TENTATIVE RULINGS

FOR: September 16, 2020

If you do not see a tentative ruling for a scheduled matter, then attendance at the hearing is required.

Remote appearances via Zoom are mandatory to prevent the spread of COVID-19. Please use Zoom at the links listed below. COURTCALL IS NO LONGER AVAILABLE.

If you have cases scheduled in both courtrooms at the same time, first log-in to the Zoom session for the department that has your quickest matter(s), and upon check-in, ask the clerk to email the clerk in the other department to advise that you will be late to the other Zoom session.

Dept. A Zoom
Join by Video (Preferred)
https://us02web.zoom.us/j/85897874559?pwd=Nk1VTnNQZmIzNXQwbVNiUk1iQTNCZz09
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Dept. B Zoom
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https://us02web.zoom.us/j/89902611018?pwd=OXJRM2FFWHZ4YXJ4b2szZWs1UFJYZz09
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Court Reporting Services – The Court does not provide official court reporters in proceedings for which such services are not legally mandated. Parties are responsible for either making the appropriate request in advance or arranging for their own private court reporter. Go to http://napacountybar.org/court-reporting-services/ for information about local private court reporters. Attorneys or parties must confer with each other to avoid having more than one court reporter present for the same hearing.

PROBATE CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

Estate of Robert C. Hartwell **17PR000010**

MOTION FOR ORDER ENTERING SETTLEMENT AGREEMENT AS JUDGMENT

TENTATIVE RULING: Petitioners Bradford Hartwell and Mary Hartwell's motion for an order entering the settlement agreement as judgment on the ground respondents breached the settlement by failing to pay the amount required under section 1(a) is DENIED WITHOUT PREJUDICE. The settlement agreement states petitioners will be paid following, *inter alia*, liquidation of sufficient trust property and after payment of tax liabilities to the IRS. (Velasquez Decl., Ex., 1, § 1(a).) The settlement agreement has no payment deadline other than a "best efforts" clause to liquidate trust property. (*Id*., Ex. 1, § 1(b) [first amendment].) It appears respondents have used best efforts to liquidate the property. (See generally Gallegos Decl.) Based on the court-requested joint status brief filed on July 22, 2020, efforts to sell real property

is ongoing with three properties listed for sale and two additional properties generating interest from prospective buyers. An additional property has hold-over tenants that cannot be removed due to unlawful detainer restrictions in Los Angeles County Superior Court from the COVID-19 pandemic. Respondents, at this time, have not breached the settlement agreement or the first amendment by failing to pay the amount required under section 1(a).

The settlement agreement contains an attorney's fee and costs clause if any party commences any legal proceeding concerning any aspect of the agreement. (Velasquez Decl., Ex. 1, §§ 3, 15.) Pursuant to that clause, respondents are entitled to their attorney's fees and costs as the prevailing party on this motion. Respondents shall recover their attorney's fees and costs incurred for opposing this motion. Respondents shall notice a motion to obtain a fee award, but the parties must first meet and confer to try and resolve the fees issue without the need for motion practice.

CIVIL LAW & MOTION CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

A.U.L. Corp. v. Nissan North America, Inc. **20CV000362**

DEMURRER TO THE COMPLAINT

TENTATIVE RULING: Defendant Nissan North America, Inc.'s request for judicial notice is GRANTED IN PART AND DENIED IN PART. The request is granted as to the March 10, 2020 Order and Judgment Granting Final Approval of Class Action Settlement from *Gann v. Nissan N. Am., Inc.* (M.D. Tenn.), No. 3:18-cv-00966 (M.D. Tenn.), *Weckwerth v. Nissan N. Am., Inc.* (M.D. Tenn.), No. 3-18-cv-00534, and *Norman v. Nissan N. Am., Inc.* (M.D. Tenn.), No. 3:18-cv-000534. The request is denied as to the January 23, 2020 Demand Letter from plaintiff to defendant (Exhibit A). Although a "demand" is referenced in the complaint at paragraph 40, no "Demand Letter" is referenced and there is a dispute as to the meaning of the letter, which renders its contents as not an appropriate subject of judicial notice. Plaintiff A.U.L. Corp.'s objection to defendant's request for judicial notice as to Exhibit A is SUSTAINED for this reason.

Plaintiff's request for judicial notice of complaints and docket sheets from other cases involving defendant in California (Exhibits 2-5) is DENIED. The request is not relevant and was not made in a separate document from the objection to defendant's request for judicial notice. (Cal. Rules of Court, rule 3.1113(l).) The Court has not considered the purported February 7, 2020 letter (Exhibit 1) defendant sent in response to the January 23, 2020 "Demand Letter" as plaintiff did not request judicial notice of this document and it is not the proper subject of judicial notice.

Defendant's request for judicial notice submitted with its reply is DENIED. Exhibits 1-2 are submitted to provide a list of individuals who opted out of the settlements in *Gann* and *Weckwerth*. These are being submitted in response to plaintiff's request for judicial notice of the complaints and docket sheets from cases involving defendant in California. Because the Court

denied the request as to these materials as irrelevant, defendant's corresponding request necessarily fails for the same reason.

Defendant's demurrer to the entire complaint on the ground if failure to state sufficient facts because the action was brought in an improper forum is OVERRULED. The complaint attaches three class action settlements from the U.S. District Court, Middle District of Tennessee: *Gann*, *Weckwerth*, and *Norman*. (Compl., ¶ 19, Exs. 1-3.) As part of the settlements, defendant agreed to reimburse class members for the cost of certain repairs made after expiration of the initial warranty period and to provide a warranty extension of up to 24 months or 24,000 miles for owners and lessees of 2013-16 Nissan Altima, 2013-17 Nissan Sentra, 2014-17 Nissan Note, 2012-17 Nissan Versa, and 2013-17 Nissan Juke vehicles equipped with a Continuously Variable Transmission ("CVT"). In exchange, class members agreed to dismiss the actions and release defendant from all "Released Claims," which included any claims based upon the transmission design, manufacturing, performance, or repair of class vehicles. The settlement agreements contain a provision stating the Middle District of Tennessee retains jurisdiction over the parties with respect to the future performance of the terms of the settlement agreement including whether any claim being asserted in any court or forum is released by the terms of the settlement agreements. (*Id*., Ex. 1, ¶ 108, Ex. 2, ¶ 107, Ex. 3, ¶ 106.) Defendant also denied all liability in the settlement agreements. (*Id*., ¶ 25.)

Based on these settlement agreements, defendant argues plaintiff's claims are required to be brought in federal court in Tennessee and this Court should dismiss or stay the action pursuant to Code of Civil Procedure section 410.30, subdivision (a). Defendant's argument, however, only addresses the claims as they may relate to the settlement agreements. "A demurrer does not lie to only a portion of a cause of action." (*PH II, Inc. v. Super. Ct.* (1995) 33 Cal.App.4th 1680, 1682-83.) Plaintiff's complaint alleges the CVT defect is not limited to the class vehicles identified in *Gann, Weckwerth*, and *Norman* as this action includes additional model years and different vehicles such as the Nissan Rogue, Murano, Maxima, and Pathfinder. (*Id*., ¶ 32.) Because the claims are based on additional allegations falling outside the settlement agreements, the demurrer is not sustainable.

More importantly, the Court is not convinced a demurrer is the proper procedural vehicle to resolve whether this action, or portions of it, should be heard in a forum outside California. It is clear from the requests for judicial notice that there is additional evidence outside the pleadings, and not the proper subject of judicial notice, that the parties want to bring before the Court for consideration when reviewing the forum selection clauses in the settlement agreements. A demurrer is not intended to devolve into a contested proceeding as just the pleadings are at issue. Defendant is free to bring a motion under Code of Civil Procedure section 410.30 or other applicable motion to challenge this forum. But for purposes of this demurrer, all that concerns the Court is what is alleged in the complaint. As noted, the demurrer is not sustainable.

Defendant's demurrer to the entire complaint on the ground of failure to state sufficient facts due to the failure to plead any facts regarding the individual circumstances for any of the repairs at issue or for the claimed payments is OVERRULED. Defendant raises no California case law requiring such specificity of allegations in a pleading. There is no doubt these

particular facts will be uncovered during the discovery process, the discovery of which, could impact a motion for inconvenient forum.

Defendant's demurrer to the first cause of action for subrogation on the ground of failure to state sufficient facts is OVERRULED. "'The essential elements of an insurer's cause of action for equitable subrogation are as follows: (a) the insured suffered a loss for which the defendant is liable, either as the wrongdoer whose act or omission caused the loss or because the defendant is legally responsible to the insured for the loss caused by the wrongdoer; (b) the claimed loss was one for which the insurer was not primarily liable; (c) the insurer has compensated the insured in whole or in part for the same loss for which the defendant is primarily liable; (d) the insurer has paid the claim of its insured to protect its own interest and not as a volunteer; (e) the insured has an existing, assignable cause of action against the defendant which the insured could have asserted for its own benefit had it not been compensated for its loss by the insurer; (f) the insurer has suffered damages caused by the act or omission upon which the liability of the defendant depends; (g) justice requires that the loss be entirely shifted from the insurer to the defendant, whose equitable position is inferior to that of the insurer; and (h) the insurer's damages are in a liquidated sum, generally the amount paid to the insured.'" (*Western Heritage Ins. Co. v. Frances Todd, Inc.* (2019) 33 Cal.App.5th 976, 984, quoting *Fireman's Fund Ins. Co. v. Maryland Casualty Co.* (1998) 65 Cal.App.4th 1279, 1292.) Defendant asserts plaintiff has not alleged facts that satisfy elements (a) or (e) because class members have not suffered a loss for which defendant is liable and class members have released their CVT repair claims against defendant. These assertions, however, only address the cause of action as it may relate to the settlement agreements rather than the entire claim that includes the allegation falling outside the settlement agreements regarding additional model years and different vehicles. (Compl., ¶ 32; see *PH II, Inc., supra*, 33 Cal.App.4th 1680, 1682-83 ["A demurrer does not lie to only a portion of a cause of action."].) The demurrer is not sustainable.

Defendant's demurrer to the second cause of action for restitution on the ground of failure to state sufficient facts is OVERRULED. Defendants argue the claim is a remedy and not a freestanding cause of action. A motion to strike, not a general demurrer, is the procedure to attack an improper remedy demanded in the complaint. (See *Venice Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal.App.4th 1547, 1561-62.)

Defendant's demurrer to the third cause of action for equitable contribution on the ground of failure to state sufficient facts is OVERRULED. Defendant avers plaintiff failed to allege it and defendant insured the same risk or loss based on the settlement agreements. Because defendants have not addressed the entire cause of action under the allegation falling outside the settlement agreements regarding additional model years and different vehicles, the demurrer as to this claim necessarily fails. (Compl., ¶ 32; see *PH II, Inc., supra,* 33 Cal.App.4th 1680, 1682-83.)

Defendant's demurrer to the fourth cause of action for quantum meruit on the ground of failure to state sufficient facts is OVERRULED. Defendant asserts plaintiff failed to allege it acted pursuant to a request from defendant or with intent to benefit defendant. Plaintiff, however, alleges "Defendants requested, by words or conduct, that [plaintiff] perform services or deliver goods for the benefit of Defendants." (Compl., ¶ 50.) Whether this allegation defies

common sense or cannot be supported is beyond the scope of a demurrer as the Court must assume the allegation is true.

Defendant shall file its answer within 10 calendar days of service of notice of entry of order.