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 26, 2024

1	**Hersel vs. Image Auto Group LLC** 2022-01245501	**Motion for Summary Judgment and/or Adjudication** Defendant United States Fire Insurance Company's (USFIC) motion for summary judgment/adjudication is DENIED in its entirety. The first amended complaint (FAC) alleges a single cause of action against USFIC, i.e., the seventh cause of action for liability on dealer bond.

		USFIC has failed to meet its initial burden to demonstrate this cause of action lacks merit. (See Code Civ. Proc., § 437c, subds. (a), (p)(2) [burden]; Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 850-851 [same]; see Veh. Code, § 11711.) USFIC admits it is the surety that issued the dealer bond to dealer Image Auto Group, LLC (IAG or dealer) pursuant to Vehicle Code sections 11710 and 11711. (SSMF #2.) USFIC first contends it is entitled to judgment because plaintiff Ramin Hersel (plaintiff) has dismissed his second cause of action for deceit/fraud against the dealer. This argument fails because section 11711 "does not require a cause of action for fraud to exist against a licensed dealer, but rather it means, in the language of the statute itself, 'If any person shall suffer any loss or damage by reason of any fraud practiced on him' by a licensed dealer, a cause of action arises on the bond if the other condition of the statute exists and that such a fraud was practiced on the plaintiff and he did suffer damage thereby." (Robinson v. Travelers Indem. Co. (1963) 219 Cal.App.2d 617, 622 [addressing former Veh. Code, § 205, now Veh. Code, § 11711].) In other words, the mere fact that plaintiff has not alleged a cause of action for fraud against the dealer does not conclusively or affirmatively demonstrate plaintiff will not be able to show he was harmed by the dealer's fraud in support of his claim on the dealer bond. Plaintiff alleges the dealer promised in writing to pay plaintiff for the vehicles it sold, and that the dealer made these promises without the intent to perform (pay), causing plaintiff harm, including the loss of the promised payments/value of the vehicles sold. (See FAC ¶ 1, 6-8, 14, 23-25, 30, 44; see also Lazar v. Superior Court (1996) 12 Cal.4th 631, 638 [promissory fraud].) Plaintiff's claims for breach of contract and conversion (among others) against the dealer are based in part on these same set of facts and allege in part the same loss. (See, e.g., FAC ¶¶ 10-14, 22-25.) USFIC does not dispute these facts or show that plaintiff will not be able to establish them, and thus they proceed unchallenged. (See Orange County Water Dist. v. Sabic Innovative Plastics US, LLC (2017) 14

		Cal.App.5th 343, 396-397 [failure to address material facts alleged in complaint permits that portion of the complaint to be unchallenged].) There is no reason then why plaintiff cannot establish this loss (fix the obligation) against the dealer under these other claims and show that the conduct was also fraudulent for purposes of the bond claim against the dealer. USFIC next contends plaintiff cannot rely on Vehicle Code section 11711, subdivision (a)(3), to establish liability on the dealer bond because "[b]ond liability under [section] 11711(a)(3) [is] not raised by the pleadings," but that even if plaintiff were proceeding under subdivision (a)(3), this specific subpart only covers vehicles "sold to and purchased" by a dealer, and not a consignment of goods for the purpose of sale, which ordinarily constitutes a bailment. (Mtn. P&As at pp. 4-5.) This contention fails for multiple reasons. First, the FAC states the claim is brought in part pursuant to Vehicle Code section "11711" (FAC ¶ 45), which naturally includes its subdivisions and subparts, such as subdivision (a)(3). (See McAlpine v. Norman (2020) 51 Cal.App.5th 933, 941 [party moving for summary judgment/adjudication has the burden to show he is entitled to judgment as a matter of law on any theory of liability reasonably embraced within the allegations of the complaint].) Next, the claim is not based on a mere consignment or bailment of goods. It is primarily based on the dealer's agreements to pay plaintiff for vehicles that the dealer has already taken and sold. (See, e.g., FAC ¶¶ 1 ["This matter involves a consignment agreement and other promises concerning several vehicles…"], 7-8 [written agreements to pay for vehicles already taken and sold], 9 [other vehicles already sold].) USFIC fails to explain how at this point, plaintiff is not "[a] person [that has] not [been] paid for a vehicle sold to and purchased by a licensee [dealer]" (Veh. Code, § 11711, subd. (a)(3)). Further, plaintiff need not establish the vehicles were "sold to and purchased" by the dealer under subdivision (a)(3) to establish bond liability anyway, because, as discussed above, plaintiff also alleges liability based on the dealer's fraud in connection with a writing under subdivision (a)(1) (see FAC ¶¶ 6-8 [writings], 44-45), which USFIC has failed to negate or

		demonstrate lacks merit. (See McCaskey v. California State Auto Assn. (2010) 189 Cal.App.4th 947, 975 [court cannot grant summary adjudication " 'to the extent' a cause of action rests on this or that premise"].) Moving Party shall give notice.
2	**Coffey vs. Newport Dunes Resort and Marina** **2020-01175786**	**Motion for Summary Judgment and/or Adjudication** * Motion vacated per Notice of Settlement filed 04/10/2024. See minute order dated 04/23/2024. *
3	**Alexander, Winton & Associates Inc. vs. Savage Rabbit Distributing, Inc.** 2021-01225345	**1. Motion to Enforce Settlement** **2. Case Management Conference** Plaintiff Alexander, Winton & Associates, Inc.'s Motion to Enforce Settlement is GRANTED. (See Code Civ. Proc. 664.6.) Plaintiff's evidence establishes that the parties entered into a written settlement agreement, that the agreement is sufficiently certain to permit enforcement, and that the judgment should be entered in in favor of plaintiff and against defendant for $48,045.00 in principal, $960.00 in attorney's fees, $537.35 in costs, $12,830.50 in prejudgment interest, for a total money judgment of $59,372.85. (See Osumi v. Sutton (2007) 151 Cal.App.4th 1355, 1360; Elyaoudayan v. Hoffman (2003) 104 Cal.App.4th 1421, 1430-32.) Plaintiff to serve and file a proposed judgment for the Court's signature within 5 days. *** *CMC is vacated* *** Plaintiff is ordered to give notice of all the above.
4	**Brickfire LLC vs. Blue Shield of California Life and Health Insurance Company**	**1. Demurrer to Complaint** **2. Motion to Strike Complaint** Demurrer: Defendant Blue Shield of California Life and Health Insurance Company's demurrer to the 1st through 5th

	2023-01339755	causes of action of the complaint of Brickfire LLC dba The Forge Recovery Center is SUSTAINED in part and OVERRULED in part as follows: The demurrer is sustained as to the 1st cause of action for breach of implied in fact contract. Plaintiff hasn't stated sufficient facts showing the elements of the claim. Specifically, how much defendants agreed to pay for the services rendered. The demurrer is overruled as to the 2nd cause of action for unfair business practices. Plaintiff may use and alleged violation of the Knox-Keene Act as a basis for its claim. The demurrer to the 3rd cause of action for unjust enrichment is overruled. The complaint asserts that plaintiff provided services to patients insured by Defendants, thereby conferring a benefit to Defendants, which Defendants knew, understood, and accepted. (complaint ¶¶ 40 through 43.) This is sufficient to plead unjust enrichment. The demurrer to the 4th cause of action for quantum meruit is overruled. The complaint alleges that Defendants knew Plaintiff was providing services to its insureds and "assumed financial responsibility for behavioral health services provided to Patients, and assumed the financial obligation to provide or arrange for behavioral health services as well as the financial risk for the necessary behavioral health services for Patients. . . " (complaint ¶46.) This is sufficient to state a cause of action at the pleading stage. The demurrer to the 5th cause of action for account stated is sustained. Plaintiff has not alleged sufficient facts to show these particular defendants agreed to pay the allege owed amount of $1,505,571.76. <u>Motion to Strike:</u> The motion to strike is granted as to the prayer for interest contained in paragraph 69. The remaining requested relief is denied. Plaintiff is granted 10 days leave to amend. Moving Party to give notice.

5	**232 Grand Blvd., LLC vs. Green Tea World USA, Inc.** 2020-01156788	**Demurrer to Amended Complaint** Defendants Hiroshi Maeda and Miyuki Maeda's demurrer to the Fourth Amended Complaint is OVERRULED as to the third through fifth causes of action and SUSTAINED without leave to amend as to the sixth cause of action. 3rd, 4th and 5th Causes of Action – Fraudulent Transfer The Fourth Amended Complaint adequately states facts to constitute these causes of action. (see Fourth Amended Complaint ¶¶41-42.) The Maeda defendants are alleged to be controlling shareholders of Green Tea and GT Japan and are alleged to have specifically directed Green Tea to transfer its cash assets to other entities owned by the Maedas. A shareholder of a corporation may be personally liable for the torts committed by the entity where the shareholder specifically directed the tortious conduct of the entity. (Wyatt v. Union Mortgage Co. (1979) 24 Cal.3d 773, 785.) Defendants' reliance on Black v. Bank of America (1994) 20 Cal.App.4th 1 is misplaced, as that case turned on the finding that the individual defendants were subordinate agents "who carried out but did not create Bank policies." 6th Cause of Action – Unlawful Dividend Regardless of whether Plaintiff has adequately pleaded an unlawful distribution, Moving Party points out that Plaintiff must bring an action for unlawful dividend as a derivative action on behalf of the Corporation. (Corp. Code §316(a).) Plaintiff's Opposition fails to adequately address this argument, as all Plaintiff does is cite authority that stands for the proposition that a plaintiff could have individual claims that co-exist with a derivative claim. Denevi v. LGCC, LLC (2004) 121 Cal.App.4th 1211 did not deal with a situation involving a claim that must be brought as a derivative claim in the name of the corporation pursuant to statute. Additionally, Bader v. Anderson (2009) 170 Cal.App.5th 775, 789-790 is inapposite, as that case dealt with the question of futility in the context of a prelawsuit demand prior to bringing a derivative action, which is plainly not at issue here.

		Accordingly, the demurrer to this cause of action is sustained. Since Plaintiff has had five opportunities to plead a viable cause of action and has shown no reason to believe this dispositive defect could be cured by further amendment, the demurrer is sustained without leave to amend as to this Cause of Action. Moving Party shall give notice.
6	**Tjhing Tan vs. JAGUAR LAND ROVER NEWPORT BEACH** 2023-01328950	**Motion to Compel Production** Plaintiff Antonius Yok Tjhang Tan's Motion to Compel Further Responses to Inspection Demands is GRANTED in part and CONTINUED in part. (See Code Civ. Proc. § 2031.310.) The motion is granted as to Categories No. 1, 4-12, 16, & 17-31. The hearing of the motion is continued as to Categories No. 2. 3, 13, & 15. Defendant to produce a privilege log. For each withheld document or redaction, the privilege log must state at least its date, sender/author, addressee/recipient, and the general subject matter, along with any other information needed to establish the ground for withholding or redacting. (See Hernandez v. Superior Court (2003) 112 Cal.App.4th 285, 291-292; Wellpoint Healthcare Networks, Inc. v. Superior Court (1997) 59 Cal.App.4th 110, 129-130.) "The party claiming the privilege has the burden to show that the communication sought to be suppressed falls within the terms of the claimed privilege." (See Lipton v. Superior Court (1996) 48 Cal.App.4th 1599, 1619.) The privilege log to be served within 15 days. Each party may file a supplemental brief solely as to issues in the privilege log, which shall be filed and served at least 10 court days before the continued hearing. *The hearing is continued to August 16, 2024 at 9:30 AM.* Sanctions were not requested. Plaintiff is ordered to give notice.
7	**Law Firm of Rivers J. Morrell III vs. Baptiste**	**1. Motion to Disqualify Attorney of Record** * Motion continued to 05/24/2024. See minute order dated 04/25/2024 (ROA 1319).

	2016-00853797	
8	**Kell vs. Wilson** 2023-01338314	**1. Application for Right to Attach Order/Writ of Attachment** **2. Application for Right to Attach Order/Writ of Attachment** **3. Application for Right to Attach Order/Writ of Attachment** **4. Application for Right to Attach Order/Writ of Attachment** Plaintiffs Georgette Marguerite Piper Kell, Ernest Kell Jr., Darrell William Lawrence, and John Caldwell's Application for Right to Attach Order and Issuance of a Writ of Attachment is GRANTED in part and DENIED in part. Defendant Dennis W. Wilson's objections to the declarations of Mr. Miller, Mrs. Kell, and Mr. Lawrence and the supplemental declaration of Mrs. Kell are all SUSTAINED. The Application is DENIED as to Defendants Dennis W. Wilson Insurance Agency, Inc. dba Wilson Financial Services and Property Pros Capital, LLC. The Application is DENIED as to Defendant Dennis W. Wilson because Plaintiffs have failed to establish with admissible evidentiary facts the probable validity of their claims against Defendant Dennis W. Wilson. Namely, Plaintiffs have failed to provide evidentiary support for their contentions that Dennis W. Wilson was a party to Plaintiffs' contracts with Kenneth Wilson and Property Pros. The Application is GRANTED, in part, as to Defendant Kenneth Wilson. Plaintiffs have shown they have a claim for money based upon an express or implied contract. Plaintiffs have shown a fixed amount of their claim that is not less than $500. Plaintiffs have shown the claim is not secured by real property. Plaintiffs have shown the claim is commercial in nature, as it arises from Defendants' professional financial services. Plaintiffs have established, with admissible evidentiary facts, the probable validity of their claim against Defendant Kenneth Wilson with respect to Plaintiff Georgette Marguerite Piper Kell and Plaintiff Darrell William Lawrence. Plaintiffs have shown that a contract

		was formed with Defendant Kenneth Wilson. Plaintiffs have shown they performed their obligations under the contract by providing the money. Plaintiffs have shown that Kenneth Wilson did not perform. Plaintiffs have shown that this failure to perform has harmed them. There has been no claim for exemption and no showing that an offset should be applied. Plaintiffs have adequately described the property they seek to attach.(See Bank of America v. Salinas Nissan, Inc. (1989) 208 Cal.App.3d 260, 267-268 [plaintiff allowed to attach "real property, personal property, equipment, motor vehicles, chattel paper, negotiable and other instruments, securities, deposit accounts, safe deposit boxes, accounts receivable, general intangibles, property subject to pending actions, final money judgments, and personalty in estates of decedents."].) Based on the above evidence, the Court finds that Plaintiffs' Application meets the requirements under Cal. Code Civ. Proc. §484.090 with respect to Plaintiffs Georgette Kell, Ernest Kell Jr., and Darrell Lawrence against Defendant Kenneth Wilson in the total amount of $550,000.00. Pursuant to Cal Code Civ. Proc. § 489.210, Plaintiff shall post an undertaking of $10,000 prior to the issuance of any writ of attachment. *** The Court notes that Plaintiffs filed two very untimely responses to objection filings. The Court considered these filings but advises that it will not consider late filings in the future. *** Plaintiffs shall give notice.
9	**Sagebrush LLC vs. Blue Shield of California Life and Health Insurance Company** 2023-01339797	**1. Demurrer to Complaint** **2. Motion to Strike Portions Of Complaint** <u>Demurrer</u> Defendant Blue Shield of California Life and Health Insurance Company's demurrer to the 1st through 5th causes of action of the complaint of Sagebrush LLC dba The Edge Treatment Center is SUSTAINED in part and OVERRULED in part as follows: The demurrer is sustained as to the 1st cause of action for breach of implied in fact contract. Plaintiff hasn't

		stated sufficient facts showing the elements of the claim. Specifically, how much defendants agreed to pay for the services rendered. The demurrer is overruled as to the 2nd cause of action for unfair business practices. Plaintiff may use and alleged violation of the Knox-Keene Act as a basis for its claim. The demurrer to the 3rd cause of action for unjust enrichment is overruled. The complaint asserts that plaintiff provided services to patients insured by Defendants, thereby conferring a benefit to Defendants, which Defendants knew, understood, and accepted. (complaint ¶¶ 40 through 43.) This is sufficient to plead unjust enrichment. The demurrer to the 4th cause of action for quantum meruit is overruled. The complaint alleges that Defendants knew Plaintiff was providing services to its insureds and "assumed financial responsibility for behavioral health services provided to Patients, and assumed the financial obligation to provide or arrange for behavioral health services as well as the financial risk for the necessary behavioral health services for Patients. . . "(complaint ¶46.) This is sufficient to state a cause of action at the pleading stage. The demurrer to the 5th cause of action for account stated is sustained. Plaintiff has not alleged sufficient facts to show these particular defendants agreed to pay the allege owed amount of $1,505,571.76. <u>Motion to Strike</u> The motion to strike is granted as to the prayer for interest contained in paragraph 69. The remaining requested relief is denied. Plaintiff is granted 10 days leave to amend. <u>Moving Party to give notice.</u>
10	**Rahgoshay vs. Pugh** 2018-00982971	**Motion to Strike or Tax Costs** Plaintiffs Mohammad Rahgoshay and MRMK, LLC's motion to strike/tax costs is GRANTED in part, as follows. On 11/3/23, the Court expressly ordered the clerk to give notice of entry of judgment. (ROA Nos. 482 [11/3/23 minute order, providing in part: "The Court

		issues the Final Statement of Decision, a copy of which is attached hereto and incorporated herein by reference, and Judgment. Court orders Clerk to give notice."], 483 [judgment].) On 11/6/23, the court served a copy of the filed-stamped "Judgment dated 11/03/23" to all parties, including to defendants' counsel, triggering the 15-day deadline for defendants to timely file a memorandum of costs. (ROA No. 484; see Cal. Rules of Court, rule 3.1700(a)(1); Code Civ. Proc., § 664.5, subd. (d); Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc. (1997) 15 Cal.4th 51, 61, 64, 65-66 ["when the clerk of the court mails a file-stamped copy of the judgment," it triggers the post-judgment motion deadlines (in this particular case, for new trial motions) "only when the order itself indicates that the court directed the clerk to mail 'notice of entry' of judgment"]; see id. at p. 58, fn. 2 [where "entry of a judgment occurs upon filing of the judgment[,] … a file-stamped copy of the judgment gives notice of the date of its entry"]; Palmer v. GTE California, Inc. (2003) 30 Cal.4th 1265, 1267, 1274, 1277-1278; Maroney v. Iacobsohn (2015) 237 Cal.App.4th 473, 483 ["The question presented in Van Beurden, … was 'what constitutes evidence sufficient to establish that the clerk of the court mailed a "notice of entry" of judgment "[u]pon order of the court" ' in the absence of a written order"]; see also Simgel Co., Inc. v. Jaguar Land Rover North America, LLC (2020) 55 Cal.App.5th 305, 314-315 ["because the [clerk's] notice does not affirmatively state it was given 'upon order of the court,' or 'under section 664.5,' or anything similar, and because the record nowhere reflects that the court ordered the clerk to serve notice of entry of judgment, we cannot assume the court did so"].) Thus, the deadline for the memorandum of costs was Monday 11/27/23. (See Cal. Rules of Court, rule 3.1700(a)(1) [15 days]; Code Civ. Proc., §§ 12-12c [computation of time], 1010.6, subd. (a)(3)(B) [time to act extended by two court days for e-service; "[t]his extension applies in the absence of a specific exception provided by any other statute or rule of court"]; see also Kahn v. The Dewey Group (2015) 240 Cal.App.4th 227, 236-237 [time to file extended by manner of service].) The Court in its discretion will excuse defendants' one-day delay in timing filing their memorandum of costs.

		(See Cal. Rules of Court, rule 3.1700(b)(3); Code Civ. Proc., § 473, subd. (b) [discretionary relief]; see also Opp. at pp. 4-6 [reasonable mistake of law].) The Court ORDERS defendants' memorandum of costs taxed in the total sum of $17,861.15, consisting of the following underlined amounts: • $1,640 for expert Alan Wallace's deposition, as this cost has been withdrawn by defendants (Opp. at p. 2). • $2,145 for the expert Hank Kahrs' deposition, as this cost has been withdrawn by defendants (Opp. at p. 2). • $6,056.15 in court reporter fees, as these fees have been withdrawn by defendants (Opp. at p. 2). • $8,020 of Limor Lehavi's expert witness fees sought under Item 8b. The fact that defendants obtained a more favorable judgment than their 998 offers to plaintiffs (see Menke Decl. at Exs. A-B) is prima facie evidence of the reasonableness of the offers. (Smalley v. Subaru of America, Inc. (2022) 87 Cal.App.5th 450, 458.) Plaintiffs have failed to meet their burden to demonstrate the offers were unreasonable or not made in good faith. (Ibid. [burden].) Given that the offers were made after the parties had already responded ready for trial, the mere fact that the offers may have been "3 hundredths of one percent" of the damages sought in the complaint is insufficient to demonstrate the 998 offers were made in bad faith or unreasonable. Nothing shows or explain how defendants' 998 offers may have been made in bad faith or unreasonable in light of the information available to plaintiffs to intelligently evaluate the offer. (See Melendrez v. Ameron Internat. Corp. (2015) 240 Cal.App.4th 632, 649-650 [the "offer[s] should be evaluated not only in comparison to the amount of damages plaintiffs sought, but in light of their likelihood to prevail"]; see also Licudine v. Cedars-Sinai Medical Center (2019) 30 Cal.App.5th 918, 921 [factors considered in evaluating reasonableness of offer]; see also ROA Nos. 217, 228, 239 [3/9/20, 30/10/20, 3/17/20 minute orders].) That said, Code of Civil Procedure section 998 only provides for reasonable "postoffer" expert witness fees in the court's discretion. (Code Civ. Proc., § 996, subd. (c)(1).) The record supports 8 hours of Ms. Lehavi's expert fees for her availability and testimony at trial on 9/20/23. (ROA No. 466 [9/20/23 minute order].)

		As for the remainder of her fees, defendants have failed to meet their burden to show they were incurred after defendants served the subject 998 offers on plaintiffs. (See Ladas v. California State Auto. Ass'n (1993) 19 Cal.App.4th 761, 774 ["if the [cost] items are properly objected to, they are put in issue and the burden of proof is on the party claiming them as costs"].) Defendants' remaining costs in the amount of $32,797.83 are granted. Plaintiffs shall give notice.