

**Tentative Rulings for October 17, 2024**  
**Department 403**

**For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)**

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There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) *The above rule also applies to cases listed in this "must appear" section.*

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The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

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(Tentative Rulings begin at the next page)

# **Tentative Rulings for Department 403**

Begin at the next page

(37)

**Tentative Ruling**

Re: **Emigdio Sanchez v. West Ag Services, Inc.**  
Superior Court Case No. 19CECG03133

Hearing Date: October 17, 2024 (Dept. 403)

Motion: By Defendant West Ag Services, Inc. for Summary Judgment  
or, in the Alternative, Summary Adjudication

**Tentative Ruling:**

To grant. (Code Civ. Proc., § 437c.)

**Explanation:**

A trial court shall grant summary judgment where there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., §437c, subd. (c).) In determining a motion for summary judgment, “we view the evidence in the light most favorable to plaintiffs” and “liberally construe plaintiffs’ evidentiary submissions and strictly scrutinize defendant[’s] own evidence, in order to resolve any evidentiary doubts or ambiguities in plaintiffs’ favor.” (*McDonald v. Antelope Valley Community College Dist.* (2008) 45 Cal.4th 88, 96-97, citations omitted.) The court does not weigh evidence or inferences (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 856), nevertheless, “[w]hen opposition to a motion for summary judgment is based on inferences, those inferences must be reasonably deducible from the evidence, and not such as are derived from speculation, conjecture, imagination, or guesswork.” (*Waschek v. Department of Motor Vehicles* (1997) 59 Cal.App.4th 640, 647, citation omitted; Code Civ. Proc., § 437c, subd. (c).)

Summary adjudication is the proper mechanism for challenging a particular, “cause of action, an affirmative defense, a claim for punitive damages, or an issue of duty.” (*Paramount Petroleum Corp. v. Superior Court* (2014) 227 Cal.App.4th 226, 242.) However, “[a] motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty.” (Code Civ. Proc., § 437c, subd. (f)(1); see also *Catalano v. Superior Court* (2000) 82 Cal.App.4th 91, 97 [piecemeal adjudication prohibited].)

On July 31, 2024, defendant West Ag Services, Inc. filed this motion in order to challenge both the Complaint filed on August 28, 2019 and the Complaint-in-Intervention filed on July 23, 2020. The Complaint-in-Intervention was dismissed on September 9, 2024. As such, all that remains to be addressed is the Complaint filed August 28, 2019. There is only one cause of action alleged against this defendant in plaintiff’s form complaint involving a motor vehicle accident. Plaintiff alleges that on August 17, 2017, he was struck by farm equipment operated by a since dismissed defendant, Jaime Last Name Unknown, while plaintiff was also operating farm equipment.





(36)

**Tentative Ruling**

Re: ***Jimenez, et al. v. Chicago Title Company, et al.***  
Superior Court Case No. 23CECG02293

Hearing Date: October 17, 2024 (Dept. 403)

Motions (x2): (1) by defendants to Dismiss the Action;  
(2) by plaintiffs for Relief from Failure to Timely File an Amended Pleading

**Tentative Ruling:**

To deny defendants' motion to dismiss as to plaintiff Rafael Gonzalez-Silva. To grant defendants' motion to dismiss as to plaintiff Josue Jimenez.

To deny plaintiffs' motion for relief without prejudice.

Defendants are granted 10 days' leave to file their responsive pleadings to the remaining causes of action. The time to which the responsive pleadings may be filed will run from the service by the clerk of the minute order.

**Explanation:**

Defendants' Motion to Dismiss

As a preliminary matter, any issues pertaining to insufficient notice are resolved by the court's continuance of the motion to dismiss.

When the court sustains a demurrer with leave to amend, ordinarily, the court fixes the time within which an amendment or amended pleading must be filed. (Code Civ. Proc., § 472a, subd. (c).) If no time is set by the court, ten days is deemed to have been granted. (Cal. Rules of Court, rule 3.1320(g).) A party must obtain leave of court to file an amended pleading after the time allowed for amendment expires. (*Leader v. Health Indus. Of America, Inc.* (2001) 89 Cal.App.4th 603, 611.)

If an amended pleading is not filed, any party may bring an *ex parte* application to dismiss. (Code of Civil Procedure, section 581, subd. (f)(2); Cal. Rules of Court, rule 3.1320(h).) However, a motion to dismiss is only appropriate if the demurrer was sustained as to all causes of action and the time to amend has expired. If the demurrer was sustained as to only certain causes of action and the time to amend has expired, the case moves forward on the remaining causes of action and no motion to dismiss lies. In that case, the "defendant has 10 days to answer or otherwise plead to ... the remaining causes of action following ... [t]he expiration of the time to amend if the demurrer was sustained with leave to amend..." (Cal. Rules of Court, rule 3.1320(j)(2).)

Nonetheless, dismissal is discretionary, and may be denied where the plaintiff furnishes a sufficient excuse for the delay in amending. (*Contreras v. Blue Cross of Calif.* (1988) 199 Cal.App.3d 945, 948.)

This court sustained the demurrer to plaintiffs' Second Amended Complaint for each cause of action as to plaintiff Josue Jimenez, and sustained, in part, the demurrer as to plaintiff Rafael Gonzalez-Silva. In particular, the demurrer, as to Mr. Gonzalez-Silva, was sustained for the first, second, fourth, fifth, seventh, eighth, and ninth causes of action, and overruled for the third and sixth causes of action. (See the Law and Motion Minute Order, filed on May 16, 2024.) Plaintiffs were both granted 20 days leave to amend. The clerk's certificate of mailing indicates that the minute order was mailed to the parties on May 17, 2024. (See the Clerk's Certificate of Mailing attached to the Law and Motion Minute Order, filed on May 16, 2024.) Accordingly, accounting for the statutory five-day extension of time for service by mail, the time allowed for the amendment of the operative complaint expired on Tuesday, June 11, 2024. (Code Civ. Proc., §§ 1010.6, subd. (a)(4), 1013, 1013a, subd. (4) [statutory extensions for service includes service made by clerk of the court].) To date, no amended pleading has been filed.

On June 10, 2024, defendants JD Investments and Dennis Morgan filed their joint *ex parte* application for dismissal of the Second Amended Complaint on the ground that plaintiffs failed to timely file an amended complaint following the court's May 16, 2024 order. On June 11, 2024, the application was denied on the ground that exigent circumstances justifying an *ex parte* application did not exist. However, even if the *ex parte* application had been considered on its merits, the application would have been denied, since the time for amendment had not yet expired.

On August 12, 2024, defendants JD Investments and Dennis Morgan filed their joint motion to dismiss on the same ground.

*Plaintiff Rafael Gonzalez-Silva*

A motion to dismiss the complaint as to Mr. Gonzalez-Silva is inappropriate, as the demurrer was not sustained as to all causes of action pled by him. Following the expiration of time allowed for amendment of the operative complaint, defendants had ten days to file a timely answer or other responsive pleading to the remaining causes of action that were not disposed of by the demurrer. (Cal. Rules of Court, rule 3.1320(j)(2).) Accordingly, the motion to dismiss as to Mr. Gonzalez-Silva is denied.

*Plaintiff Josue Jimenez*

Plaintiffs oppose the motion to dismiss on the ground that the Third Amended Complaint was not filed due to counsel's calendaring error.<sup>1</sup> Plaintiff's counsel, Henry Nunez, testifies that his office inadvertently failed to calendar either the hearing date for the demurrer to the Second Amended Complaint and/or the due date for the filing of the Third Amended Complaint. (Nunez Decl., ¶¶ 2-4.) Mr. Nunez provides that his office

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<sup>1</sup> In light of the policy in favor of liberal amendment, the facts provided in plaintiffs' motion for relief are considered as part of their opposition to defendants' motion to dismiss.

did not become aware of the deadline for the filing until he received notice of defendants' *ex parte* application to dismiss on June 10, 2024. (*Id.*, at ¶ 4.) As previously indicated, this *ex parte* application to dismiss was premature, since the deadline for filing the Third Amended Complaint was on June 11, 2024.

However, despite being put on notice of the imminent deadline, plaintiffs did nothing to seek an extension to file an amended complaint. Moreover, while plaintiffs called the court to reserve a date for their motion for relief, the court's record reflects that the moving papers were not filed until August 27, 2024. Although Mr. Nunez indicates that during the course of preparing the proposed Third Amended Complaint, he discovered that further causes of action needed to be added, no explanation is provided for plaintiff's delay and inaction to seek either an extension of time to file or permission to file a late amended complaint.

Accordingly, defendants' motion to dismiss as to plaintiff *Jimenez* is granted.

#### Plaintiffs' Motion for Relief

Plaintiffs move for relief from the dismissal under Code of Civil Procedure section 473, subdivision (b). In particular, plaintiffs submit an attorney's affidavit of fault and seek mandatory relief under the statute.

The trial court has broad discretion to vacate the judgment and/or the clerk's entry of default that preceded it. However, that discretion can be exercised only if the moving party establishes a proper ground for relief, by the proper procedure, and within the statutory time limits. (*Cruz v. Fagor America, Inc.* (2007) 146 Cal.App.4th 488, 495.) The court is empowered to relieve a party "upon any terms as may be just ... from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief ... shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken." (Code Civ. Proc., § 473, subd. (b).) The outside time limit for seeking relief under Code of Civil Procedure, section 473, subd. (b) is six months. This limit is jurisdictional in the sense that the court has no power to grant relief after this time regardless of whether an attorney affidavit of fault is filed or how reasonable the excuse for the delay. (*Austin v. Los Angeles Unified School Dist.* (2016) 244 Cal.App.4th 918, 928.)

Generally, where a motion seeking this relief is based on an "attorney affidavit of fault," the relief is mandatory. Otherwise, relief is discretionary. (*Standard Microsystems Corp. v. Winbond Electronics Corp.* (2009) 179 Cal.App.4th 868, 897.)

However, "[a] plaintiff may obtain mandatory relief under Code of Civil Procedure section 473 from a dismissal entered under the discretionary dismissal statutes (§ 583.410 *et seq.*) only if it occurred because the plaintiff's attorney failed to oppose the defendant's motion for dismissal; the plaintiff may not obtain mandatory relief merely by filing an affidavit in which his or her counsel avows that the dismissal came about through counsel's fault." (*Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 618–619.) Since "dismissals [under the discretionary dismissal statutes] are ordered after a hearing in which the court has evaluated and considered the excuses for delay...



[p]laintiff cannot circumvent the court's ruling by filing an attorney affidavit of fault..." (*Id.*, at p. 619, italics in original, citations and quotations omitted.)

"Finding that when the Legislature incorporated dismissals into section 473 subdivision (b) it intended to reach only those dismissals which occur through failure to oppose a dismissal motion—"the only dismissals which are procedurally equivalent to a default,' courts have held the mandatory relief provision inapplicable to dismissals for failure to prosecute [Citation.], dismissals for failure to serve a complaint within three years [Citations.], dismissals based on running of the statute of limitations [Citation.], and voluntary dismissals entered pursuant to settlement [Citation.]" (*Id.*, at p. 620, citations omitted.)

"To this list we add discretionary dismissals based on the failure to file an amended complaint after a demurrer has been sustained with leave to amend, at least where, as here, the dismissal was entered after a hearing on noticed motions which required the court to evaluate the reasons for delay in determining how to exercise its discretion. Like discretionary dismissals for delay in prosecution, ' "virtually all such dismissals are attorney caused and such a construction would result in a disfavored repeal of the discretionary dismissal statute[s] by implication." ' [Citation.]" (*Ibid.*, citations omitted.)

In this case, the court was required to evaluate the reasons for plaintiffs' delay in determining whether to dismiss the action where a demurrer had been sustained with leave to amend but plaintiffs failed to amend within the time specified. Plaintiffs filed an opposition to the motion to dismiss, but provided insufficient explanation for the lengthy delay. Plaintiffs had an opportunity to appear and oppose the motion to dismiss, and thus, mandatory relief is inapplicable. (*Ibid.*)

For reasons previously provided under the section discussing defendants' motion to dismiss, the court does not find the facts provided support discretionary relief under Code of Civil Procedure section 473, subdivision (b).

Accordingly, plaintiffs' motion for relief is denied.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**

**Issued By:** \_\_\_\_\_ **JS** \_\_\_\_\_ **on** **10/15/2024** \_\_\_\_\_  
(Judge's initials) (Date)



(35)

**Tentative Ruling**

Re: **Thorpe-Ghazal v. Bell et al.**  
Superior Court Case No. 24CECG02613

Hearing Date: October 17, 2024 (Dept. 403)

Motion: (1) By Defendant Thomas L. Bell on Demurrer  
(2) By Defendant Thomas L. Bell to Strike Portions of the Complaint

**Tentative Ruling:**

To sustain the demurrer in its entirety, with leave to amend. (Code Civ. Proc. § 430.10, subd. (e).)

To grant the motion to strike portions of the Complaint in its entirety, with leave to amend.

Plaintiff Ylva Thorpe-Ghazal shall serve and file an amended complaint within 10 days of the date of service of this minute order by the clerk. All new allegations shall be in **boldface**.

**Explanation:**

*Demurrer*

On June 18, 2024, plaintiff Ylva Thorpe-Ghazal ("Plaintiff") filed an original Complaint for three causes of action against defendants Thomas L. Bell, Stanley Cooper and RBC Capital Markets, LLC dba RBC Wealth Management. The Complaint states three causes of action: (1) fraud by omission; (2) breach of fiduciary duty; and (3) professional negligence. The first cause of action is not stated against the moving party, defendant Thomas L. Bell ("Defendant"). Defendant on demurrer challenges both the second cause of action, for breach of fiduciary duty, and the third cause of action, for professional negligence, on the grounds that the Complaint fails to state sufficient facts due to applicable statutes of limitation.<sup>1</sup>

On a demurrer a court's function is limited to testing the legal sufficiency of the complaint. A demurrer is simply not the appropriate procedure for determining the truth of disputed facts. (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113-114.) A plaintiff is not required to plead evidentiary facts supporting the allegation of ultimate fact; the pleading is adequate if it apprises defendant of the factual basis for plaintiff's claim. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) In determining a demurrer, the court assumes the truth of the facts alleged in the complaint and the reasonable inferences that may be drawn from those facts. (*Miklosy v. Regents of University of California* (2008) 44 Cal.4th 876, 883.)

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<sup>1</sup> Defendant's Request for Judicial Notice is granted.

## Statute of Limitations

Incidental to both causes of action is the threshold inquiry of timeliness of the action. It appears uncontested that the applicable statute of limitation as to the third cause of action is two years. (Code Civ. Proc. § 339 [action on contract, obligation, or liability not founded upon an instrument of writing is two years]; see also *Moonie v. Lynch* (1967) 256 Cal.App.2d 361, 363.) The parties also appear to agree that the third cause of action is rooted in the same facts or inquiry as the breach of fiduciary duty. Defendant is explicit about this, while Plaintiff argues that discovery rules as to breach of fiduciary duty should apply to the professional negligence cause of action as having the same duty of inquiry.

The parties dispute the applicable statute of limitations of the second cause of action, whether the action is timely within four years versus two. However, there is no material dispute that the nature of the right sued on, not the form of the action determines the applicability of the statute of limitations. (*Lee v. Escrow Consultants, Inc.* (1989) 210 Cal.App.3d 915, 919-920 citing *April Enterprises, Inc. v. KTTV* (1983) 147 Cal.App.3d 805, 828.)

The date when the statute of limitations starts to run in an action for malpractice or negligence by an accountant differs from those of other professions, defined at law, for professions such as medical providers, insurance agents and attorneys. (*Mooney v. Lynch, supra*, 256 Cal.App.2d at p. 363.) Accordingly, in actions such as here, the statute of limitations does not run until the negligent act is discovered, or with reasonable diligence, could have been discovered. This is, in effect, the discovery rule imposed on a breach of fiduciary duty cause of action. (See *April Enterprises, Inc. v. KTTV, supra*, 147 Cal.App.3d at p. 827; see *id.* at pp. 828-829 [“We agree that as a result of judicial pronouncements, the discovery rule can be regarded as the general rule of accrual in many classes of cases in California. It has been applied to nearly every conceivable action for professional malpractice, beginning with its application in 1936 to cases of medical malpractice.”]) A cause of action under the discovery rule accrues when the plaintiff discovers or should have discovered all facts essential to his cause of action. (*Id.* at p. 826.) This has been interpreted to be when a plaintiff either (1) actually discovers her injury and its negligent cause, or (2) could have discovered injury and cause through the exercise of reasonable diligence. (*Id.* at pp. 826-827.)

Plaintiff submits that where a fiduciary relationship exists, there is no duty of diligence or inquiry. (*United States Liab. Ins. Co. v. Haidinger-Hayes, Inc.* (1970) 1 Cal.3d 586, 598, citing *Bennett v. Hibernia Bank* (1956) 47 Cal.2d 540, 563-564.) However, the duty of diligence or inquiry is merely relaxed where there is a fiduciary relationship; the duty exists when the plaintiff has notice of facts sufficient to arouse the suspicions of a reasonable person. (*Bennett v. Hibernia Bank, supra*, 47 Cal.2d 540, 563-564 [finding that the statute of limitations on a claim against a trustee who misappropriates trust property runs from when the beneficiary learns of the breach of the trust, or had facts sufficient to arouse suspicion].)

Defendant submits that Plaintiff was on reasonable inquiry by February 2022. Among the allegations of the Complaint, the Complaint expressly states that in February 2022, defendant Stanley Cooper informed non-party friend to Plaintiff, Jim Miller, that the

trust account balance was down \$300,000 from the prior year. (Complaint, ¶ 44.) Plaintiff submits that the mere dropping of the balance would not put a reasonable person on inquiry of wrongful conduct.

However, the Complaint continues. Namely, the sharp decline caused Plaintiff a great amount of concern. (*Ibid.*) Plaintiff then asked her daughter to go through the statements to confirm the report by Cooper, which indicated that the trust principal had been invaded. (*Ibid.*) Further, the Complaint alleges that Plaintiff initially understood and expected that what her trust would be set up to accomplish was to invest the principal such that she would be supported for the rest of her life, with withdrawals of \$12,500 a month, based only on the income that the investments generated, without touching the principal. (Complaint, ¶¶ 10-15.)

From the above, it would appear that Cooper's report constituted a serious violation of Plaintiff's expectations that the principal would not be invaded. Plaintiff had a natural concern of hearing that the trust was down \$300,000, which caused her to inquire about the status of the principal balance. The allegations of the Complaint would place Plaintiff on notice of facts sufficient to arouse the suspicions of a reasonable person. (Compare, e.g., *Hobart v. Hobart Estate Co.* (1945) 26 Cal.2d 412, 440-441 [noting that the jury made a finding that the plaintiff learned nothing to arouse suspicions and therefore was not put on inquiry].) While, as Plaintiff contends, the poor performance of the account may not have put Plaintiff on inquiry notice on its own, Plaintiff nevertheless inquired, and therefore could discover the facts that formed the basis of her now pending action.

Plaintiff argues that she reasonably believed Cooper's assurances that the drop in the account was due to market conditions until October 2022. This is contradicted by the allegations of the Complaint. (Complaint, ¶ 44.) The Complaint expressly alleges that Plaintiff was greatly concerned by the report, which caused Plaintiff to investigate. (*Ibid.*) In other words, the Complaint demonstrates not reasonable reliance, but reasonable doubt that her account was not being managed properly, namely because the principal was being invaded against her stated wishes.

Plaintiff submits that June 2022 should be the date for consideration because that is when Plaintiff confirmed that something was wrong with the accounts. However, inquiry runs from the date of learning facts to arouse suspicions, the date in which the cause of action becomes discoverable. (See also *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 807-808 [finding that plaintiffs are charged with presumptive knowledge of an injury if they have information of circumstances that put them on inquiry or have the opportunity to obtain knowledge from sources open to their investigation].)

Plaintiff submits that the statute of limitations should be tolled until October 2022 due to Cooper's assurances. To the extent that Plaintiff relies on tolling, the Complaint does not clearly allege the basis. While Plaintiff cites to paragraphs 43 to 46 and 61, none of these paragraphs carry allegations of reasonable reliance after the February 2022 report. At best, the Complaint alleges that Miller, not Plaintiff, accepted the assurances given in March 2021. (Complaint, ¶ 43.) Nothing in any of the paragraphs cited is there an allegation that Plaintiff relied on the representations by Cooper. Nor are there allegations that Plaintiff relied on representations by Defendant that could form the basis

to apply the doctrine of equitable tolling. If this is to be the basis for Plaintiff's claims to be timely asserted, the Complaint does not so allege. The demurrer in its entirety is sustained, with leave to amend.

### *Motion to Strike*

Defendant seeks to strike a punitive damages statement in paragraph 72, as it pertains to the second cause of action, as well as the prayer for punitive damages.<sup>2</sup> Punitive damages are sought pursuant to Civil Code section 3294.

Pleadings are to be construed liberally with a view to substantial justice between the parties. (Code Civ. Proc. § 452.) The allegations in the complaint are considered in context and presumed to be true. (*Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255.) Civil Code section 3294, subdivision (a) provides:

In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

With respect to punitive damage allegations, mere legal conclusions of oppression, fraud or malice are insufficient and therefore may be stricken. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.) However, if looking to the complaint as a whole, sufficient facts are alleged to support the allegations, then a motion to strike should be denied. (*Ibid.*) Allegations that include conclusions of law or that are considered to be ultimate facts will stand if sufficient facts are alleged to support them. (*Ibid.*) Stated another way, if the facts and circumstances are set out clearly, concisely, and with sufficient particularity to apprise the opposite party of what is called on to answer, such is sufficient to support a claim for punitive damages. (*Lehto v. Underground Const. Co.* (1977) 69 Cal.App.3d 933, 944.)

Malice means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. (Civ. Code § 3294, subd. (c)(1).) Oppression means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. (*Id.*, § 3294, subd. (c)(2).) Fraud means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury. (*Id.*, § 3294, subd. (c)(3).)

Defendant submits that there are no factual bases alleged to support punitive damages. After careful review of the Complaint, the court agrees. No facts are alleged

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<sup>2</sup> The motion refers to Item 2 in the prayer as for attorney fees. However, Item 2 of the prayer of the Complaint is for punitive and exemplary damages, consistent with the other portions of the present motion to strike.

with sufficient particularity to support a basis of malice, fraud, or oppression. Defendant's actions, as alleged by the Complaint, and as Defendant argues, may rise to the level of negligence. However, the allegations that Defendant's acts: a failure to disclose material facts, failure to explain, failure to craft accordingly, failure to prepare or provide a financial plan, failure to provide oversight, monitoring or a review, and receiving a referral fee without disclosure; constitute despicable conduct, conscious disregard of a person's right, or is an intentional act to deceive. (Complaint, ¶ 66.)

Plaintiff's opposition does not change these findings. It is not contested that punitive damages are available on a breach of fiduciary duty claim. The specificity of facts is contested. While Plaintiff characterizes the omissions and failures of Defendant to be tantamount to fraud, Plaintiff does not cite to the portions of the Complaint that allege Defendant's intent to deceive. While Plaintiff characterizes an unsuitable investment strategy to be tantamount to conscious disregard, Plaintiff does not cite to the portions of the Complaint that allege that Defendant knew or should have known that the investment strategy was unviable. A bald allegation that the strategy was unviable does not by itself attribute any intentional conduct by Defendant.

The motion to strike is granted in its entirety, with leave to amend.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

**Tentative Ruling**

**Issued By:**       JS       **on**       10/16/2024      .  
(Judge's initials) (Date)