

**Tentative Rulings and Resolution Review Hearings
March 19, 2018
Department 8**

NOTE: This Court does not follow the procedures described in Rules of Court, Rule 3.1308(a). Tentative rulings appear on the calendar outside the court department on the date of the hearing, pursuant to California Rule of Court, Rule 3.1308(b)(1). As a courtesy to counsel, the court also posts tentative rulings no less than 12 hours in advance of the time set for hearing. The rulings are posted on the court’s website (www.shasta.courts.ca.gov) and are available by clicking on the “Tentative Rulings” link. A party is not required to give notice to the Court or other parties of intent to appear to present argument.

Law and Motion – 8:30 a.m.

BANK OF AMERICA VS. ENGLERT

Case Number: 188378

Tentative Ruling on Motion to Dismiss Complaint: Defendant seeks an order dismissing plaintiff’s complaint for failure to state a claim upon which relief can be granted or validate and verify the alleged debt in violation of the Fair Debt Collection Practices Act. A motion to dismiss a complaint for failure to state a cause of action functions like a general demurrer *See Citizens for Parental Rights v. San Mateo County Bd. of Education* (1975) 51 Cal.App.3d 1, 38. A demurrer can only be used to challenge defects that appear on the face of the complaint or matters that may be judicially noticed. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. No other extrinsic evidence can be considered. *Ion Equip. Corp. v. Nelson* (1980) 110 CA3d 868, 881. A motion to dismiss that relies upon external evidence is treated as a motion for summary judgment. *McKinney v. County of Santa Clara* (1980) 110 Cal.App.3d 787, 793. Because the instant motion relies upon evidence outside the face of the complaint and must be construed as a motion for summary judgment, defendant was required to file and serve his moving papers at least 75 days prior to today’s hearing. *See CCP § 437c(a)(2)*. No proof of service of notice of the motion and supporting papers has been filed. The motion is therefore untimely. This procedural defect is sufficient to deny the motion.

A defendant moving for summary judgment bears the initial burden of producing evidence to make a prima facie showing that there are no triable issues of material fact. *Aguilar v. Atlantic Richfield Co.*, 25 Cal.4th 826,850. The defendant must show that either one or more elements of the “cause of action ... cannot be established”; or there is a complete defense to that cause of action. CCP § 437c(p)(2). Where plaintiff has the burden of proof at trial by a preponderance of evidence, defendant “must present evidence that would require a reasonable trier of fact *not* to find any underlying material fact more likely than not—otherwise, *he* would not be entitled to judgment *as a matter of law*, but would have to present *his* evidence to a trier of fact.” *Aguilar v. Atlantic Richfield Co.* (2001) 25 C4th 826, 851 (emphasis in original). If defendant fails to meet this burden, the motion must be denied; plaintiff need not make any showing at all. *Consumer Cause, Inc. v. SmileCare*, 91 Cal.App.4th 454, 468.

Here, defendant is relying upon external evidence to support his position that the complaint should be dismissed, which he seeks to introduce in the form of a sworn declaration and Exhibit A, the latter of which has not been properly authenticated. In its opposition, plaintiff also seeks to introduce extrinsic evidence to support the claims alleged in its complaint and of its alleged compliance with the Fair Debt Collection Practices Act, but fails to provide such information in the form of admissible evidence. Regardless, under the standards applicable to a summary judgment motion, defendant has failed to satisfy his burden of proof and has failed to comply with the procedural requirements of CCP § 437c. The Motion is **DENIED**. A proposed order has been lodged and will be modified and executed by the Court.

HOLLAND, ET AL VS. AUTO WEST, ET AL

Case Number: 187854

Tentative Ruling on Motion to Quash Deposition Subpoena: Defendant Auto West seeks an order quashing plaintiffs' deposition subpoena for production of business records issued to third party Manheim Investments, Inc. The subpoena at issue seeks the following business records:

All documentation concerning all vehicles with Frame/Unibody damage that were purchased by Auto West, between January 2, 2015 to January 3, 2018, including but not limited to, Condition Reports on a spreadsheet indicating vehicle announcements.

Defendant has standing under CCP § 1987.1 to bring a motion to quash a deposition subpoena directed at a third party. The Discovery Act provides for discovery of any matter, not privileged, that "appears reasonably calculated to lead to the discovery of admissible evidence." CCP § 2017.010. Information is relevant where it might reasonably assist a party in evaluating the case, preparing it for trial, or facilitating settlement. *City of Los Angeles v. Superior Court* (2017) 9 Cal.App.5th 272, modified on denial of rehearing.

Defendant argues that Manheim's auction records pertaining to other damaged vehicles are not relevant to this action because plaintiff does not need information pertaining to other unrelated vehicles in order to prove whether defendant failed to disclose frame/unibody damage in the car sold to plaintiffs and that plaintiff intends to use such records for the improper purpose of identifying potential clients for future litigation. Plaintiffs respond that they should be able to obtain documents that potentially establish that defendant has engaged or continues to engage in unfair business practices. The complaint contains causes of action for and seeks injunctive relief under the Consumer Legal Remedies Act (Civil Code § 1750 et seq.) and the Unfair Competition Law (Business & Professions Code § 17200 et seq.). Under both laws, plaintiffs must establish that defendant engaged in prohibited business practices. Civil Code § 1770 enumerates the proscribed business practices under the Consumer Legal Remedies Act. While defendant is correct that a "business practice" under the Unfair Competition Law may involve a single victim or act, the requirement "envisions something more than single transaction; it contemplates pattern of conduct, on-going conduct, pattern of behavior, or course of conduct." *Hewlett v. Squaw Valley Ski Corp.* (1997) 54 Cal.App.4th 499. At a minimum, plaintiffs have demonstrated that the documents being requested would assist them in evaluating whether defendants have engaged in unlawful business practices pertaining to reselling damaged used cars. Plaintiffs should not be barred from conducting discovery to assist them in evaluating whether a pattern of conduct exists that extends beyond defendant's sale of the car to plaintiffs, which would potentially strengthen their claims.

Plaintiffs are requesting records for a three-year period commencing approximately two months prior to their purchase of the vehicle and ending January 2018, approximately six months after they filed this action. Business and Professions Code § 17203 states that "[a]ny person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction." The complaint alleges that defendant "is involved in a fraudulent scheme in which it purchases accident and/or frame damaged vehicles, then specifically tells consumers the vehicles are not damaged and have never been in an accident (or does not disclose that material fact), negotiates the price of the vehicles at full-retail-non-damaged prices, and sells such vehicles without proper and adequate disclosure." Complaint, p. 7:6-10. To the extent that plaintiff has alleged and may seek to evaluate whether defendant's unlawful business practices are ongoing, defendant has not demonstrated a good reason to limit the time period for which plaintiffs are requesting the business records at issue. The Motion is **DENIED**. A proposed order has been lodged and will be executed by the Court.

WHALEN VS. DIGNITY HEALTH

Case Number: 187598

Tentative Ruling on Order to Show Cause re Sanctions and Further Orders: An Order to Show Cause Re:

Sanctions and Further Orders issued on February 8, 2018 to plaintiff and counsel for failure to timely prosecute (CRC Rule 3.110(b)) and failure to timely file a settlement conference statement and appear at the mandatory settlement conference (CRC Rule 3.1380(b)). Based on the information contained in counsel for plaintiff's response to the Order to Show Cause, the Court declines to impose monetary sanctions upon plaintiff and counsel and the Order to Show Cause is discharged. **No appearance is necessary on today's calendar.** The trial date of May 1, 2018 is confirmed.

Resolution Review – 10:00 a.m.

CITY OF REDDING VS. SHREE SHIVA, LLC ET AL.
Case Number: 183558

This matter is on calendar for review regarding status of receivership, having been continued from February 26, 2018 to give plaintiff an opportunity to provide further briefing to the Court. Receiver indicated at the February 26, 2018 hearing and in the Seventh Receiver's Report that he would likely seek to be discharged. Plaintiff has submitted an Opposition to Discharge of Receiver. The Court appreciates both parties having provided additional input regarding status of the receivership. The Court will defer ruling, on the issue of discharge of the receiver, until which time the Receiver files the noticed motion and final accounting. See CRC Rule 3.1184(a), Health and Safety Code § 17980.7(c)(9). Because no motion for discharge is currently pending and no final accounting has been submitted, the receiver remains in place. The Court having reviewed the Seventh Receiver's Report and the December 2017 and January 2018 Monthly Accountings, and having received no opposition thereto, approves said Report and Accountings. This matter is continued to **Tuesday, May 29, 2018 at 9:00 a.m. in Department 8** for review regarding status of receivership. **No appearance is necessary on today's calendar.**