Superior Court of the State of California
County of Orange

DEPT C25 TENTATIVE RULINGS

The Honorable Nico A. Dourbetas

Civil Court Reporters: The Court does not provide court reporters for law and motion hearings. Please see the Court's website for rules and procedures for court reporters obtained by the Parties.

Tentative Rulings: The Court will endeavor to post tentative rulings on the Court's website by 4 p.m. on the day before the motion is set to be heard. Do NOT call the Department for a tentative ruling if none is posted. **The Court will NOT entertain a request for continuance or the filing of further documents once a tentative ruling has been posted.**

Submitting on the Tentative Ruling: If ALL counsel intend to submit on the tentative ruling and do not wish oral argument, please advise the Court's clerk or courtroom attendant by calling (657) 622-5225. If all sides submit on the tentative ruling and so advise the Court, the tentative ruling shall become the Court's final ruling and the prevailing party shall give Notice of Ruling and prepare an Order for the Court's signature if appropriate under CRC 3.1312. **Please do not call the Department unless ALL parties submit on the tentative ruling.**

Non-Appearances: If no one appears for the hearing and the Court has not been notified that all parties submit on the tentative ruling, the Court shall determine whether the matter is taken off calendar or whether the tentative ruling shall become the final ruling.

Appearances: Counsel may appear by video on Zoom.
1. Visit https://www.occourts.org/media-relations/aci.html

Date: April 19, 2024

1	**Bartolo vs. Kutlug** **2021-01222961**	**Motion for Summary Judgment and/or Adjudication** * Motion vacated per notice of withdrawal filed 03/13/2024 (ROA 470). *
2	**Johnson vs. Assent, Inc.** 2020-01148179	**Motion to Enforce Settlement** Plaintiff's EDWARD JOHNSON, VICTOR AMEY, CARLA CHAVEZ, and WALTER GAMMAGE ("Plaintiffs")'s motion to enforce the settlement of April 12 2022

		between plaintiffs and Defendant ASSENT MORTGAGE, LLC is DENIED without prejudice. Plaintiff hasn't submitted sufficient evidence of the terms of the agreement. There is no settlement agreement attached to the Notice of Lodgment in the court's file and no other evidence submitted to sufficiently permit the Court to determine the terms of settlement. Moving Party shall give notice.
3	**Fregoso vs. Ford Motor Company** 2023-01316525	**Demurrer to Amended Complaint** The Demurrer by Defendants UTO Company XIX, Inc. dba "Porsche Irvine" and Joe MacPherson Ford dba "Autonation Ford Tustin" to Plaintiff's First Amended Complaint ("FAC") is OVERRULED in part and SUSTAINED with leave in part. The demurrer as to the 1st, 4th, & 5th causes of action is overruled. The FAC states facts sufficient to state a cause of action for Violation of CLRA (See Bus. & Prof. Code § 17204; Bower v. AT&T Mobility, LLC (2011) 196 Cal.App.4th 1545, 1556 [elements] The FAC states facts sufficient to state a cause of action for Negligent Repair See Berkley v. Dowds (2007) 152 Cal.App.4th 518, 527 [Negligence may be alleged in general terms].) The FAC states facts sufficient to state a cause of action for Violation of the UCC (Defendants failed to identify any defects with the pleading of this cause of action). The omission of the allegation that the vehicle was pre-owned in plaintiff's complaint in the FAC without explanation is a classic case of sham pleading. (See Womack v Lovell (2015) 237 Cal.App.4th 772, 787; McClain v Octagon Plaza, McClain v Octagon Plaza, LLC (2008) 159 Cal.App.4th 784, 799.) Plaintiff's failure to provide satisfactory explanation regarding omission of harmful allegations allows court to disregard inconsistent allegations and read into amended complaint allegations of superseded complaint. (See Tindell v Murphy (2018) 22

		Cal.App.5th 1239, 1248–49.) The Court analyzed the demurrer as if the FAC alleged that the Vehicle was pre-owned. The demurrer to the second cause of action is sustained on the grounds that the Song-Beverly Act does not apply to a used vehicle with some portion of the manufacturer's warranty still in effect. The Court recognizes that there is a split of authority on this issue between the courts of appeal, primarily created by (Rodriguez v. FCA US, LLC (2022) 77 Cal.App.5th 209) and (Jensen v. BMW Of North America (1995) 35 Cal.App.4th 112.) While Rodriguez is currently under review before the California Supreme Court, the terms of review specifically authorized trial courts to cite Rodriguez and its holding for purposes of "…allow[ing] trial courts to exercise discretion under Auto Equity Sales, Inc. v. Superior Court (1962) 57 Cal.2d 450, 456, 20 Cal.Rptr. 321, 369 P.2d 937, to choose between sides of any such conflict." (285 Cal.Rptr.3rd 351.) The Court has reviewed both opinions and holds that Rodriguez is the better reasoned decision and more applicable to the facts alleged in the FAC. (See also Dagher v. Ford Motor Co. (2015) 238 Cal.App.4th 905, 923 and Kiluk v. Mercedes-Benz USA, LLC (2019) 43 Cal.App.5th 334, 339-40.) The demurrer to the third cause of action is sustained on the grounds that the plaintiff's Song-Beverly Act cause of action fails. (See Daugherty v. Am. Honda Motor Co. (2006) 144 Cal.App.4th 824, 833.) Plaintiff to file an amended complaint, if any, within 10 days. Defendants shall give notice.
4	**Eikanas vs. Summit Healthcare REIT, Inc.** 2023-01329149	**Motion to Compel Production** * Case reassigned to Department C33. See minute order dated 04/11/2024 (ROA 203) *

5	**Kell vs. Wilson** 2023-01338314	**1. Demurrer to Amended Complaint** **2. Motion to Strike** Defendants DENNIS W. WILSON AND DENNIS W. WILSON INSURANCE AGENCY, INC. DBA WILSON FINANCIAL SERVICES's demurrer to the 7th, 8th and 10th causes of action of the First Amended Complaint of plaintiffs Georgette Marguerite Piper Kell, Ernest Earl Kell, Jr., Adrrell William Lawrence, and John Caldwell is SUSTAINED in its entirety with ten days leave to amend. The alleged fraud has not been pled with the required specificity. The motion to strike is denied as moot as to paragraphs 75 and 88. The motion as to the remaining requested relief is granted with ten days leave to amend. The punitive damages allegations and prayer are conclusory and without the required factual allegations of fraud, oppression or malice. Moving party shall give notice.
6	**Mann vs. Compass California, Inc.** 2023-01320472	**1. Demurrer to Amended Complaint** **2. Motion to Strike Portions of Complaint** **3. Case Management Conference** Demurrer to First Amended Complaint Defendants Compass California, Inc. and Sharon Wang's (collectively, defendants) demurrer to first amended complaint (FAC) is SUSTAINED. Plaintiffs Jeffrey Mann and Suzette Mann (collectively, plaintiffs) shall have 10 days leave to amend. 2nd & 3rd causes of action for fraudulent misrepresentation and negligent misrepresentation. The FAC fails to state facts sufficient to constitute these causes of action. (See Lazar v. Superior Court (1996) 12 Cal.4th 631, 638, 645 [fraud elements]; Nissan Motor Acceptance Cases (2021) 63 Cal.App.5th 793, 823 [negligent misrepresentation elements].) The residential purchased agreement (RPA) attached as exhibit A to the FAC shows that at the time defendants made the subject "misrepresentations" on 6/1/22 (FAC ¶¶ 18-21, 40-45, 48-53), defendants did not misrepresent the buyer's intent. The RPA, executed by

		the buyer itself, confirms the buyer's intent to purchase the property (see id. ¶ 21, Ex. A), as well as its intent to purchase it "as is." (Id. at Ex. A [RPA §§ 7B, 25D, see also § 10A]; see Nealy v. County of Orange (2020) 54 Cal.App.5th 594, 597 [facts in exhibits attached to complaint take precedence over and supersede any inconsistent or contrary allegations in the pleading].) Once the buyer affirmatively promised in writing to purchase the property pursuant to the terms of the RPA—any falsity regarding its intent to perform would be attributable to the buyer who made the promise, and not defendants, who made no such promise themselves. (See FAC at Ex. A.) 1st cause of action for breach of statutory duty, Civ. Code, § 2079.16. The FAC fails to state facts sufficient to constitute this cause of action. (See Civ. Code, § 2079.16 [duty owed by buyer's agent to buyer and seller].) To the extent this cause of action is based on defendants' alleged misrepresentations on 6/1/22 (see FAC ¶ 18-21, 37), it fails for the same reasons discussed above under the 2nd and 3rd causes of action. (See FAC at Ex. A [executed RPA].) To the extent the claim is based on the demand for return of the deposit, is uncertain how defendants may have breached their duty of honest and fair dealing and good faith to plaintiffs by demanding that escrow return the initial deposit. (See FAC ¶¶ 27-28, 37.) The FAC vaguely alleges a discrepancy between the 6/10/22 cancellation form, which did not indicate the buyer was seeking a return of its deposit, and a 6/10/22 email to escrow in which the defendants, as the buyer's agents, demanded return of the deposit. (Id. ¶¶ 27-28.) As alleged, it remains equally possible that the cancellation form inadvertently failed to indicate the buyer was seeking a return of the deposit, as it does that defendants' email may have mistakenly sought the return. Indeed, in support of the opposition, plaintiffs' counsel has submitted a tentative arbitration award recently issued in the arbitration between the buyer (Nice Sheen International, Inc.) as claimant and plaintiffs (the Manns) as respondents, in which both sides asserted claims/cross-claims for breach of contract, including a claim by the buyer that it was entitled to the return of its deposit under the RPA. (See Rader Decl. at Ex. 3.) This tentative arbitration award only tends to confirm that

		defendants were merely relaying the buyer's demand for return of the deposit, and not themselves "interfering" with escrow by making the demand. Further, if defendants made the demand for return of the deposit on behalf of the buyer as the buyer's agents, it would be the buyer that is demanding return of the deposit without grounds to do so, not the defendants. A buyer's real estate agent has no duty to the seller to explain the significant of facts known or observable by the seller, such as, e.g., facts amounting to the buyer's alleged breach/wrongful cancellation of the RPA and the buyer's allegedly unwarranted demand for return of the deposit. (See Greif v. Sanin (2022) 74 Cal.App.5th 412, 433 [buyer's real estate agent owed no duty to seller to explain the significance of facts that were readily accessible or observable by seller].) Motion to Strike Portions of First Amended Complaint Defendants' motion to strike portions of the first amended complaint is MOOT, in light of the ruling above. ***CMC is continued to April 14, 2025 at 9 AM. Defendants shall give notice of all the above.
7	**Vazirnia vs. Vazirnia** 2023-01326658	**1. Demurrer to Amended Complaint** **2. Motion to Strike** **3. Motion for Sanctions** **4. Case Management Conference** Motion for Sanctions. Defendant Soha Vazirnia's motion for sanctions "based both on filing and maintaining a knowingly frivolous First Amended Complaint" [FAC] is DENIED. (Code Civ. Proc., §§ 128.5, 128.7.) Plaintiff's evidentiary objections are OVERRULED. First, moving defendant fails to provide evidence, as opposed to unsupported argument, that moving party in fact served the instant motion and supporting

		papers more than 21 days prior to filing them. (Code Civ. Proc., §§ 128.5, subd. (f)(1)(B), 128.7, subd. (c)(1); Smith, Smith & Kring v. Superior Court (1997) 60 Cal.App.4th 573, 577-578 [statements in briefs are argument, not evidence]; Hart v. Avetoom (2002) 95 Cal.App.4th 410, 413-415 [motion initially served must be the same as the one eventually filed]; Galleria Plus, Inc. v. Hanmi Bank (2009) 179 Cal.App.4th 535, 538 [failure to comply with safe harbor provisions require denial of the motion].) The court observes that the moving papers, attorney declaration, and proof of service are all dated 2-13-23, the same date the motion was filed; further, while moving party's declaration is dated more than 21 days prior to the motion filing, there is no evidence it was served prior to the motion filing. Second, moving party has not provided evidence as to the alleged agreement for defendant to reimburse plaintiff for caretaking expenses. (First Amended Complaint [FAC], ¶¶ 19, 36, 37, 39, 40.) The alleged text messages between plaintiff and her father (Ex. 11 to Soha Vazirnia Decl.) are silent as to any reimbursement agreement, or lack thereof, and moving party provides no other evidence on this point. The instant motion addresses the entire FAC. (Notice of Motion at 2:8-11.) Thus, moving party's failure to address this claim defeats the motion entirely. Sanctions are proper "only when the 'pleading, motion, or other paper' itself is frivolous, not when one of the arguments in support of a pleading or motion is frivolous … the fact that the court concludes that one argument or sub-argument in support of an otherwise valid motion, pleading, or other paper is unmeritorious does not warrant a finding that the motion or pleading is frivolous or that [Fed. Rules Civ. Proc., rule 11] has been violated." (Golden Eagle Distributing Corp. v. Burroughs Corp. (9th Cir. 1986) 801 F.2d 1531, 1540–1541; see also Bucur v. Ahmad (2016) 244 Cal.App.4th 175, 190 ["federal case law construing rule 11 is persuasive authority on the meaning of section 128.7"].) Third, the evidence submitted by both parties indicates good faith disputes as to the underlying facts and circumstances of all of plaintiff's claims, including the terms of the alleged buyout agreement and plaintiff's execution of the grant deed and affidavit (Soha Vazirnia Decl., ¶¶ 3-10, Exs. 6 and 7; Amira Vazirnia Decl., ¶¶ 3, 4), as well as plaintiff's alleged tenancy, and the legal and factual basis therefor (Soha Vazirnia

		Decl., ¶ 11, Ex. 8; Amira Vazirnia Decl., ¶¶ 4-6). (Kumar v. Ramsey (2021) 71 Cal.App.5th 1110, 1126 ["the evidentiary burden to escape sanctions under section 128.7 is light," requiring only "sufficient evidentiary showing to demonstrate … a reasonable inquiry into the facts and … a good faith belief in the merits … [plaintiff] need not amass even enough evidence to create a triable issue of fact as would be required if [defendant] had brought a motion for summary judgment, or allege a valid cause of action, as required to overcome a demurrer"].) Finally, moving party's contentions that she was out of the country during the alleged period of quiet enjoyment violations are misplaced, and ultimately insufficient. The FAC alleges: "In December of 2022 through March of 2023, Defendant additionally leased part of the Property to Plaintiff's nephew subject to a handwritten lease, which was drafted by Defendant personally. (FAC, ¶ 43.) The FAC goes on to allege that " Defendant, in violation of Plaintiff's rights, repeatedly violated Plaintiff's rights and privileges … regularly barged into the Property without statutory notice, scheduled unnecessary remodeling work, cut off Plaintiff's access to her mail, and called on the police making false accusations against the Plaintiff. …" (FAC, ¶ 43.) The FAC does not allege that moving party engaged in such actions during the entire period of December of 2022 through March of 2023, as moving party contends. Further, moving party's evidence shows that she was out of the country between 11-21-22 and 2-4-23. (Soha Vazirnia Decl., Para. 12 and Ex. 9 thereto.) Thus, moving party admits she was not out of the country during the entire time period alleged. Demurrer to First Amended Complaint. Defendant Soha Vazirnia's demurrer to the First Amended Complaint [FAC] is OVERRULED. (Code Civ. Proc., § 430.10, subd. (e).) Moving defendant shall file an Answer to the FAC within 10 days. 1st cause of action: breach of contract.

		This cause of action states sufficient facts. (Oasis West Realty, LLC v. Goldman (2011) 51 Cal.4th 811, 821 [elements]; Service Employees International Union v. Hollywood Park, Inc. (1983) 149 Cal.App.3d 745, 757 [demurrer may consider reasonable inferences which can be drawn from allegations of complaint]; Lickiss v. Financial Industry Regulatory Authority (2012) 208 Cal.App.4th 1125, 1135 [detailed information can be obtained through discovery]; FAC, ¶¶ 12, 15, 18, 21, 23-25.) Further, as alleged, this cause of action is not barred by the statute of limitations, and even if it were, plaintiff has adequately alleged delayed discovery. (FAC, ¶¶ 16, 18.) 3rd C/A: fraud: This cause of action is now alleged with the required specificity. (Lazar v. Superior Court (1996) 12 Cal.4th 631, 638, 645 [elements, specific pleading].) (FAC, ¶¶ 12, 36 [representations, including specific facts]; 37 [knowledge of falsity], 38 [intent to defraud/induce reliance], 39 [plaintiff's reasonable reliance], 40 [proximately caused damages]; see also Perry v. Robertson (1988) 201 Cal.App.3d 333, 340 [a plaintiff may plead alternative tort and contract theories based on the same set of facts].) Further, this cause of action is timely. The FAC does not allege facts showing inquiry notice in October 2019 when the grant deed was recorded, as moving party contends; even if it did, the FAC also adequately alleges delayed discovery. (FAC, ¶¶ 16, 18.) 5th cause of action: breach of covenant of quiet enjoyment. This cause of action states sufficient facts. (Andrews v. Mobile Aire Estates (2005) 125 Cal.App.4th 578, 588, 590-591 [implied covenant of quiet enjoyment, damages]; Borden v. Stiles (2023) 92 Cal.App.5th 337, 347–348 ["tenancy at will"]; FAC, ¶¶ 8, 9, 12, 15, 42-44.) Motion to Strike. Defendant Soha Vazirnia's motion to strike portions of plaintiff's First Amended Complaint [FAC] is GRANTED in part, without leave to amend, and DENIED in part. (Code Civ. Proc., §§ 435, 436.)

		The motion is GRANTED, without leave to amend, as to the portion of ¶ 25 of the FAC, alleged within the 1st cause of action for breach of contract, which reads: "Defendant acted deliberately, seeking to injure Plaintiff and rob her of her interests in the Property. This conduct was wanton, malicious, and with a conscience [sic] disregard for the rights of Plaintiff. Defendant acted intentionally to cause damage to Plaintiff. Thus, Soha's conduct justifies an award of punitive and exemplary damages against the Defendant." Punitive damages are only available "[i]n an action for the breach of an obligation not arising from contract." (Civ. Code, § 3294, subd. (a).) Plaintiff's Opposition concedes the motion in this respect. Accordingly, the motion is granted as to the above-quoted portion of ¶ 25 of the FAC, without leave to amend. The remainder of the motion is DENIED. As discussed above, plaintiff's fraud claim is sufficiently alleged. A properly pleaded fraud claim is sufficient to support recovery of punitive damages; no additional allegations of "malice" or intent to injure plaintiff are required. (Stevens v. Superior Court (1986) 180 Cal.App.3d 605, 610 ["[a] fraud cause seeking punitive damages need not include an allegation that the fraud was motivated by the malicious desire to inflict injury … [t]he pleading of fraud is sufficient"].) Moving party shall file an Answer to the FAC within 10 days. ***CMC is continued to April 14, 2025 at 9 AM. Plaintiff shall give notice of all the above.
8	**Bansal vs. Sehgal** 2023-01312162	**1. Application for Right to Attach Order/ Writ of Attachment** **2. Application for Right to Attach Order/ Writ of Attachment** **3. Case Management Conference** Plaintiffs Maneesh Bansal, M.D., as Trustee of the Maneesh A. Bansal 2018 Revocable Trust; and Jagan Bansal, M.D., as Trustee of the Bansal Family Trust Dated March 11, 1998; derivatively on behalf of Reliant Management Group and Riverside Postacute

		Care, LLC's ("Plaintiff") Applications for a Right to Attach Order and order for issuance of a Writ of Attachment ("Application") against defendant Arunpal Sehgal, M.D. ("Defendant") are GRANTED in the following amounts: Reliant Management Group, LLC's Application is GRANTED in the reduced amount of $100,000; and Riverside Postacute Care, LLC's Application is GRANTED in the reduced amount of $103,132.88. Plaintiff is ordered to post an undertaking of $10,000. "Under Code of Civil Procedure section 483.010, a prejudgment attachment may issue only if the claim sued upon is (1) a claim for money based upon a contract, express or implied; (2) of a fixed or readily ascertainable amount not less than $500; (3) either unsecured or secured by personal property, not real property (including fixtures); and (4) commercial in nature." (Goldstein v. Barak Construction (2008) 164 Cal.App.4th 845, 852.) An application for a right to attach order must be supported by an affidavit or declaration showing that the applicant, on the facts presented, would be entitled to a judgment on the claim upon which the attachment is based. (Lydig Construction, Inc. v. Martinez Steel Corp. (2015) 234 Cal.App.4th 937, 943-944.) "A defendant who opposes a right to attach order must give notice of his objection, "accompanied by an affidavit supporting any factual issues raised and points and authorities supporting any legal issues raised." (§ 484.060, subd. (a).) The defendant may make a claim of exemption with respect to his property in the opposition. (§ 484.070.)" (Id.) "In determining the probable validity of a claim where the defendant makes an appearance, the court must consider the relative merits of the positions of the respective parties and make a determination of the probable outcome of the litigation." (Loeb & Loeb v. Beverly Glen Music, Inc. (1985) 166 Cal.App.3d 1110, 1120.) Here, Plaintiff has shown that the attachment is based upon a claim for money based upon an express contract. Namely, Plaintiff has shown that it is suing for breach of contract with respect to the operating agreements of Reliant Management Group, LLC, Riverside Postacute Care, LLC and RMG Capital

		Partners, LLC. In opposition, Defendant does not dispute that Plaintiff has satisfied this requirement. Plaintiff argues that the amount of damages is readily ascertainable by reference to the operating agreements and the bank records for the relevant entities. Plaintiff's supporting declarations establish that the damages are readily ascertainable and not less than $500. Defendant does not dispute this in the Opposition. There is no dispute that the claimed debt is not secured by real property. Plaintiff has shown that the claimed debt is commercial in nature because it arises from Defendant's conduct as a manager of an LLC. Plaintiff demonstrates the probable validity of the claim by making an evidentiary showing that the Operating Agreements all prohibited unilateral distribution of LLC assets to members and showing that Defendant made unilateral distribution of LLC assets in violation of the Operating Agreements. Defendant argues in Opposition that there is no probable validity because Plaintiff had unclean hands. Unfortunately, Defendant's supporting evidence consists of two declarations that are preoccupied with ancillary issues regarding Plaintiff's alleged attempt to remove Defendants from the LLC. Moreover, Defendant admits that the money was withdrawn as a unilateral distribution of LLC assets. Plaintiff has adequately demonstrated the likelihood of prevailing on the merits. Plaintiff's request to include a potential award of attorneys fees as part of the attachment, however, has not been adequately supported with a relevant factual showing. Plaintiff provides the declaration of Christopher Beatty, but this declaration fails to provide sufficiently detailed records to permit the Court to assess whether the claimed attorney's fees were reasonably expended. Accordingly, the Court denies the request to include attorneys' fees and costs. (See Cal. Code Civ. Proc. §§482.110, subd. (b).) Defendant fails to provide a factual showing to support any set-off or claim for exemption. Code of Civil Procedure section 489.210 states: "Before issuance of a writ of attachment, a temporary

		protective order, or an order under subdivision (b) of Section 491.415, the plaintiff shall file an undertaking to pay the defendant any amount the defendant may recover for any wrongful attachment by the plaintiff in the action." Code of Civil Procedure section 489.220 states: "(a) Except as provided in subdivision (b), the amount of an undertaking filed pursuant to this article shall be ten thousand dollars ($10,000). [¶] (b) If, upon objection to the undertaking, the court determines that the probable recovery for wrongful attachment exceeds the amount of the undertaking, it shall order the amount of the undertaking increased to the amount it determines to be the probable recovery for wrongful attachment if it is ultimately determined that the attachment was wrongful." Here, Plaintiff does not address the issue of posting an undertaking and represents in the Application that no undertaking has been filed. Defendant fails to object to Plaintiff's failure to post an undertaking and failure to address the issue in the Application. Accordingly, the Court orders Plaintiff to post an undertaking of $10,000. ***CMC is continued to April 14, 2025 at 9 AM. Plaintiff shall give notice of all the above.