Tentative Rulings for March 25, 2021
Department 7

To request oral argument, you must notify Judicial Secretary Vanessa Siojo 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 7 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 MUST APPEAR AT ANY LAW AND MOTION DEPARTMENT TELEPHONICALLY WHEN REQUESTING ORAL ARGUMENTS. **IN-PERSON APPEARANCES WILL NOT BE PERMITTED**.

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

- Call-in Numbers: 1 (213) 306-3065 or 1 (844) 621-3956 (TOLL FREE)
- Meeting Number: 808-890-717#
- Press # again

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://riverside.courts.ca.gov/PublicNotices/Webex-Appearances-Public-Access.pdf?rev=05-29-2020-09:54:48am.

1.

RIC2001368	MILTON VS PENNA	DEFENDANT BEAUMONT UNIFIED SCHOOL DISTRICTS NOTICE OF DEMURRER AND DEMURRER TO PLAINTIFFS FIRST AMENDED COMPLAINT FOR DAMAGES; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF; DECLARATION OF DANIELLE C. FOSTER

Tentative Ruling: Sustained.

The demurrer to the 2nd cause of action is sustained without leave to amend.

Otherwise, the demurrer to the remaining causes of action is sustained with 30 days leave to amend.

The court grants judicial notice of the claim, amended claim and rejection notice. The court also takes judicial notice of Plaintiff's filing of her complaint with the U.S. District Court on 6/6/19.

Plaintiff submitted a claim on 3/27/19, and an amended claim on 4/30/19. District's notice, dated 6/19/19, indicates that the District rejected the claim on 6/11/19. The dispute is essentially whether 6/11/19 or 6/19/19 is the controlling date. Government Code §912.4(a) merely requires the board to act within 45 days after the claim, or amended claim, is presented. The notice indicates that the District acted on 6/11/19, which is within 45 days of 6/11/19 (i.e. 42 days).) Plaintiff provides no authority that the notice must be sent out in the same day as the decision. Accordingly, timely written notice of the rejection was provided, and therefore, the 6-month limitations period applies. Thus, Plaintiff had until 12/19/19 to file this action, but did not file until 6/1/20.

Any statute of limitations on a state claim is tolled while the claim is pending and for a period of 30 days after dismissal, unless state law provides a longer period. (28 USC §1367(d).) It appears that the U.S. District Court dismissed Plaintiff's complaint on 8/10/20—but it is not clear. Plaintiff failed to provide a complete copy of the dismissal. Assuming the U.S. District Court dismissed the federal action on 8/10/20, Plaintiff had until 9/9/20 to file this action, and she timely did so on 6/1/20. Accordingly, the complaint is timely.

1st & 3rd Causes of Action – IIED & Negligence

Unless provided by statute, a public entity is not liable for an injury. (Gov. C. § 815(a).) Plaintiff fails to provide any statutory basis for liability.

2nd Cause of Action – Unruh

A school district is not a business establishment subject to Unruh. (*Brennon B. v. Superior Court of Contra Costa County* (2020) 57 Cal.App.5th 367, 322.) Plaintiff argues that this was not decided by the Fourth District Court of Appeals. "All trial courts are bound by all published decisions of the Court of Appeal [citation], the only qualifications being that the relevant point in the appellate decision must not have been disapproved by the California Supreme Court and must not be in conflict with another appellate decision." (*Sarti v. Salt Creek Ltd*. (2008) 167 Cal.App.4th 1187, 1193.)

4th Cause of Action – California Constitution, Article I, §7(a); Article IV §16(a)

Article I, §7(a) provides for due process and equal protection. Article IV §16(a) merely states: "All laws of a general nature have uniform operation." " ' "The concept of the equal protection of the laws compels recognition of the proposition that persons similarly situated with respect to the

legitimate purpose of the law receive like treatment." ' [Citations.]" (*Walgreen Co. v. City and County of San Francisco* (2010) 185 Cal.App.4th 424, 434.)

Plaintiff fails to identify which law is at issue that Defendant applied in an unequal manner and, Plaintiff fails to identify why she was treated differently than those similarly situated.

"The first prerequisite to a meritorious claim under the equal protection clause is a showing that the state has adopted a classification that affects two or more similarly situated groups in an unequal manner." [Citations.] This initial inquiry is not whether persons are similar situated for all purposes, but "whether they are similarly situated for purposes of the law challenged." [Citation.]' [Citation.] 'If persons are not similarly situated for purposes of the law, an equal protection claim fails at the threshold.' " (*Id*. at 506.)

5th & 6th Causes of Action – Education Code §201, 220

Education Code §201 is the Legislature's declarations and intents regarding the rights of students and the obligations of public schools. "Education Code section 201 is part of an extensive array of anti-discrimination statutes applicable to any educational institution, public or private, that receives any form of state funding. (Ed. Code, § 210.3)" (*Brennon B. v. Superior Court of Contra Costa County* (2020) 57 Cal.App.5th 367, 341.) Education Code §220 prohibits discrimination. The elements of a properly plead claim are that a plaintiff suffered severe, pervasive and offensive harassment that deprived plaintiff of the right of equal access to education benefits and opportunities, the school district had actual knowledge, and the school district acted with deliberate indifference. (*Donovan v. Poway Unified School Dist.* (2008) 167 Cal.App.4th 567, 579.)

Plaintiff alleges that she is disabled. (FAC ¶20-21.) She merely alleges that she was discriminated by "prohibiting Plaintiff from fully participating on her high school's cheerleading team, alienating Plaintiff, humiliating Plaintiff by excluding her from various activities and events and engaging in other behavior to cause Plaintiff to be ashamed of her disability and to cause Plaintiff emotional distress. (FAC ¶28-29.) There are no specific facts plead —only conclusions.

To state a cause of action against a government entity, every fact essential to the existence of statutory liability must be pled with particularity. (See *Searcy v. Hemet Unified School Dist*. (1986) 177 Cal. App. 3d 792, 802.) Plaintiff did not plead any facts to support the elements.

2.

RIC2003415	VSTYLES INC VS CONTINENTAL CASUALTY COMPANY	GALLAGHER DEFENDANTS NOTICE OF DEMURRER AND DEMURRER TO THE AMENDED COMPLAINT; AND MEMORANDUM OF POINTS AND AUTHORITIES

Tentative Ruling: Sustained. No leave to amend.

Both Requests for Judicial Notice are denied.

Gallagher's request that the court take judicial notice of an unpublished December 15, 2020 decision from the New York Supreme Court (Nassau County) granting motions to dismiss is denied. While the court may take judicial notice of the records of any court of record, a lower court's unpublished decision made under New York law will not aid the court in resolving the present demurrer. (*See Aquila, Inc. v. Superior Court* (2007) 148 Cal.App.5th 556, 569.)

Plaintiff's request that the court take judicial notice of various articles obtained from the Internet (Exhibits A-E) is denied. The court accepts as true Plaintiff's allegation in the FAC that the insurance industry was aware of the threat of a viral pandemic. The articles proffered in support of the opposition are therefore not relevant and, to the extent that they are offered for the truth of

the matters asserted, are hearsay. Likewise, Plaintiff's request that the court take judicial notice of excerpts from complaints files in Texas and Minnesota is denied. While the court may certainly take notice of complaints filed in any court of record [Evid. Code § 452(d)], none of the material for which Plaintiff seeks judicial notice will aid the court in resolution of the present demurrer. (*See Aquila, supra*, 148 Cal.App.5th at 569.)

A complaint in a claim for negligence against an insurance broker must allege: (1) a legal duty of care owed to the plaintiff; (2) the defendant's breach of that duty, (3) injury to the plaintiff as a proximate result of the breach; and (4) damage to the plaintiff. (*Jones v. Grewe* (1987) 189 Cal.App.3d 950, 954; *Wallman v. Suddock* (2011) 200 Cal.App.4th 1288, 1309)

As a general rule, however, an insurance agent does not have a duty to advise an insured to procure additional or different insurance coverage. (*Williams v. Hilb, Rogal & Hobbs Ins. Services of California, Inc.* (2009) 177 Cal.App.4th 624, 635; *Fitzpatrick v. Hayes* (1997) 57 Cal.App.4th 916, 922 .) Thus, an insurance agent's duty is "to use reasonable care, diligence, and judgment in procuring the insurance requested by an insured." (*Jones*, *supra*, 189 Cal.App.3d at 954; *Pacific Rim Mechanical Contractors, Inc. v. Aon Risk Ins. Services West, Inc.* (2012) 203 Cal.App.4th 1278, 1283.)

"The rule changes, however, when – but only when – one of the following three things happens: (a) the agent misrepresents the nature, extent or scope of the coverage being offered or provided …, (b) there is a request or inquiry by the insured for a particular type or extent of coverage …, or (c) the agent assumes an additional duty by either express agreement or by holding himself out as having expertise in a given field of insurance being sought by the insured." (*Fitzpatrick*, *supra*, 57 Cal.App.4th at 927 [citations and internal quotation marks omitted]; *see also Pacific Rim Mechanical Contractors*, *supra*, 203 Cal.App.4th at 1273; Ashley *et al.*, California Liability Insurance Practice (CEB 2020), § 29.16 [failure to exercise expertise].)

Plaintiff alleges that Gallagher breached a duty of care when it failed to advise Plaintiff to acquire business interruption coverage that would protect against loss arising out of a global pandemic. As in the original complaint, Plaintiff does not allege that Gallagher made any misrepresentation about the coverage being offered under the Policy or that Plaintiff specifically requested that Gallagher procure coverage to protect against business income loss due to an epidemic or pandemic. Thus – as on the previous demurrer – the question becomes whether the FAC sufficiently alleges that Gallagher assumed any additional duty by either an express agreement or by holding itself out as having expertise in a given field of insurance. To that end, Plaintiff alleges, as it did in the original complaint, that Gallagher expressly agreed that it would identify coverage gaps and provide "coverage and limit review" and that it would "create coverage checklists." Plaintiff further repeats its allegations that Gallagher held itself out as having expertise in insurance and risk management and as having expertise in "uncovering and closing coverage gaps." Lastly, the FAC adds additional allegations regarding the insurance industry's knowledge of a potential pandemic that could cause significant business losses and allegation that Gallagher should have known of available insurance products to cover such losses. (*See* FAC, ¶¶ 84-93, 121-122.)

Nothing in Gallagher's sales pitch, as alleged in the FAC, amounts to an express agreement to assume duties greater than an insurance agent's general duties. Indeed, as the court previously noted, express agreements are generally associated with a broker's agreement to service a policy by keeping coverage in force and notifying the insured of a cancellation. (*See* Ashley *et al.*, California Liability Insurance Practice (CEB 2020) ("Ashley *et al.*"), §§ 29.18-29.19.) [failure to exercise expertise].) Nor would an agreement to monitor risks and update coverage implicate a duty to advise Plaintiff of the potential loss that could arise out of a pandemic (the likes of which has not been seen in over a hundred years).

Gallagher's alleged representation that it had expertise in insurance and risk management and in "uncovering and closing coverage gaps" is too vague to trigger a duty to procure a policy that

would cover business income loss arising out of a pandemic. (*Wallman*, *supra*, 200 Cal.App.4th at 1310-11; *see also* Ashley *et al.*, § 29.16 [failure to exercise expertise]; *Hartford Casualty Insurance Company v. Fireman's Fund Insurance Company* (N.D. Cal. 2016) 220 F.Supp.3d 1008, 1018 [finding "isolated, generalized statements are not the type of 'holding out' for which California law imposes an elevated duty of care on insurance agents"].)

Plaintiff's reliance on *Williams v. Hilb, Rogal & Hobbs Ins. Services of California, Inc.* (2009) 177 Cal.App.4th 624 is misplaced. In *Williams*, the owner of a spray-on truck bed lining dealership brought an action against an insurance agency after an injured worker obtained a multimillion-dollar judgment. (177 Cal.App.4th at 627.) The owner alleged the agency was liable for negligently "advising on, procuring, and maintaining an insurance package for a new business venture that did not include workers compensation insurance." (*Ibid.*) The trial court determined the agency was liable and the appellate court agreed, concluding there was ample evidence that the agent held herself out as having expertise in the insurance needs of the dealership, creating a special duty of care. (*Id.* at 637.) Notably, the court specifically highlighted the following evidence as being relevant to its analysis: (1) the agent previously worked with the owners to bundle insurance plans needed for other dealerships and represented herself as an expert on the insurance products necessary to meet the dealership's needs; (2) the agent told the owners a meeting to discuss insurance plans was not necessary because of her expertise; (3) the owner did not request specific insurance and asked the agent for insurance "needed to operate the business"; (4) the owner understood the agent was "the go-to person" for dealership insurance needs; (5) the owner filled in basic information but left blank all the portions of the application relating to insurance coverages; (6) the agent selected the insurance coverages and did not give it to the owner to review before she submitted it to the insurance company; (7) the agent was aware that employees spraying paint had "the most dangerous jobs and that it would be important for a sprayer's employer to know if its insurance provided coverage for on-the-job injuries"; (8) the agent was aware workers compensation insurance was mandatory in California; and (9) the agent represented and marketed the insurance package as having been specifically designed for the owner. (*Id.* at 627-28.).)

While the court accepts as true that the insurance industry – among others – was aware of the potential that a pandemic could result in significant business losses and that there are products available that would provide coverage for such losses, there is still nothing in the FAC that suggests that Gallagher took on any additional duties greater than an insurance agent's general duties. Nor are there factual allegations that would demonstrate that Gallagher itself either knew that a global pandemic was on the horizon or knew that coverage for such an eventuality was indicated for Plaintiff's business. While the court also accepts as true the allegation that the insurance industry was generally aware that a potential pandemic could result in significant business losses, there is no legitimate argument that insurance brokers such as Gallagher should have anticipated the COVID-19 pandemic and its far-reaching impact on the business world. (*See Rowan v. Kirkpatrick* (2020) 54 Cal.App.5th 289, 297 ["[W]e acknowledge the unprecedented nature of the circumstances presented by the COVID-19 pandemic and the hardships it may have caused"]; *Midway Venture LLC v. County of San Diego* (2021) 60 Cal.App.5th 58, 274 Cal.Rptr.3d 383, 392 "[COVID-19] is the worst American public health crisis in a century"].)

Because the FAC does not adequately allege that Gallagher breached a duty of care owed to the Plaintiff, the cause of action for professional negligence necessarily fails. Accordingly, the demurrer to the third cause of action is sustained. Further, unless Plaintiff can articulate how he can amend the Complaint and how that amendment will change the legal effect of the second cause of action, the demurrer is sustained without leave to amend. (*Ferrick v. Santa Clara University* (2014) 231 Cal.App.4th 1337, 1341.)

3.

RIC2003477	PRADO VS TOYOTA MOTOR SALES USA, INC	MOTION TO COMPEL DEFENDANT'S FURTHER SUPPLEMENTAL RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS NOS.37 THROUGH 45 BY JORGE PRADO

Tentative Ruling: Denied.

A motion to compel further responses "shall set forth specific facts showing good cause justifying the discovery sought by the demand." (CCP § 2031.310(b)(1); *Kirkland v. Superior Court (Guess? Inc.)* (2002) 95 Cal.App.4th 92, 98.) To establish "good cause," the burden is on the moving party to show both relevance to the subject matter and specific facts justifying discovery. (*Glenfed Develop. Corp. v. Sup. Ct. (National Union Fire Ins. Co. of Pittsburgh, Penn.)* (1997) 53 Cal.App.4th 1113, 1117.)

RFP nos. 37-45 seek documents relating to complaints by owners of the same year, make, model as the subject vehicle regarding issues with "harsh shifting," the "radio," and the "vehicle failing to start." Plaintiff argues that information relating to complaints by other consumers involving the same types of vehicle as Plaintiffs' vehicle containing the same defect or nonconformity is relevant to whether Defendant has committed a willful violation of the Song-Beverly Act, i.e., that there is a widespread defect or nonconformity and that Defendant rarely repurchases vehicles containing these defects. That *could* be a basis for good cause.

However, Plaintiff fails to establish the defects he experienced with the vehicle including "harsh shifting," or "the radio" or "vehicle failing to start" – not in the supporting declaration of Plaintiff's counsel, not by a declaration by Plaintiff himself or any other evidence. Nor are these nonconformities specifically alleged in the Complaint. Rather, the Complaint vaguely identifies the defects as "transmission issues, engine system failure, display issues, startup issues, loss of power, and gas pump failure." (See Complaint, ¶ 10.) Plaintiff failed to meet its burden show good cause for the documents.

4.

RIC2003477	PRADO VS TOYOTA MOTOR SALES USA, INC	MOTION TO COMPEL DEFENDANT'S FURTHER RESPONSES TO FORM INTERROGATORIES 1.1 AND 12.1 BY JORGE PRADO

Tentative Ruling: Denied.

<u>Form Interrogatory No. 1.1</u>

Defendant responded that Toyota is a corporate defendant, that the responses were prepared with the documents currently available and with the assistance of defense counsel Mark W. Skanes, and that an authorized agent of Toyota verified the responses.

Plaintiff argues that Defendant failed to identify any Toyota employee who prepared or assisted in preparing the response. However, Defendant explained why it couldn't, and identified counsel and his contact information. The response is compliant with CCP § 2030.220(a) (requiring each answer to be "as complete and straightforward" as possible).

<u>Form interrogatory no. 12.1</u>

This interrogatory requests the name, address, and telephone number of each individual who witnessed the "incident," made any statement regarding the "incident," heard any statements about the "incident," or anyone claiming to have knowledge of the "incident." Defendant objected

on the grounds that the term "incident" is vague and ambiguous, and identified individuals who witnessed or made a statement regarding Plaintiff's complaint with the subject vehicle.

Plaintiff argues that Defendant "failed to identify any of its employees who reviewed, handled or oversaw the potential repurchase of Plaintiff's vehicle." However, Plaintiff checked the box in the form interrogatory defining the term "incident" as "circumstances and events surrounding the alleged accident, injury, or other occurrence or breach of contract giving rise to this action or proceeding." Given that this case is a lemon law matter and not centered around any particular "incident," Plaintiff's argument is unreasonable. Plaintiff never defined "incident" as including the "potential repurchase." Defendant's answer is code-compliant, and its objection based on vagueness is valid.

5.

RIC1826211	COMO VS CITY OF RIVERSIDE	MOTION FOR SUMMARY JUDGMENT OR IN THE ALTERNATIVE SUMMARY ADJUDICATION ON CROSS COMPLAINT OF CITY OF RIVERSIDE

Tentative Ruling: Denied.

The City requests judicial notice of the Complaint, the City's Answer and Cross-Complaint, Breakmart's Answer and the Notice of Ruling re: The City's Motion for Summary Judgment. Judicial notice is appropriate under Evid. Code § 452(d) and is granted.

"A cause of action for breach of contract requires pleading of a contract, plaintiff's performance or excuse for failure to perform, defendant's breach and damage to plaintiff resulting therefrom." (*Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal. App. 4th 1004, 1031.) A contact will be enforced if it is sufficiently definite for the court to ascertain the parties' obligations and to determine whether there has been a breach. (*Bustamante v. Intuit Inc*. (2006) 141 Cal. App. 4th 199, 209.) To plead a cause of action based on a written contract, a plaintiff may attach a copy of the written contract and incorporate it by reference or plead the terms verbatim or the legal effect of the contract. (*Construction Protective Services, Inc. v. TIG Specialty Ins. Co.* (2002) 29 Cal.4th 189, 198-199.)

On April 12, 2019, the City filed it Cross-Complaint against Brandon. The Cross-Complaint includes one cause of action for breach of contract, wherein the City alleges that on December 28, 2017 an agreement was made with Chanel Brandon. As indicated in the Cross-Complaint, the Rental Contract was attached as Exhibit A. The City alleges that Brandon breached the contract on February 21, 2019 by failing to defend the City.

On June 21, 2019, the City filed an amendment to the Cross-Complaint. The amendment states only "Upon filing the complaint herein, plaintiff(s) being ignorant of the true name of a defendant and having designated said defendant in the complaint by the fictitious name of ROE 1

and having discovered the true name of the said defendant to be Breakmart LLC dba MD Commercial Cleaning hereby amends the complaint by inserting such true name in place and stead of such fictitious name wherever it appears in said complaint." The only time the fictitious name appears in the Cross-Complaint is where ROES 1- 10 are described as the agents or employees of the named defendants acting within the scope of that agency or employment. The Service Contract is not attached and neither the exact terms nor legal effect are explained in either the Cross-Complaint or amendment. This is insufficient to plead a cause of action for breach of contract.

"In the course of deciding a motion for summary judgment, if a trial court concludes the complaint is insufficient as a matter of law, it may elect to treat the hearing of the judgment motion as a motion for judgment on the pleadings and grant the ***opposing party*** an opportunity to file an

amended complaint to correct the defect." (*Prue v. Brady Co./San Diego* (2005) 242 Cal. App. 4th 1367, 1384. [Emphasis Added]) In such circumstances, summary judgment should be stayed pending the amendment. (Ibid.) In this case, although the Cross-Complaint is defective, it appears that the defect can be cured by amendment.

However, the Court has found no similar authority allowing such a remedy for a moving party, whose own pleading is defective.