

**TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, June 26, 2024 3:00 p.m.
Courtroom 19 –Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa**

The tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument, **YOU MUST NOTIFY** the Judge’s Judicial Assistant by telephone at **(707) 521-6602**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

If the tentative ruling is accepted, no appearance is necessary unless otherwise indicated.

TO JOIN ZOOM ONLINE:

Department 19 Hearings

MeetingID: 160-421-7577

Password: 410765

<https://sonomacourt-org.zoomgov.com/j/1604217577>

TO JOIN ZOOM BY PHONE:

By Phone (same meeting ID and password as listed for each calendar):

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PLEASE NOTE: The Court’s Official Court Reporters are “not available” within the meaning of California Rules of Court, Rule 2.956, for court reporting of civil cases.

1-2. 24CV00570, Zurita v. Volkswagen Group of America, Inc.

Plaintiff Michelle Zurita (“Plaintiff”) filed the currently operative first amended complaint (the “FAC”) in this action against defendants Volkswagen Group of America, Inc., (“Manufacturer”), Fairfield Automotive Partners II, LLC (“Dealer”, together with Manufacturer, “Defendants”), and Does 1-10. The Complaint contains causes of action for: 1) breach of express warranty through failure to repair under the Song-Beverly Consumer Warranty Act, Civ. Code § 1790 et seq. (the “Act”) (Civ. Code § 1793.2); 2) breach of implied warranty under the Act; 3) violations of Business and Professions Code § 17200 et seq. (the “Unfair Competition Law” or “UCL”); 4) negligent repair; and 5) violation of the Federal Magnuson-Moss Warranty Act. This matter is on calendar for Defendants’ motion to strike punitive damages and their demurrer to each cause of action within the FAC pursuant to Cal. Code Civ. Proc. (“CCP”) §§ 430.10(e) for failure to state facts sufficient to constitute a cause of action.

The matter is continued on two bases. First, through error of the clerk at the time the matter was set, the hearing dates assigned to the motions filed by Defendants did not match between the papers issued to Defendants and the Court’s internal system. While the Court expected to draw additional clarity from subsequent filings, this raised a subsequent issue.

Second, there is no proof of service reflecting that the hearing date for the demurrers were served to the Plaintiff, and therefore it is not clear that they have notice of the instant date.

Therefore, the demurrers on calendar in this case are continued to July 17, 2024, at 3:00 pm in Department 19, to be heard at the same as the motions to strike filed by Defendants. Any outstanding briefing will be due in accordance with CCP § 1005 relevant to the new date.

3. SCV-265714, County of Sonoma v. Castagnola

Appearances required.

4. SCV-271402, Maier v. Alvarez

Plaintiffs Cheryl Maier (“Deceased Plaintiff”) and John Maier (“Plaintiff”), filed the complaint (the “Complaint”) against defendants Jose Alvarez (“Individual Defendant”) G6 Hospitality Property, LLC (“Corporate Defendant”, together with Individual Defendant, “Defendants”), arising out of an automobile accident.

This matter is on calendar for the motion by Consortium Plaintiff pursuant to Cal. Code Civ. Proc. (“CCP”) § 473 for leave to amend the Complaint in order to step in as successor in interest for Injured Plaintiff, who is now deceased. Plaintiff also seeks to add Deceased Plaintiff’s son, Brendan Crosson (“Proposed Plaintiff”) to the action. The Motion is **GRANTED in part**.

I. Facts and Procedure

The original complaint in this action was filed by Plaintiff on August 12, 2022. Corporate Defenant filed a motion for summary judgment on November 15, 2023. Injured Plaintiff passed away on December 9, 2023. Upon notice that Injured Plaintiff had passed away, the trial was taken off calendar. The parties subsequently stipulated to await the appointment of Injured Plaintiff’s successor in interest before the Court heard the motion for summary judgment. The trial date and summary judgment motion remain unset. This matter was previously continued from May 1, 2024, for Plaintiff to cure procedural deficiencies in the motion for leave to amend. Oppositions from Defendants have followed.

II. Governing Authorities

The California Code of Civil Procedure provides that a court “may in the furtherance of justice, and on any terms as may be proper” allow a party to amend any pleading to correct a mistake. CCP § 473(a)(1). Likewise, the court may “in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars”. CCP § 473(a)(1). “Any judge, at any time before or after commencement of trial, in the furtherance of justice, and upon such terms as may be proper, may allow the amendment of any pleading or pretrial conference order.” CCP § 576. The general rule is “liberal allowance of amendments.” *Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939; see *Lincoln Property Co., Inc. v. Travelers Indemnity Co.* (2006) 137 Cal.App.4th 905, 916. The “policy of great liberality”

applies to amendments “at any stage of the proceedings, up to and including trial.” *Magpali v. Farmers Group* (1996) 48 Cal.App.4th 471, 487. “Absent a showing of prejudice to the adverse party, the rule of great liberality in allowing amendment of pleadings will prevail.” *Board of Trustees v. Superior Court* (2007) 149 Cal. App.4th 1154, 1163.

Absent a showing of prejudice, delay alone is not a basis for denial of leave to amend. *Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 563. “(I)t is irrelevant that new legal theories are introduced as long as the proposed amendments relate to the same general set of facts.” *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048 [internal citations omitted].

It is within the Court’s discretion to deny leave to amend where the amendment has been pursued in a dilatory manner, and that delay has prejudiced other parties. Prejudice exists where the amendment would result in the delay of trial, where there has been a critical loss of evidence, where amendment would add substantially to the costs of preparation, or where it would substantially increase the burdens of discovery. *Magpali v. Farmers Group, Inc.* (1996) 48 Cal.App.4th 471, 486-488; see *P & D Consultants, Inc. v. City of Carlsbad* (2010) 190 Cal.App.4th 1332, 1345; *Fisher v. Larsen* (1982) 138 Cal.App.3d 627, 649.

Great liberality applies to amendment unless the amendment raises new and substantially different issues from those already pleaded. *McMillin v. Eare* (2021) 70 Cal.App.5th 893, 910. In exercising its discretion over amendment, the court will consider whether there is a reasonable excuse for the delay, whether the change relates to facts or legal theories, and whether the opposing party will be prejudiced by the amendment. *Duchrow v. Forrest* (2013) 215 Cal.App.4th 1359, 1378. The underlying merits of the proposed cause of action amendments are not relevant to determining whether amendment is appropriate, as long as they relate to the same general set of facts, as the amended pleadings may be attacked by demurrer, motion for judgment on the pleadings, or other similar proceedings. *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048. Denying leave to amend due to failure to sufficiently plead a cause of action would be most appropriate where the defect cannot be cured by further amendment. *California Casualty Gen. Ins. Co. v. Superior Court* (1985) 173 Cal.App.3d 274, 280–281; disapproved of on different grounds by *Kransco v. American Empire Surplus Lines Ins. Co.* (2000) 23 Cal.4th 390. The exception would lie where a plaintiff makes contradictory pleadings. “As a general rule a party will not be allowed to file an amendment contradicting an admission made in his original pleadings. If it be proper in any case, it must be upon very satisfactory evidence that the party has been deceived or misled, or that his pleading was put in under a clear mistake as to the facts.” *Brown v. Aguilar* (1927) 202 Cal. 143, 149.

III. Analysis

There is no contention of delay. Deceased Plaintiff passed away and Plaintiff timely moved to amend the Complaint accordingly. Rather, Defendants contend that the proposed amendment is not legally supported, and as a result the Court should deny leave to amend. This is not persuasive. In moving for leave to amend, great liberality applies unless the amendment raises new or substantially different issues. Even assertion of a new cause of action is immaterial so long as it is predicated on the same facts. *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048. Here, the only material change is the addition of Proposed Plaintiff and

the conversion of the claims to actions related to Deceased Plaintiff's death. Defendants do not aver that this amendment is prejudicial. Rather, they argue that Proposed Plaintiff has no standing to bring the survivorship action, and as such the motion should be denied.

Given that most of the proposed amendment appears viable, it appears to be far more efficient to have the parties argue the issue in the context of motions on the pleadings. In ruling on a motion to amend, where a proposed amendment is deficient, "the preferable practice would be to permit the amendment and allow the parties to test its legal sufficiency by demurrer, motion for judgment on the pleadings or other appropriate proceedings." *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048. All of this considered, the vast majority of the amendment appears proper and is not challenged. Defendants raise no substantive issue with the conversion of the causes of action, nor Plaintiff's assertion of those actions. The only challenge is to a small contention therein. That is not sufficient to show the proposed amendment is "futile", as would be required to deny leave to amend. There is no basis to deny Plaintiff's proposed amendment as a whole.

Plaintiff seems to concede the substance of the issue that Proposed Plaintiff cannot bring the survivorship cause of action. See Plaintiff's Reply, pg. 2, 5-6. Plaintiff implies that Defendants' confusion derives from the unintentional insertion of an "s" at the end of Plaintiff. The confusion by Defendants is understandable. In reviewing the Proposed Amended Complaint in contrast to the original, Plaintiff has deleted "John Maier", and instead inserted "Plaintiffs". That Defendants interpreted this as a material change is reasonable, though it is of concern to the Court that the parties could not resolve this matter informally through stipulation given that there does not appear to be any legal disagreement in the substance of the matter before the Court. Amendment of complaints is commonly resolved through stipulation. Given that there is no dispute as to the legal sufficiency of Proposed Plaintiff's ability to bring the survivorship cause of action, placing that as a condition on Plaintiff's leave to amend appears proper.

Plaintiff raises argument that he requested at the last hearing on this matter that the Court enter the order nunc pro tunc back to the date of the original hearing, May 1, 2024. Plaintiff provides no legal authority supporting this request, nor is any request thereon reflected in the moving papers. The necessity of the continuance was on Plaintiff's failure to file a motion in conformance with the Rules of Court. Without legal authority provided to support the request, the Plaintiff has not met the burden to show the propriety of such an order.

The motion is GRANTED, conditional on Plaintiff's modification of the First Amended Complaint to reflect that the Second Cause of Action is brought by John Maier and not Plaintiffs.

IV. Conclusion

Based on the foregoing, the motion for leave to amend is GRANTED as modified above. Plaintiffs' counsel shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

5-6. SCV-273099, Gaye Martin v. Kaiser Foundation Hospitals, et al.

The parties have submitted a stipulation to continue the pending demurrers to a date after July 31, 2024. The court has signed the stipulation and continued the pending demurrers to August 28, 2024.

****This is the end of the Tentative Rulings.****