LAKES TREATMENT CENTER, INC., et al v RESORT AT LAKE TULLOCH, LLC, et al

21CV45585

PLAINTIFF'S MOTION TO FOR LEAVE TO FILE THIRD AMENDED COMPLAINT; DEFENDANT RESORT AT LAKE TULLOCH, LLC'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS IN AMENDED DEPOSITION NOTICE AND SANCTIONS

This case stems from a property dispute between The Lakes Treatment Center, Inc. ("Lakes") and Bernadette Cattaneo ("Cattaneo") (collectively "Plaintiffs") and The Resort at Lake Tulloch, ("Resort"), Narullah Safdari ("Safdari"), Odell Tristin ("Tristin"), Michael Van ("Van"), Andreas Ambramson ("Ambramson"), and Diamond Dirt LLC ("Diamond") (collectively, "Defendants.")

Plaintiff's Motion for Leave to File a Third Amended Complaint is **DENIED** for failure to follow Local Rule 3.3.7, without prejudice to refile.

The clerk shall provide notice of this ruling to the parties forthwith. No further formal Order is required.

BETTENCOURT v NORCAL GOLD dba RE/MAX GOLD, et al

23CV47084

DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS

This matter involves a residential real estate dispute between Plaintiff Darren Bettencourt ("Plaintiff") and Defendants Norcal Gold, Inc. dba Re/Max Gold ("Gold"), Traci Hatt ("Hatt"), Kirk Kercielich ("Kercielich"), Arlene Vierra ("Vierra"), Anne Almeida ("Almeida") and Powerhouse Realty ("Powerhouse").

Now before the Court is a motion for judgment on the pleadings ("MJOP") brought by Vierra, Almeida, and Powerhouse (collectively "Moving Defendants.")

I. Factual and Procedural Background

Powerhouse is a licensed real estate broker. (FAC ¶ 4.) Vierra is employed by Powerhouse.

Plaintiff contracted with Vierra and Powerhouse to list his family dairy and 501 acres of land. (FAC ¶ 5.) After that sale, Vierra assisted Plaintiff in making a 1031 exchange for real property located at 271 Calypso Beach Drive in Copperopolis, California ("Property") (*Ibid*.) Plaintiff, upon the advice of Moving Defendants, purchased the Property on December 31, 2021, for $795,000.00. Plaintiff alleges that Moving Defendants made "clear and unambiguous promises to act in good faith and honestly represent" Plaintiff in the purchase of the Property. (FAC ¶ 23.) Plaintiff alleges he relied on those representations in purchasing the Property. (*Ibid*.)

Between December 2022 and February 2023, the Property suffered significant water damage to the basement due to a failure to stabilize the soil and prepare the foundation. (FAC ¶ 25.) The cost to Plaintiff to remedy the failure is over $146,000.00. (*Id*. ¶ 26.)

II. Legal Standard

A motion for judgment on the pleadings serves the same function as a demurrer but is made after the time for demurrer has expired. (Code Civ. Proc., § 438(c)(2); *Cloud v.*

Northop Grumman Corp. (1998) 67 Cal.App.4th 995, 999.) Except as provided by statute, the rules governing demurrers apply. (*Id*.) The court must accept as true the factual allegations of the complaint and must give them a liberal interpretation. (*Gerawan Farming, Inc., v. Lyons* (2000), 24 Cal. 4th 468, 515-516.) In addition, the court is limited in its consideration to the face of the pleadings or matters entitled to judicial notice. (Code Civ. Proc.§ 438(d).)

III. Legal Discussion

A. Breach of Fiduciary Duty

The elements of a cause of action for breach of fiduciary duty are: 1) the existence of a fiduciary duty; 2) a breach of the fiduciary duty; and 3) resulting damage. (*Pellegrini v. Weiss*, 165 Cal. App. 4th 515, 524 (2008).)

Defendant does not dispute the existence of a fiduciary duty, nor the resulting damage, but rather argues that the FAC fails to set forth facts showing a breach of the duty by Moving Defendants. Here, the FAC clearly articulates a duty on the behalf of the Moving Defendants to "learn the material facts that may affect the principal's decision…determining the type of information required…and disclosing to him all reasonably obtainable material information." (FAC ¶ 2.) And while the FAC insinuates that somehow Moving Defendants breached this duty, there are no factual allegations of any actions (or omissions) which would constitute a breach of this duty. The only allegation of breach relates to the sellers of the home who failed to disclose water damage.

At the demurrer stage, Plaintiff need not allege facts with specificity but must allege some facts which would place the Moving Defendants on notice of the allegations against them.[1]

Accordingly, the demurrer to the cause of action for breach of fiduciary duty is granted, with leave to amend.

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[1] Moving Defendants reliance on *Dowling v. Zimmerman*, 85 Cal. App. 4th 1400, 1422 (2001) is unpersuasive. This case involved a claim of fraud which requires pleading with specificity. The instant claim is one for breach of fiduciary duty.

B. Promissory Estoppel

"The elements of a promissory estoppel claim are '(1) a promise clear and unambiguous in its terms; (2) reliance by the party to whom the promise is made; (3) [the] reliance must be both reasonable and foreseeable; and (4) the party asserting the estoppel must be injured by his reliance.'" (*Aceves v. U.S. Bank, N.A*., (2011) 192 Cal. App. 4th 218, 226 (2011), quoting *Adv. Choices, Inc. v. State Dept. of Health Servs.*, (2010), 182 Cal. App. 4th 1661, 1672.)

Plaintiff alleges that Moving Defendants made a promise to "act in good faith and honestly represent" Plaintiff. (FAC ¶ 29.) This conclusory and vague allegation is insufficient because promissory estoppel requires that the promise be "clear and unambiguous" in its terms. (*Laks v. Coast Fed. Sav. & Loan Assn.* (1976) 60 Cal.App.3d 885, 893.) Here, there are no factual allegations at all about the terms of the promise, let alone ones that are clear and unambiguous.

Accordingly, the MJOP on the cause of action for promissory estoppel is granted, with leave to amend.

C. Implied Covenant of Good Faith and Fair Dealing

The elements for breach of the implied covenant of good faith and fair dealing are: (1) existence of a contract between plaintiff and defendant; (2) plaintiff performed his contractual obligations or was excused from performing them; (3) the conditions requiring defendant's performance had occurred; (4) the defendant unfairly interfered with the plaintiff's right to receive the benefits of the contract; and (5) the plaintiff was harmed by the defendant's conduct. (*Merced Irr. Dist. v. County of Mariposa* (E.D. Cal. 2013) 941 F.Supp.2d 1237, 1280 [discussing California law].) To allege a breach of the implied covenant, however, the claim must be for something "beyond breach of the contractual duty itself." (*Careau & Co. v. Security Pacific Business Credit, Inc,.* (1990) 222 Cal. App. 3d 1371, 1394.)

A prerequisite to any claim for breach of an implied covenant is the existence of a contract. (*Smith v. City and County of San Francisco* (1990) 225 Cal.App.3d 38, 48-49.) Here, there is no allegation that a contract existed between Plaintiff and Moving Defendants, nor what the terms of that contract were.

Accordingly, the MJOP on the cause of action for breach of implied covenants is granted, with leave to amend.

IV. Conclusion.

Moving Defendants' motion for judgment on the pleadings is **GRANTED**, with twenty (20) days leave to amend.

The clerk shall provide notice of this ruling to the parties forthwith. Moving defendants to submit a formal Order complying with Rule 3.1312 in conformity with this Ruling.

ROOFLINE, INC., v SPERRY, et al

24CV47576

CROSS-COMPLAINANT'S MOTION TO PERMIT SERVICE BY PUBLICATION ON CROSS-DEFENDANT JON WAYNE JOCHIMS

This matter involves a breach of contract dispute brought by Roofline, Inc. ("Plaintiff") and United Home Specialist Co. dba Kangaroof ("United"), Rodney Sperry ("Sperry"), Merchants Bonding Company (Mutual) ("Merchants") and Platte River Insurance Company ("Platte")[2] (collectively "Defendants").

On August 23, 2024, Plaintiff filed suit against Defendants. On September 26, 2024, Merchants filed a cross-complaint against Roofline, Patricia Kleinhart ("Kleinhart") and American Builders and Contractors ("American.")

On November 19, 2024, default was entered against United.

On November 18, 2025, Perry filed a cross-complaint against United, Jon Wayne Jochims ("Jochims"), Claudia Susana Rivas ("Rivas") and Tracy Emery Smith ("Smith.") On February 6, 2026, Perry filed a motion to serve Jochims by publication, which motion was denied for failure to comply with local rules of Court. At the March 4, 2026, case management conference, the Court noted that Jochim had still not been served and ordered Perry to effectuate service on or before the next CMC on May 27, 2026.

The motion for service by publication is unopposed.

I. Legal Standard

Compliance with the statutory procedures for service of process is essential to establish personal jurisdiction. (*Dill v. Berquist Construction Co*. (1994) 24 Cal.App.4th 1426, 1439.) For service within the state, "[a] summons may be served by personal delivery of a copy of the summons and of the complaint to the person to be served." (Code Civ. Proc. § 415.10.) Alternatively, if the summons and complaint cannot with reasonable diligence be personally delivered, a plaintiff may effectuate substitute

[2] Platte was dismissed with prejudice on October 25, 2024.

service by leaving a copy of the summons at the person's dwelling or usual place of residence and then also sending a copy via first-class mail. (Code Civ. Proc. §415.20(b)(1).) A plaintiff may show reasonable diligence "by attempting personal delivery of the summons and complaint, in good faith, on at least three occasions on three different days at three different times." (*Id.*, subd.(b)(2).) Service may also be effectuated within the state by U.S. mail. (Code Civ. Proc., § 415.30, subd. (a).) Service by mail is deemed complete "on the date a written acknowledgment of receipt of summons is executed, if such acknowledgment thereafter is returned to the sender." (*Id,* subd. (c).)

Where these methods have failed, a "summons may be served by publication if upon affidavit it appears to the satisfaction of the court in which the action is pending that the party to be served cannot with reasonable diligence be served in another manner specified in this article[.]" (Code Civ. Proc., § 415.50, subd. (a); *Rios v. Singh* (2021) 65 Cal.App.5th 871, 880 ["If service of a summons by other means proves impossible, service may be effected by publication…"])

Pursuant to Code Civ. Procedure section 415.50:

> A summons may be served by publication if upon affidavit it appears to the satisfaction of the court in which the action is pending that the party to be served cannot with reasonable diligence be served in another manner specified in this article and that either:
>
> **(1)** A cause of action exists against the party upon whom service is to be made or he or she is a necessary or proper party to the action.
>
> **(2)** The party to be served has or claims an interest in real or personal property in this state that is subject to the jurisdiction of the court or the relief demanded in the action consists wholly or in part in excluding the party from any interest in the property.

II. Discussion

Perry, via a process server, attempted to personally serve Jochim six different times at a residential address of 6651 Hillsdale Blvd, Sacramento, Ca 95842. (Declaration of Reasonable Diligence of Katrina Wiliams dated 12/22.2025.) There is no evidence of any attempt to serve Jochim by U.S. mail under Code Civ. Proc. Section 4015.30(a).) Perry has also failed to provide an affidavit which complies with the requirements of Code Civ. Proc. Section 415.50(a)(1)(2).

Perry has not exercised reasonable diligence to serve Jochim within the manners authorized by the code, prior to requesting service by publication.

Accordingly, the motion for service by publication is **DENIED**, without prejudice to refile if all statutory provisions have been exhausted prior to filing and all statutory requirements are met with regard to the motion.

The clerk shall provide notice of this ruling to the parties forthwith. No further formal Order is required.

WELLS FARGO BANK, N.A. v HARBER

25CF15340

PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS

This is an action by Wells Fargo Bank, N.A. ("Plaintiff") against Loretta M. Harber ("Defendant") for the collection of a credit card debt in the sum of $ $17,978.96. In his Answer, Defendant denied the allegations in the Complaint and raised the affirmative defense that there was no proof of debt.

The Court granted Plaintiff's motion to deem requests for admissions admitted on January 16, 2026.

Now before the Court is Plaintiff's motion for judgment on the pleadings.

I. Legal Standard

A motion for judgment on the pleadings serves the same function as a demurrer but is made after the time for demurrer has expired. (Code Civ. Proc., § 438(c)(2); *Cloud v. Northop Grumman Corp*. (1998) 67 Cal.App.4th 995, 999.) Except as provided by statute, the rules governing demurrers apply. (*Id*.) The court must accept as true the factual allegations of the complaint and must give them a liberal interpretation. (*Gerawan Farming, Inc., v. Lyons* (2000), 24 Cal. 4th 468, 515-516.) In addition, the court is limited in its consideration to the face of the pleadings or matters entitled to judicial notice. (Code Civ. Proc.§ 438(d).)

If the motion is granted in favor of the plaintiff, "it shall be based on the grounds that the complaint states facts sufficient to constitute a cause of action against the defendant and the answer does not state facts sufficient to constitute a defense to the complaint. (Code Civ. Proc. §438(c)(3)(a).)

II. Legal Analysis

A breach of contract claim requires: 1) the existence of a contract, 2) plaintiff's performance or excuse for nonperformance, 3) defendant's breach, and 4) the resulting damages to the plaintiff. (*San Mateo Union High Sch. Dist. v. Cnty. of San Mateo*, (2013) 213 Cal. App. 4th 418, 439.) "Where contract language is clear and explicit and does not lead to absurd results, we ascertain intent from the written terms and go no further." (*Shaw v. Regents of Univ. of Cal*., (1997) 58 Cal. App 4th 44, 53.)

Plaintiff and Defendant entered into a contract for a consumer credit card. (RFA No. 1.) Pursuant to the contract, Plaintiff provided credit and Defendant used that credit to make consumer purchases. (RFA No. 2.) Defendant incurred charges, was provided statements detailing those charges, and did not object or deny that she had incurred those charges. (RFA Nos. 4, 5.) However, Defendant stopped making payments towards the balance on the subject account her last payment was on December 5, 2024. (RFA 7.) Defendant has an unpaid balance on her account of $17,978.76 (RFA No. 6.)

Plaintiff has carried its burden of demonstrating evidence supporting all the elements of its claim for breach of contract and that there are no affirmative defenses available. Defendant has failed to oppose the motion and makes no argument on her own behalf.

III. Conclusion

Plaintiff's motion for judgment on the pleadings is **GRANTED**.

The clerk shall provide notice of this ruling to the parties forthwith. The Court intends to sign the submitted (Proposed) Order and Judgment.

BUTTS v FCA US, LLC, et al

25CV47877

PLAINTIFF'S MOTION TO COMPEL INITIAL DISCLOSURES AND MONETARY SANCTIONS

This is a lemon law matter brought by Plaintiff Alan Butts ("Plaintiff") against FCA US, LLC ("FCA") and Stoneridge Chrysler Jeep Dodge ("Stoneridge.") Now before the Court is Plaintiff's motion to compel production of documents.

I. Background

Plaintiff purchased a 2022 Ram 3500 vehicle on July 21, 2022, for a total sales price of $117,829.44. Plaintiff filed the Complaint in this action on February 11, 2025. FCA US LLC filed its Answer on May 5, 2025.

Pursuant to California Code of Civil Procedure section 871.26, subdivision (h), FCA was required to provide all mandatory initial disclosures within 60 days of filing its Answer (or by July 4, 2025).

FCA apparently produced the initial disclosures months after the mandatory deadline. However, Plaintiff contends that while FCA made certain disclosures but has failed to provide all the mandatory disclosures and documents. FCA opposes the motion.

II. Legal Standard

Code Civil Procedure section 871.26 provides for expedited discovery procedures in lemon law actions. Specifically, section 871.26(h) provides for the production of the following documents within 60 days of the filing of the responsive pleading: copy of access to a version of the owner's manual for a motor vehicle of the same make, model, and year; any warranties issued in conjunction with the sale of the motor vehicle; sample brochures published for the motor vehicle; the motor vehicle's original invoice, if any, to the selling dealer; sales or lease agreement, if the manufacturer is in possession; motor vehicle information reports, including build documentation, component information, and delivery details; entire warranty transaction history for the motor vehicle; and more.

Code Civil Procedure section 871.26(j)(1) provides, in pertinent part, the following:

> Unless the party failing to comply with this section shows good cause, notwithstanding any other law and in addition to any other sanctions imposed

> pursuant to this chapter, a court shall impose sanctions as follows . . . (2) [a] two-thousand five-hundred-dollar ($2,500) sanction against the defense attorney . . . paid within 15 business days for failure to comply with the document production requirements as prescribed in subdivision (b).

There is no meet and confer requirement set forth in Code Civil Procedure section 871.26. (*Beltran v. FCA US LLC,* 2025 Cal.Super.LEXIS 79237.)

III. Discussion

FCA filed its answer on May 5, 2025, which required FCA to produce the aforementioned documents by July 4, 2025, pursuant to CCP § 871.26. FCA produced documents after the deadline in October of 2025.

Plaintiff brings the instant motion arguing that FCA "refuses to produce" the following: (1) the Warranty Policies and Procedure Manual; (2) Pre-Delivery Inspection records showing what defects FCA knew about and the vehicle's condition at the time of sale; (3) the entire warranty transaction history with missing diagnostic trouble code results customer concerns, and repair history; (4) field action and recall documentation; (5) applicable technical service bulletins and information service bulletins; and (6) service manuals for systems the dealer diagnosed and repaired.

In opposition, FCA argues that it served all initial disclosures pursuant to section 871.26 and that any delay in producing the documents was harmless. FCA asserts that its document production "included over 1,000 pages of materials, including the repair records, warranty claims records, sales brochures, sales documents, vehicle information detail report, glove box documents, the Monroney label, Technical Service Bulletins ("TSBs"), and recalls applicable to the Subject Vehicle. Simultaneously, FCA provided Plaintiff with a proposed Stipulation and Protective Order ("SPO") based on the Los Angeles Superior Court Model Protective Order – Confidential Designation Ony to facilitate the production of additional materials that FCA US considers confidential and proprietary. Apparently, FCA would produce the remaining mandatory documents, including the Warranty Administration Manual, the FCA US Dealer Policy Manual, the Customer Assistance Center ("CAC") Policies and Procedures and the Service Manual pursuant to this SPO.

In reply, Plaintiff argues that FCA "admits it has withheld" the Warranty Administration Manual, the Service Manual, the Dealer Policy Manual, and the Customer Assistance Center Policies and Procedures. FCA stated that it was ready to produce these documents once a protective order is in place. This is not good cause for failing to timely produce mandatory disclosures. First, nothing in the statute's mandatory disclosure provisions contains an exception to the mandatory requirements, or excuses delay, on the grounds that a protective order is necessary. Indeed, there is no mention of seeking protective orders whatsoever in the statute which very clearly outlines the numerous documents which FCA is mandated to disclose.

Further, while the Court encourages joint stipulations, if one party (Plaintiff) refuses to sign a SPO, FCA could have filed a motion for protective order with the Court prior to the initial disclosure deadline. It did not do so and has still not filed for a protective order.

IV. Sanctions

Plaintiff requests sanctions on the grounds that FCA failed to produce documents in mandatory categories and sanctions are therefore required pursuant to CCP § 871.26(j)(1).

Considering FCA's untimely initial disclosures, its failure to provide all mandatory documents, and its failure to timely seek a protective order (Code Civ Proc. §2031.060(a), the Court finds FCA's noncompliance with Code Civil Procedure section 871.26 unjustifiable, thereby requiring sanctions.

V. Conclusion

Accordingly, Plaintiff's Motion to Compel is **GRANTED**. Additionally, FCA is ordered to pay sanctions in the amount of $2,500.00 within fifteen (15) days of this Order.

The clerk shall provide notice of this ruling to the parties forthwith. The Court intends to sign the submitted (Proposed) Order.