

September 5, 2025, Civil Law & Motion Tentative Rulings

1. CU0002247 DRB CAPITAL, LLC vs. T.W.

The petition is denied without prejudice.

Background

Per the petition, payee became entitled to certain structured settlement payments resulting from settlement of a lawsuit. Pet. ¶ 6. The petition does not detail when the settlement agreement was entered, nor what the terms of the structured settlement were. There is also no copy of the structured settlement agreement attached to the petition. Payee has agreed to sell, to petitioner, one-hundred and thirty-two (132) \$500 monthly payments in exchange for \$20,033.52. Ex. A. Payee is 58 years old, single, and has no minor children. Ex. B. Payee currently has a monthly income of \$2,000 from the structured settlement annuity. *Id.* The petition is verified by a paralegal of petitioner.

Analysis

The transfer of structured settlement payments is authorized in California provided the transfer is first approved by the court. Ins. Code § 10139.5(a). The court shall consider the totality of the circumstances, including, but not limited to a list of considerations described in Insurance Code section 10139.5(b), when determining whether the proposed transfer should be approved, including whether the transfer is fair, reasonable, and in the payee's best interest, taking into account the welfare and support of the payee's dependents.

At bar, the record as developed is insufficient to support approval of the transfer and a finding that the transfer is fair, reasonable and in the payee's best interest. The petition and declaration do not describe payee's financial and economic situation, beyond an indication that her monthly income is a \$2,000.00 annuity. There is no discussion of whether payee is facing a hardship situation and no indication of how payee will support herself in the absence of annuity payments. Insurance Code § 10139.5(b)(3), (8), (13). There is no apparent disclosure of previous transactions. Insurance Code § 10139.5(b)(10)-(12). The petition does not describe the terms of the structured settlement and it is unclear whether payee is transferring all or a portion of her future payments. Insurance Code § 10139.5(b)(4). Additionally, the court is missing a copy of the annuity contract and the underlying structured settlement agreement, or, if unavailable, a description of the terms. Insurance Code § 10139.5(f). Finally, there is no proof demonstrating that the prior attorney involved with the settlement or the Attorney General was served, as applicable. *Id.*

2. CU0000512 eCapital Asset Based Lending v. Nicole Medina, et al.

No appearances required. Plaintiff's motion to tax costs is denied without prejudice as moot. Defendants withdrew their memorandum of costs on August 18, 2025.

3. CU0001605**Andrew Alan Johnson vs. Donald Judas**

Plaintiff's motion for leave to file first amended complaint is granted. Plaintiff shall file its amended complaint within ten (10) days of the Court's order.

Motions for leave to amend to file a complaint are governed by Code of Civil Procedure section 473(a)(1), which provides that the same may be permitted "in furtherance of justice, and on any terms as may be [deemed] proper [by the court]." California has a "policy of liberality in permitting amendments at any stage of the proceeding." *P&D Consultants, Inc. v. City of Carlsbad* (2010) 190 Cal.App.4th 1332, 1345. That said, trial courts nevertheless possess "wide discretion" in deciding whether to grant a plaintiff leave to amend. *Huff v. Wilkins* (2006) 138 Cal.App.4th 732, 746; *Branick v. Downey Savings & Loan Assn.* (2006) 39 Cal.4th 235, 242. In exercising that discretion, courts are to consider a number of factors including, *inter alia*, whether the defendant would be prejudiced by the amendment (through delay in a trial, added costs of preparation, or increased discovery), whether the amendment states a potentially viable claim in the proper form, and whether the amendment was delayed without sufficient explanation or excuse. *Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 613; *Miles v. City of Los Angeles* (2020) 56 Cal.App.5th 728, 739; *P&D Consultants*, 190 Cal.App.4th at 1345.

Procedurally, a proper motion to amend a pleading must include a copy of the proposed amended pleading, serially numbered to differentiate it from prior pleadings or amendments. Cal. Rules of Court, Rule 3.1324(a)(1). Additionally, it must state the allegations proposed as additions, if any, and where by page, paragraph, and line number they are located. Cal. Rules of Court, Rule 3.1324(a)(3). The motion must be accompanied by a separate declaration stating the effect of the amendment, why it is necessary and proper, when the facts were discovered, and the reason the request was not made earlier. Cal. Rules of Court, Rule 3.1324 (b).

At bar, the court is satisfied that plaintiff has stated good cause for amendment of the complaint including compliance with the required procedural requirements and that amendment is in the best interests of justice. The court is not persuaded by any of defendant's arguments to the contrary. Specifically, the amendment does not appear untimely particularly given the September 2024 filing date for the instant complaint and discovery issues that have arisen in connection with defendant Judas' deposition. The amendments appear to potentially state a viable cause of action and request for damages. Moreover, defendant has failed to demonstrate that he will suffer any unfair prejudice as a result of amendment particularly given the age of this September 2024 case subject to its *first* trial setting. To the extent that defendant needs any additional time to engage in motion practice and/or to prepare to meet the newly added allegations, he, of course, may seek a continuance of the trial date upon the filing of an appropriate motion demonstrating good cause.

4. CU0001849**Gregory Thrush vs. Jose Antonio Valdovinos**

Plaintiff's motion to compel further responses to special interrogatories, set two and inspection demands, set two, and for corresponding monetary sanctions is granted as prayed. Defendant is ordered to provide verified, further responses to plaintiff's special interrogatories, set two and

inspection demands, set two, without objections, within thirty (30) days of notice of the Court's order. Plaintiff is awarded attorneys' fees and costs as prayed in the amount of \$1,775.49, payable jointly and severally by defendant and defendant's counsel.

If a party fails to timely serve a response to interrogatories or inspection demands, Code of Civil Procedure Sections 2030.290 and 2031.300 authorizes the propounding party to move for an order compelling response without objections. The court also has discretion to issue monetary sanctions against a party for its misuse of the discovery process which includes failing to respond to an authorized method of discovery and failing to meet and confer to resolve a discovery dispute. Code Civ. Proc. § 2023.010 (d), (i). Additionally, the court shall impose a \$1,000 sanction if the court finds defendant did not respond in good faith to a request for a production of documents and failed to meet and confer with the attorney requesting the documents in a reasonable and good faith attempt to informally resolve any dispute concerning the request. Code Civ. Proc. § 2023.050(a)(1), (3).

On May 20, 2025, plaintiff served defendant with special interrogatories, set two, and inspection demands, set two. Plaintiff made a good faith attempt to resolve any discovery disputes informally, offering defendant a two-week extension. Defendant has not responded to the authorized discovery requests or plaintiff's meet and confer efforts.

While defendant did not oppose plaintiff's motion, his failure to respond to plaintiff's special interrogatories and inspection demands is a misuse of the discovery process that necessitated plaintiff's motion. See Code Civ. Proc. §§ 2023.010(d), (i), 2023.030. Monetary sanctions are proper, including \$75.49 in court and electronic filing fees, and \$1,225.00 in attorney's fees (3.5 hours as the reasonable time to prepare the motion at \$350.00 per hour). Additionally, the court imposes a \$1,000.00 sanction given that defendant did not respond in good faith to the request for production of documents and failed to meet and confer with the attorney requesting the documents in a reasonable and good faith attempt to informally resolve any dispute concerning the request. See Code Civ. Proc. § 2023.050. The court orders a total award of \$2,300.49, jointly and severally payable by defendant and defendant's counsel.

5. CU0001651 Joseph Sacks vs. Navy Federal Credit Union

Defendants' demurrer is sustained without leave to amend as to the second and third causes of action and otherwise overruled as to all other claims.

Standard of Review

A demurrer tests the sufficiency of the factual allegations in the complaint and whether facts are pled with sufficient certainty and particularity. See *Banerian v. O'Malley* (1974) 42 Cal.App.3d 604, 610-611; see also Code Civ. Proc., § 430.10(e). Because a demurrer tests the legal sufficiency of a complaint, the plaintiff must show that the complaint alleges facts sufficient to establish every element of each cause of action. See *Rakestraw v. California Physicians Service* (2000) 81 Cal.App.4th 39, 43. Where a complaint fails to adequately plead all necessary elements of a cause of action, a demurrer is properly sustained. See *Cantu v. Resolution Trust Corp.* (1992) 4 Cal.App.4th 857, 884- 85. While all material facts properly pled are generally

accepted as true, “contentions, deductions or conclusions of fact or law” are not. *Evans v. City of Berkeley*, 38 Cal. 4th 1, 6 (2006).

Facts that may be inferred from those alleged are also properly taken as true. *Harvey v. City of Holtville* (1969) 271 Cal.App.2d 816, 819. The complainant’s ability to prove the allegations does not concern the court. *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App. 3d 593, 604. Rather, the court must construe the complaint liberally by drawing reasonable inferences from the facts pleaded. *Wilner v. Sunset Life Ins. Co.* (2000) 78 Cal.App.4th 952, 958.

“Where the complaint is defective, ‘[i]n the furtherance of justice great liberality should be exercised in permitting a plaintiff to amend his complaint, and it ordinarily constitutes an abuse of discretion to sustain a demurrer without leave to amend if there is a reasonable possibility that the defect can be cured by amendment.’ ” *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 970–971 (citation omitted). However, “[t]he plaintiff has the burden of demonstrating that “there is a reasonable possibility the plaintiff could cure the defect with an amendment.” *Jo Redland Trust, U.A.D. 4-6-05 v. CIT Bank, N.A.* (2023) 92 Cal.App.5th 142, 162. “The burden of proving such reasonable possibility is squarely on the plaintiff.” *Zelig v. County of Los Angeles* (2002) 27 Cal.4th 1112, 1126.

Breach of Contract and Breach of Implied Covenant of Fair Dealing

“To prevail on a cause of action for breach of contract, the plaintiff must prove (1) the contract, (2) the plaintiff’s performance of the contract or excuse for nonperformance, (3) the defendant’s breach, and (4) the resulting damage to the plaintiff.” *Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186. “Implicit in the element of damage is that the defendant’s breach caused the plaintiff’s damage.” *Troyk v. Farmers Group, Inc.* (2009) 171 Cal.App.4th 1305, 1352.

The complaint alleges a valid and enforceable written contract existed between the parties in the form of a deed of trust, which was executed in connection with the mortgage loan secured by the subject property. First Amended Complaint (FAC) ¶¶ 12-14 and Ex. A. Pursuant to section 5(a) of the deed of trust, defendant as the lender had sole authority to require hazard insurance coverage (“Borrower must keep the improvements...on the Property insured against loss by fire, hazards included within the term “extended coverage,” and any other hazards...for which Lender requires insurance.”) Pursuant to section 3(c) of the deed of trust, defendant had an obligation to estimate the amount of escrow funds required to pay for escrow items, including required insurance premiums (“Lender will estimate the amount of Funds due in accordance with Applicable Law”). “Funds” is defined in section 3(a) as “Borrower must pay to Lender...until the Note is paid in full, a sum of money to provide for payment of amounts due for all Escrow Items (the “Funds”). “Escrow items” is defined to include “premiums for any and all insurance required by Lender under Section 5”.

Therefore, under the deed of trust, defendant had an express obligation to estimate the amount of escrow funds required to pay for all escrow items including hazard insurance. Plaintiff has sufficiently alleged the existence of a contract, that plaintiff acquired the required insurance, that defendant breached the contract by not estimating the amount of funds due, and resulting damage to plaintiff. The demurrer as to the first cause of action is overruled.

“There is an implied covenant of good faith and fair dealing in every contract that neither party will do anything which will injure the right of the other to receive the benefits of the agreement.” *Comunale v. Traders & General Ins. Co.* (1958) 50 Cal.2d 654, 658. “Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement.” *Carma Developers (Cal.), Inc. v. Marathon Development California, Inc.* (1992) 2 Cal.4th 342, 371 (quotations and citations omitted). “The covenant of good faith finds particular application in situations where one party is invested with a discretionary power affecting the rights of another. Such power must be exercised in good faith.” *Id.* at 372.

In the operative complaint, plaintiff alleges that the deed of trust required plaintiff to make monthly payments including required insurance premiums, that defendant failed to provide plaintiff with an accurate estimate of those escrow items in bad faith, and in a manner that was arbitrary, unreasonable and inconsistent with plaintiff’s contractual expectations, and that as a result thereof, plaintiff was deprived of expected benefits under the contract and suffered substantial damages. FAC ¶¶ 39-43. Plaintiff has sufficiently pleaded a cause of action for breach of the implied covenant of good faith and fair dealing. The demurrer as to the sixth cause of action is overruled.

Negligence and Breach of Fiduciary Duty

The elements of a cause of action for negligence are a legal duty to use due care, a breach of such legal duty, and the breach is the proximate or legal cause of the resulting injury. *Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917. “[A]s a general rule, a financial institution owes no duty of care to a borrower when the institution’s involvement in the loan transaction does not exceed the scope of its conventional role as a mere lender of money.” *Nymark v. Heart Fed. Savings & Loan Assn.* (1991) 231 Cal.App.3d 1089, 1096.

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) 417, 432-433. Of note, “[n]o fiduciary duty exists between a borrower and lender in an arm’s length transaction.” *Ragland v. U.S. Bank National Assn.* (2012) 209 Cal.App.4th 182, 206 (citation omitted.) “[A]bsent special circumstances ... a loan transaction is at arms-length and there is no fiduciary relationship between the borrower and lender.” *Oaks Management Corporation v. Superior Court* (2006) 145 Cal.App.4th 453, 466.

Here, plaintiff alleges, in a conclusory fashion, that defendant, “exceeded its conventional role as a mere lender by directly requiring hazard insurance coverage ... and by directing the escrow company ... to disburse \$4,568 toward the insurance premium at closing.” FAC ¶ 17. Similarly, plaintiff alleges, in a conclusory fashion, that “by assuming control over the insurance funding process, Defendant undertook responsibilities that gave rise to a relationship of trust and confidence with respect to the disclosure and calculation of escrow obligations, thereby creating a fiduciary duty owed to Plaintiff.” *Id.* at ¶ 23. The allegations pled do not sufficiently demonstrate how defendant’s involvement in the loan transaction exceeds the scope of a conventional role as a mere lender of money, and does not demonstrate special circumstances giving rise to a fiduciary relationship between defendant and plaintiff. Affording every inference in favor of plaintiff, plaintiff’s allegations fail to state facts constituting causes of action for

negligence and breach of fiduciary duty. The demurrer as to the second and third causes of action is sustained.

In this case, there is has been no specific showing by plaintiff how he can amend the complaint to correct these defects. Therefore, on this record, leave to amend is denied.

Negligent Misrepresentation

“The elements of negligent misrepresentation are ‘(1) the misrepresentation of a past or existing material fact, (2) without reasonable ground for believing it to be true, (3) with intent to induce another’s reliance on the fact misrepresented, (4) justifiable reliance on the misrepresentation, and (5) resulting damage.’” *National Union Fire Ins. Co. of Pittsburgh, PA v. Cambridge Integrated Services Group, Inc.* (2009) 171 Cal.App.4th 35, 50. “Fraud allegations must be pled with more detail than other causes of action. The facts constituting the fraud, including every element of the cause of action, must be alleged factually and specifically. The objectives are to give the defendant notice of definite charges which can be intelligently met, and to permit the court to determine whether, on the facts pleaded, there is any foundation, prima facie at least, for the charge of fraud.” *Apollo Capital Fund, LLC v. Roth Capital Partners, LLC* (2007) 158 Cal.App.4th 226, 240 (citations and quotations omitted).

At bar, plaintiff alleges defendant misrepresented to plaintiff the total monthly mortgage payment, that defendant had no reasonable grounds to believe it to be true based on its direction to Placer Title Company to disburse \$4568 toward the insurance premium at closing, that the inaccurate disclosures were made with the intent that plaintiff would rely on them in deciding whether to proceed with the loan, that plaintiff reasonably relied on the same, and resulting damages to plaintiff. FAC ¶¶ 29-30. Assuming the truth not only of all facts properly pled, but also of those facts that may be implied or inferred from those expressly alleged in the FAC, the Court finds that the FAC states sufficient facts to constitute a cause of action for negligent misrepresentation. Defendant’s demurrer as to the fourth cause of action is overruled.

Violation of Truth in Lending Act (TILA)

“TILA, title 15 of the United States Code section 1601 *et seq.*, and its accompanying regulations (Regulation Z), 12 Code of Federal Regulations part 226.1 *et seq.*, require specific disclosures by businesses offering consumer credit (including mortgage loans). TILA's purpose is to ‘avoid the uninformed use of credit.’ 15 U.S.C. § 1601.” *Boschma v. Home Loan Center, Inc.* (2011) 198 Cal.App.4th 230, 244 (parentheses and date omitted). In a case such as this one, a creditor is obliged to provide a closing disclosure, containing all information required by section 1026.38(a)–(s), at least three business days before consummation of the loan. See 12 C.F.R. § 1026.19(f)(1)(ii). The disclosures should reflect the credit terms to which the parties are legally bound at the time of giving the disclosures. See *Hauk v. JP Morgan Chase Bank United States*, 552 F.3d 1114, 1119 (9th Cir. 2009). To sustain a cause of action under TILA, a plaintiff must allege a violation of a specific TILA provision. *Monreal v. GMAC Mortg., LLC* (S.D. Cal. 2013) 948 F.Supp.2d 1069, 1081-1082. The plaintiff must also establish detrimental reliance to recover actual damages. See 15 U.S.C.A. § 1640(a); *In re Ferrell* (9th Cir. 2008) 539 F.3d 1186, 1192.

Here, the instant complaint alleges defendant violated 12 C.F.R. § 1026.38(c)(1)-(2) by failing to accurately disclose the required hazard insurance premiums, when the total monthly payment inclusive of required insurance premiums was substantially higher, and that the closing disclosure did not reflect the credit terms to which the parties were legally bound at the time of the giving of the disclosure. FAC ¶ 34. Plaintiff also alleges he detrimentally relied on the inaccurate disclosures provided when making his decision to proceed with the loan, resulting in actual damages. *Id.* ¶¶ 36-37. Assuming the truth not only of all facts properly pled, but also of those facts that may be implied or inferred from those expressly alleged in the FAC, the court finds that plaintiff's current complaint states facts to constitute a cause of action for violation of TILA. Thus, defendant's demurrer as to the fifth cause of action is overruled.