULED**. Defendant's motion to strike is **DENIED**. Defendant shall file an answer to the FAC by 5/21/26. **<u>Motion No. 1: Demurrer</u>** ***<u>Statute of Repose</u>*** The court concludes the six-year statute of repose under Code of Civil Procedure section 871.21,

subdivision (b) does not apply retroactively to Plaintiff's claims.

Statute of Limitations (First through Third Causes of Action)

The warranty contract at issue provides for repair of the Subject Vehicle for five years after delivery. (FAC ¶ 9, Exh. A.) "A promise to repair defects that occur during a future period is the very definition of express warranty of future performance" under both the Song-Beverly Act and the California Uniform Commercial Code. (*Krieger v. Nick Alexander Imports, Inc.* (1991) 234 Cal.App.3d 205, 217.) Accordingly, as Plaintiff argues, Plaintiff's claims did not accrue until Plaintiff discovered or should have discovered Defendant's breaches of the warranty. The FAC alleges "Plaintiff discovered Defendants' wrongful conduct alleged herein shortly before the filing of the complaint, as the Vehicle continued to exhibit symptoms of defects following FCA's unsuccessful attempts to repair them." (FAC ¶ 57.) It is thus not clearly and affirmatively shown from the face of the complaint that the first, second, and third causes of action are time-barred.

Fourth Cause of Action for Breach of Implied Warranty

Defendant contends Plaintiff's claim for breach of implied warranty of merchantability expired because implied warranties have an absolute maximum duration of one year from the sale of new consumer goods. (See Civ. Code, § 1791.1(c).) Defendant argues because the FAC does not allege any defect arose within the restricted statutory period, Plaintiff's implied warranty claim fails as a matter of law. However, the FAC alleges "[t]he subject vehicle was sold with one or more latent defect(s) set forth above." (FAC ¶ 76.) The defects

		alleged in the FAC consist of engine and powertrain issues, transmission defects, electrical defects, and others. (See FAC ¶¶ 15-24, 31.) The allegations in the FAC thus could reasonably be read to allege defects arising at the time of sale, i.e., within the applicable one-year warranty period. ***<u>Sixth Cause of Action for Fraudulent Inducement – Concealment</u>*** Defendant argues the fraud claim fails because: (1) it is time-barred by the three year statute of limitations period under Code of Civil Procedure section 338(d); (2) it is not pled with the requisite specificity; (2) Plaintiff fails to allege a direct transactional relationship giving rise to a duty to disclose on the part of Defendant; and (4) the claim is barred by the economic loss rule. *<u>Statute of Limitations</u>:* The allegations of the FAC are sufficient to support tolling of Plaintiff's fraud claim. (See FAC ¶¶ 26-27, 56-57.) *<u>Specificity:</u>* Fraud claims must be pled with particularity. Every element of the cause of action for fraud must be alleged in full, factually and specifically. The policy of liberal construction of pleading will not be invoked to sustain a pleading defective in any material respect. (*Wilhelm v. Pray, Price, Williams & Russell* (1986) 186 Cal.App.3d 1324, 1332.) The allegations in the FAC are pled with sufficient specificity to support the fraud claim. (See FAC ¶¶ 35, 37-39, 42, 44, 84, 87-88.) *<u>Transactional Relationship:</u>* Defendant relies on *Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, in support of its argument that there must have been a direct transaction between Plaintiff and Defendant for a duty to arise and no such transaction exists here because the FAC does not allege Plaintiff purchased the Subject Vehicle

directly from Defendant. However, the court in *Bigler-Engler* also held that " '[a] duty to disclose facts arises only when the parties are in a relationship that gives rise to the duty, such as '… parties entering into any kind of contractual arrangement.' [Citation.]" (*Bigler-Engler*, *supra*, 7 Cal.App.5th at p. 311). Here, Plaintiff alleges he entered into a warranty contract directly with Defendant regarding the Subject Vehicle, which was manufactured and/or distributed by Defendant. (FAC ¶ 8). This appears sufficient to allege a transactional relationship between the parties.

Defendant argues a warranty is not a contract or a direct transaction that can create a duty to disclose. It cites *Ford Motor Warranty Cases* (2023) 89 Cal.App.5th 1324, but that matter did not involve the issue of when a duty to disclose arises for fraudulent inducement claims. *Ford Motor Warranty Cases* addressed whether Ford was entitled to compel arbitration of plaintiffs' Song-Beverly and fraud claims by relying on an arbitration clause in the sales contracts between the buyers and seller dealerships.

<u>*Economic Loss Rule:*</u> Defendant's argument that the fraudulent inducement claim is barred by the economic loss rule is no longer compelling following the ruling in *Dhital v. Nissan N. Am., Inc.* (2022) 84 Cal.App.5th 828, 843, wherein the court declined to apply the economic loss rule to a purchaser's fraudulent inducement by concealment claim. (*Dhital*, supra, 84 Cal.App.5th at 840-841.)

Defendant points to *Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1, to support its argument that the economic loss rule bars Plaintiff's fraud claim. *Rattagan*, however, dealt with whether, "[u]nder California law, a plaintiff may assert a cause of action for fraudulent concealment based on conduct occurring in the course of a contractual

		relationship." (*Rattagan*, *supra*, 17 Cal.5th at 45.) As such, the economic loss rule would not bar Plaintiff's claim for fraudulent inducement-concealment. **<u>Motion No. 2: Motion to Strike</u>** Because Plaintiff's fraud cause of action remains viable, punitive damages may be recoverable pursuant to said claim. The FAC also sufficiently alleges authorization or ratification by an officer, director, or managing agent of Defendant. (FAC ¶ 7; see also, Civ Code, § 3294(a), (b).) Court continues the CMC to 6/1/26 at 8:45am. Defendant shall give notice.
311	*Dehbozorgi vs. AL E. CAT, Inc.*	The Demurrer by cross-defendant Jeffrey Michael Payne fdba J Payne Construction Company (Payne) is SUSTAINED with leave to amend. Cross-complainant Al E. Cat, Inc. has leave to file a first amended cross-complaint by 5/21/26. 3rd Cause of Action, Breach of Contract. The cross complaint fails to state facts sufficient to constitute this cause of action. (See *Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186 [elements]; *Harris v. Rudin, Richman & Appel* (1999) 74 Cal.App.4th 299, 307 ["If the action is based on alleged breach of a written contract, the terms must be set out verbatim in the body of the complaint or a copy of the written agreement must be attached and incorporated by reference."].) The court continues the CMC to 8/17/26 at 8:45am in Dept. C24. All unserved defendants/cross-defendants must be served by the next date. Payne shall give notice.

312	*Lazar vs. Irvine Management Company*	Defendants Tustin Rancho Monterey LLC and Irvine Management Company's motion to compel arbitration is GRANTED. (See 9 U.S.C. § 2.) Plaintiffs Heidi Lazar and Russell Lazar shall submit their claims against Defendants to binding arbitration, including questions about the applicability, validity, formation, and enforceability of the arbitration agreement. This action is stayed pending completion of arbitration. (See 9 U.S.C. § 3; Code of Civ. Proc. § 1281.4.) The Court declines to rule on Defendants' request for judicial notice because the evidence is not material to the Court's analysis. Plaintiffs' evidentiary objection no. 8 is OVERRULED. The Court declines to rule on all other evidentiary objections because the evidence is not material to the Court's analysis. Defendants' evidentiary objection no. 1 is SUSTAINED. All other evidentiary objections are moot. The Federal Arbitration Act governs the arbitration agreement at issue. (See 9 U.S.C. § 2; *Victrola 89, LLC v. Jaman Properties 8 LLC* (2020) 46 Cal.App.5th 337, 355 [the FAA applies if it is so stated in the agreement]; see also Declaration of Ricky Pena, Ex. B at ¶ 1.) When deciding whether a valid arbitration agreement exists under the FAA, courts generally apply "ordinary state-law principles that govern the formation of contracts." (*First Options of Chicago, Inc. v. Kaplan* (1995) 514 U.S. 938, 944.)

		Defendants met their burden to show a written arbitration exists between the parties. (See *Rosenthal v. Great Western Fin. Securities Corp*. (1996) 14 Cal.4th 394, 413 [burden].) By its plain terms, the arbitration agreement here clearly and unmistakably delegates to the arbitrator the exclusive authority to resolve "any dispute relating to the interpretation, applicability, enforceability or formation of this agreement." (See *Najarro v. Superior Court* (2021) 70 Cal.App.5th 871, 879-880; Pena Decl., Ex. B ¶ 1.) Plaintiffs failed to meet their burden to show the delegation clause is unconscionable or otherwise unenforceable. (*Aanderud v. Superior Court* (2017) 13 Cal.App.5th 880, 895 ["When determining whether a delegation clause is unconscionable, any claim of unconscionability must be specific to the delegation clause."].) Plaintiffs' argument that Civil Code section 1953, subdivision (a)(4) renders the arbitration agreement void as against public policy and the arbitration agreement does not cover Plaintiffs' claims go to the applicability, validity and enforceability of the arbitration agreement. Those issues are for the arbitrator to decide pursuant to the delegation clause. The court sets a status conference re: arbitration for 2/22/27 at 8:45am in Dept. C24. Defendants shall give notice.
314	*Phol vs. Synched, LLC*	The motion by attorney Christopher J. Keller to be relieved as counsel for defendant Synched, LLC will be GRANTED, as set forth herein. California Rules of Court, Rule 3.1362 sets forth the requirements for an attorney moving to withdraw. The motion and declaration complies with Rule 3.1362 and there is good cause to grant the motion.

		However, the proposed order submitted by Mr. Keller is inaccurate because Para 7 lists the trial as the next hearing when there is a motion to be relieved scheduled for July 20, 1016. Accordingly, the motion will be GRANTED upon submission of a corrected proposed order. The order will then become effective upon service of the resulting order on the client and filing same with the Court. Mr. Keller shall give notice.