

Tentative Rulings for April 19, 2023

Department 5

**To request oral argument, you must notify Judicial Secretary
Charmaine Ligon at (760) 904-5722
and inform all other counsel no later than 4:30 p.m.**

This court follows California Rules of Court, Rule 3.1308 (a) (1) for tentative rulings (see Riverside Superior Court Local Rule 3316). Tentative Rulings for each law & motion matter are posted on the Internet by 3:00 p.m. on the court day immediately before the hearing at <https://www.riverside.courts.ca.gov/OnlineServices/TentativeRulings/tentative-rulings.php>. If you do not have Internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

To request oral argument, no later than 4:30 p.m. on the court day before the hearing you must (1) notify the judicial secretary for Department 5 at (760) 904-5722 and (2) inform all other parties of the request and of their need to appear telephonically, as stated below. If no request for oral argument is made by 4:30 p.m., the tentative ruling **will become the final ruling** on the matter effective the date of the hearing. **UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.**

IN LIGHT OF THE CORONAVIRUS PANDEMIC; AND UNTIL FURTHER NOTICE, COUNSEL AND SELF-REPRESENTED PARTIES ARE ENCOURAGED TO APPEAR AT ANY LAW AND MOTION DEPARTMENT TELEPHONICALLY WHEN REQUESTING ORAL ARGUMENTS.

TELEPHONIC APPEARANCES: On the day of the hearing, call into one of the below listed phone numbers, and input the meeting number:

- Call-in Numbers: 1 (833) 568-8864 (Toll Free), 1 (669) 254-5252,
1 (669) 216-1590, 1 (551) 285-1373, or
1 (646) 828-7666
- Meeting Number: **161 782 8254**

Please **MUTE** your phone until your case is called and it is your turn to speak. It is important to note that you must call fifteen (15) minutes prior to the scheduled hearing time to check in or there may be a delay in your case being heard.

For additional information and instructions on telephonic appearances, visit the court's website at <https://www.riverside.courts.ca.gov/PublicNotices/remote-appearances.php>.

Riverside Superior Court provides official court reporters for hearings on law and motion matters only for litigants who have been granted fee waivers and only upon their timely request. (See General Administrative Order No. 2021-19-1) Other parties desiring a record of the hearing must retain a reporter pro tempore.

1.

CVRI2105469	CO BROTHERS, LLC vs TILT UP INC.	Motion to Compel by TILT UP INC.
-------------	----------------------------------	----------------------------------

Tentative Ruling: On the Court's own motion continued to 4/21/23, 8:30 a.m., Department 5.

2.

CVRI2200396	BARRERA vs GENERAL MOTORS LLC	Motion to Compel Deposition of Defendant General Moto LLC's Person Most Knowledgeable and Custodian of Records and Request for Sanctions by FRANCISCO BARRERA, et. al.
-------------	-------------------------------	--

Tentative Ruling: Granted. The Defendant's Person Most Knowledgeable is to be produced for deposition within 30 days of the date of this order and Defendant is to produce the documents identified in the Notice. Defendant is to pay Plaintiff monetary sanctions in the reduced and reasonable amount of \$1347 (\$175 hr. X 3.5 + \$450 X 1.5 + \$60).

Factual and procedural background: This is a lemon-law action under the Song-Beverly Consumer Warranty Act. Plaintiffs allege that the 2018 Chevrolet Silverado they purchased on 6/6/19 was delivered on several occasions for repair of certain nonconformities. (Complaint, ¶¶ 15, 17-18.) Further that Defendant GM failed to conform the vehicle to the applicable warranties, and failed to either replace the vehicle or make restitution in accordance with the Song-Beverly Act. (Complaint, ¶¶ 18, 20.) On 1/28/22, Plaintiffs filed the instant action against GM, seeking restitution, damages, attorney's fees, and civil penalty.

On 1/4/23, Plaintiffs served GM with a deposition notice for a deposition scheduled to occur on 1/23/23, consisting of 26 matters for examination and 17 requests for production of documents. (Declaration of Phil A. Thomas ["Thomas Decl."] ¶ 2, Ex. A [Notice of Deposition].) The deposition notice was served by electronic service to GM's counsel. It was accompanied by a cover letter requesting GM to provide alternative dates if its witness is not available on the date noticed for deposition (Ibid.) On 1/18/23, GM served its objection to Plaintiffs' notice of deposition, objecting to the unilaterally noticed deposition. It stated that it would not produce a witness at the date and time noticed but will produce a witness at a mutually convenient time and place. (Thomas Decl., ¶ 5, Ex B [Objection to Notice of Deposition].) Additionally, GM objected to each of the categories for examination and requests for production of documents. (Ibid.) As to some of the categories and request for production, GM stated that it will produce a witness at a mutually agreeable time and place. (Ibid.)

On 1/20/23, having not heard back from GM's counsel on the alternative date for deposition, Plaintiffs' counsel followed up, requesting GM's counsel to propose dates for deposition. (Thomas Decl., ¶ 6, Ex. C [emails to GM's counsel].) On 1/23/23, Plaintiffs' counsel proceeded with the deposition, but GM did not appear. (Thomas Decl., ¶ 7, Ex. D [Affidavit re Nonappearance].) The reporter prepared an Affidavit of Nonappearance. (Ibid.) On 1/25/23, Plaintiffs' counsel emailed GM's counsel, noting that his office has not heard from GM's counsel on alternative dates for deposition, and requested for GM's counsel to advise on such alternative date, so Plaintiffs' counsel can re-notice the deposition. (Thomas Decl., ¶ 8, Ex. C [emails to GM's counsel].) Plaintiffs' counsel followed up again on January 31st, February 6th, 8th, 16th, 28th, and March 2nd and 6th, but Defendant's counsel did not respond. (Ibid.) On 3/9/23, Plaintiffs filed this motion for an order compelling Plaintiff's deposition and for production of documents.

Legal authorities and analysis: Plaintiffs move the Court for an order compelling GM to appear and testify at a deposition and to produce documents described in the deposition notice. Plaintiffs' motion is based on CCP § 2025.450, which provides in part: "If, after service of a deposition notice, a party to the action ... without having served a valid objection ... fails to appear for

examination, or to proceed with it, or to produce for inspection any document ..., the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document..." (CCP § 2025.450(a).) Here, the conditions for bringing a motion pursuant to this section have been met. Plaintiffs demonstrate that they proceeded with the deposition on the noticed date of 1/23/23, at which time GM failed to appear, to proceed, or to produce documents.

GM opposes the motion, arguing, *inter alia*, that Plaintiffs cannot invoke section 2025.450 because GM served valid objections under CCP 2025.410. GM's argument is lacks merit. Plaintiffs were not prevented from moving forward with the deposition by reasons of GM's service of a valid objection pursuant to section 2025.410 or filing of a motion to quash the deposition notice because no objections under section 2025.410 were asserted by GM and no motion to stay was filed. (CCP §2025.410(c) ["In addition to serving this written objection, a party may also move for an order staying the taking of the deposition and quashing the deposition notice"].)

Proper service of a notice of deposition is effective to require the attendance of a party as well as compelling production of specified documents or electronically stored information at the deposition. (CCP §2025.280(a).) The code provides that, if the deponent, without having served a valid objection, fails to appear or produce documents, electronically stored information, or tangible thing described in the deposition notice, "the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document, electronically stored information, or tangible thing describe in the deposition notice." (CCP §2025.450(a).) A valid objection under Section 2025.410, subdivision (a), relates to an error or irregularity in a deposition notice that does not comply with Article 2 (commencing with Section 2025.210). (CCP §2025.450(a).) A notice that a party is unavailable is not one of such grounds provided under Article 2, Chapter 9 of the Civil Discovery Act. Therefore, merely serving an objection based on unavailability does not impose a stay on a notice of deposition.

GM also argues that the motion should be denied because Plaintiffs failed to adequately meet and confer before resorting to filing the instant motion. According to GM, Plaintiffs should have attempted to meaningfully engage with GM to resolve the dispute raised by its objections before bringing the motion and that Plaintiffs' counsel's emails concerning only the date on which to hold the deposition is insufficient. (Opposition, 4:8-15.) Before seeking an order to compel the deposition of a party, no "meet and confer" is required where the deponent "fails to attend the deposition and produce the documents...described in the deposition notice." In such cases, all that is required is a declaration by the moving party that he or she contacted the deponent "to inquire about the nonappearance." (CCP §2025.450(b)(2).) Implicit in the requirement that counsel contact the deponent to "inquire" about the nonappearance is a requirement that counsel listen to the reasons offered and make a good faith attempt to resolve the issue by rescheduling the deposition. (*Leko v. Cornerstone Building Inspection Service* (2001) 86 Cal.App.4th 1109, 1124 [failure to consider rescheduling depo and instead filing motion to compel resulted in sanctions against deposing counsel for filing unnecessary motion].) Plaintiffs' counsel has demonstrated by declaration, and GM does not deny, that he to reached out to GM's counsel several times before resorting to filing the instant motion. GM's counsel failed to respond.

A motion to compel production of documents described in a deposition notice must also be accompanied by a showing of "good cause". (Code Civ. Proc., §2025.450(b)(1).) Justification for discovery is found where the moving party demonstrates a fact-specific showing of relevance. (*Associated Brewers Dist. Co., Inc. v. Superior Court* (1967) 65 Cal.2d 583, 587.) Plaintiffs have met this requirement by submitting a separate statement in support of the motion, indicating that the documents are necessary for establishing their *prima facie* case for violation of the Song-Beverly Act and to show whether GM's refusal to replace or repurchase the subject vehicle constitutes a willful violation of the Act, which would determine Plaintiffs' entitlement to civil penalties under Civil Code section 1794. Plaintiff has demonstrated good cause in seeking the requested documents.

As to sanctions, Section 2025.450 (g)(1) provides: “If a motion under subdivision (a) is granted, the court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) in favor of the party who noticed the deposition and against the deponent or the party with whom the deponent is affiliated, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.”

Sanction are imposed against GM to pay the reasonable expenses, including attorney’s fees, incurred by Plaintiff as a result of GM’s failure to appear at deposition or to produce documents demanded in the deposition notice. Plaintiffs are seeking sanctions in the amount of \$2,310, reflecting 7 hours of attorney’s fees at the hourly rates of \$175 and \$450, and \$60 for filing cost. The hours appear to be excessive and are reduced as stated above.

3.

CVRI2203866	WEISS vs RIVERSIDE UNIVERSITY HEALTH SYSTEM MEDICAL CENTER	Motion to be Relieved as Counsel for JEFFERY WEISS
-------------	--	---

Tentative Ruling: The unopposed motion is granted. The order is effective upon the filing of the proof of service of the signed order on the client. The proposed order is to include at paragraph 7 and 8 the dates, times and departments of all upcoming hearing. The Proof of Service Re Order Granting Attorney’s Motion to be Relieved As Counsel, filed on 3/30/23 is stricken as void, as there was no order granting to be served at that time.

4.

CVSW2206201	MAMCO, INC. vs ABUZEID	Demurrer on First Amended Complaint by LARA T ABUZEID, ABUZEID LAW, PC
-------------	------------------------	--

Tentative Ruling: Overruled. Defendants are to file their Answer within 30 days.

Factual and procedural background: Plaintiffs bring this action legal malpractice action against his former counsel, moving party Defendants, alleging they hired Defendants to represent them in eight separate matters, but Defendants did not meet the requisite standard of care.

Defendants demur to the First Amended Complaint (FAC) on the grounds it fails to state fact sufficient to constitute a cause of action and is uncertain. (CCP § 430.10(e) & (f).) They argue the FAC is based on eight legal matters they represented Plaintiffs in, but as to six of the matters there are insufficient allegations regarding showing breach and causation. Plaintiffs oppose and argue a demurrer to a part of a cause of action is not proper. They argue they allege eight separate legal matters, but Defendants did not challenge the allegations as to two of the legal matters.

Legal authorities and analysis: A general demurrer lies where the pleading does not state facts sufficient to constitute a cause of action. (CCP § 430.10(e).) In evaluating a demurrer, the court gives the pleading a reasonable interpretation by reading it as a whole and all of its parts in their context. (Moore v. Regents of University of California (1990) 51 Cal. 3d 120, 125.) The court assumes the truth of all material facts which have been properly pleaded, of facts which may be inferred from those expressly pleaded, and of any material facts of which judicial notice has been requested and may be taken. (Crowley v. Katleman (1994) 8 Cal. 4th 666, 672.) “To survive a demurrer, the complaint need only allege facts sufficient to state a cause of action; each evidentiary fact that might eventually form part of the plaintiff’s proof need not be alleged.” (C.A. v. William S. Hart Union High School Dist. (2012) 53 Cal.4th 861, 872.) If the complaint fails to state a cause of action, the court must grant the plaintiff leave to amend if there is a reasonable

possibility that the defect can be cured by amendment. (Blank v. Kirwan (1985) 39 Cal. 3d 311, 318.)

The test is whether the complaint states any valid claim entitling plaintiff to relief. Thus, plaintiff may be mistaken as to the nature of the case, or the legal theory on which plaintiff can prevail. But if the essential facts of some valid cause of action are alleged, the complaint is good against a general demurrer. (Quelimane Co., Inc. v. Stewart Title Guar. Co. (1998) 19 Cal.4th 26, 38-39; New Livable Calif. v. Association of Bay Area Governments (2020) 59 Cal.App.5th 709, 714-715; Adelman v. Associated Int'l Ins. Co. (2001) 90 Cal.App.4th 352, 359; see Sheehan v. San Francisco 49ers, Ltd. (2009) 45 Cal.4th 992, 998—general demurrer may be upheld “only if the complaint fails to state a cause of action under any possible legal theory” (emphasis added).)

A special demurrer lies where a pleading is uncertain, ambiguous and unintelligible. (C.C.P., § 430.10(f).) Demurrers for uncertainty will only be sustained where the defendant cannot reasonably determine what issues must be admitted or denied, or what claims are directed against him. (Khouri v. Maly's of California, Inc. (1993) 14 Cal.App.4th 612, 616.) Demurrers for uncertainty are to be overruled when addressed to inconsequential matters, the facts are within the knowledge of the defendant or ascertainable in discovery, or not dispositive of one or more causes of action. (Id.)

The elements for a legal malpractice action are: (1) the duty of the attorney to use such skill, prudence, and diligence as members of his or her profession commonly possess and exercise; (2) a breach of that duty; (3) a proximate causal connection between the breach and the resulting injury; and (4) actual loss or damage resulting from the attorney's negligence. (Fergus v. Songer (2007) 150 Cal.App.4th 552, 577-578.) “It is well-settled in California that an attorney is subject to liability for malpractice when his or her negligent investigation, advice, or conduct of the client's affairs results in loss of a meritorious claim.” (Stanley v. Richmond (1995) 35 Cal.App.4th 1070, 1092.)

Plaintiffs have allege they hired Defendants to represent them with respect to the following matters: Yazen LP v. Jalx Inc., dba Crème Bakery; Yazen LP v. SMK, Inc. dba T-Fitness Gym, Isaac Turley, and Stacey Turley; Yazen LP v. Starbucks Coffee Company, Store No.: 11463; Yazen LP v. Koko Investments, Inc. dba Ripsik Mediterranean Grille; Mamco, Inc. v. Victorville Motors, Inc., et al. San Bernardino County Court No. CIVSB 2103088; Mamco, Inc. v. Velocity Truck Centers, et al., Riverside County Superior Court Case No. CVR 12104175; Mamco, Inc. v. Innovative Electrical Services, Inc., Riverside County Superior Court Case No. RIC 1904562; and Marwan Alabbasi v. Joseph Paul DiBenedetto, Riverside County Superior Court Case No. CVR 12101207 (collectively “Actions”). (FAC, ¶¶ 10,19) The FAC sufficiently pleads all essentially elements to state causes of action for professional negligence.

In their general and special demurrer, Defendants only challenge Plaintiff's allegations regarding representation in 6 of the 8 alleged matters. A general demurrer does not lie to only part of a cause of action. If there are sufficient allegations to entitle plaintiff to relief, other allegations cannot be challenged by general demurrer. (Daniels v. Select Portfolio Servicing, Inc. (2016) 246 Cal.App.4th 1150, 1167 [disapproved on other grounds by Sheen v. Wells Fargo Bank, N.A. (2022) 12 Cal.5th 905, 948].) Defendants do not challenge the entire cause of action. As such, the general demurrer is overruled. To the extent Defendants have demurred on the grounds of uncertainty, they have not argued how the FAC is so uncertain that they cannot reasonably determine what issues are presented. Defendants have notice of the professional negligence claim asserted against them and the basis therefore. As such, the demurrer is overruled.