November 13, 2026
Dept. 9
Civil Tentative Rulings

1.	**22CV1011**	**SHINGLE SPRINGS BAND OF MIWOK INDIANS VS. FLINTCO PACIFIC, INC.**
OSC HEARING		

On October 27, 2026, Plaintiff, Shingle Springs Band of Miwok Indians ("Plaintiff" or the "Tribe"), filed an Amended Response to Order to Show Cause Re Monetary Sanctions Should Not be Imposed for Plaintiff SSBMI's Failure to Timely Provide the PMK and Percipient Witness Information Required by PTO No. 4. On the same date, Defendant, Flintco Pacific, Inc. ("Defendant"), filed an Order to Show Cause Statement in Support of Monetary Sanctions.

Background

On August 18, 2026, Special Master, Karl R. Molineux, Esq. ("Special Master"), submitted his Recommended Order Regarding Compliance with Pre-Trial Order No. 4 and Order to Show Cause ("the "Recommended Order"). Pre-Trial Order No. 4 ("PTO # 4") provides that the parties were to designate person most knowledgeable ("PMK") witnesses and percipient witnesses to be deposed on or before May 15, 2026, which was subsequently extended by the Special Master.

On July 28, 2026, the Special Master determined Plaintiff had not yet provided all PMK and percipient-witness information required by PTO No. 4, as subsequently modified. The Special Master advised counsel that he intended to prepare a recommended order addressing Plaintiff's compliance with the outstanding requirements but that, if Plaintiff brought itself into compliance before the recommended order was finalized and submitted to the Court, the recommended order would not be submitted. As of the submission of the Recommended Order, Plaintiff had not provided all the person most knowledgeable ("PMK") and percipient-witness information required by PTO No. 4, as modified, including complete PMK designations and corresponding deposition availability and the required information concerning percipient witnesses.

On August 25, 2026, the Court entered its Order Regarding Compliance with Pre-Trial Order No. 4 and Order to Show Cause. The Court set a hearing on October 30, 2026, which was thereafter continued to November 13, 2026, to show cause why monetary sanctions should not be imposed for their past failure to provide the PMK and percipient-witness information required by PTO # 4, as subsequently modified.

Discussion

Plaintiff argues monetary sanctions are not warranted because the Tribe has provided the PMK designations, deposition dates, and percipient witness information required by PTO #4, and every one of its designated witnesses has now been deposed. Plaintiff asserts the delay was substantially justified due to Defendant's request to designate witnesses on 95 separate

categories of testimony and to account for 32 percipient witnesses regarding a clinic designed and built between 2008 and 2011, of which many of the people with knowledge of that work left the Tribe years ago.

Additionally, the Tribe's principal designee, William David Murray, Jr., was dealing with health issues which affected his ability to commit to dates. On August 20, 2026, the Tribe served updated designations assigning specific categories to specific witnesses, proposed deposition dates, and the last known addresses of the former employees it cannot produce. As such, Defendant suffered no prejudice. The Tribe's designees were deposed between September 21, 2026, and October 13, 2026, whereas Defendant cancelled the deposition of their PMK.

Defendant argues that Plaintiff repeatedly failed to timely identify its PMK witnesses, failed to provide sufficient deposition availability, failed to resolve inconsistencies in its PMK designations, and failed to meaningfully meet and confer concerning a workable deposition schedule. Defendant contends that Plaintiff's noncompliance continued after entry of the PTO Compliance Order and it was not until September 15, 2026, that the Special Master was able to provide a confirmed deposition schedule for Plaintiff's PMKs.

Problems persisted after the depositions began, including assigning individuals as the PMK who lacked information as to the identified categories and re-scheduling and cancellation of depositions. Defendant was prejudiced because they were required to participate in numerous conferences and meet-and-confer efforts from July through September to obtain information and deposition availability which should have been provided pursuant to PTO 4. Additionally, depositions that should have proceeded earlier were delayed and remained incomplete well into October. Due to a sustained course of noncompliance, Defendant maintains that monetary sanctions are warranted.

Code of Civil Procedure, section 177.5 provides:

> A judicial officer shall have the power to impose reasonable money sanctions, not to exceed fifteen hundred dollars ($1,500), notwithstanding any other provision of law, payable to the court, for any violation of a lawful court order by a person, done without good cause or substantial justification. This power shall not apply to advocacy of counsel before the court. For the purposes of this section, the term "person" includes a witness, a party, a party's attorney, or both.
>
> Sanctions pursuant to this section shall not be imposed except on notice contained in a party's moving or responding papers; or on the court's own motion, after notice and opportunity to be heard. An order imposing sanctions shall be in writing and shall recite in detail the conduct or circumstances justifying the order.

The Court finds good cause exists for the imposition of sanctions. Plaintiff repeatedly failed to comply with the deadlines imposed by PTO #4, even after the Special Master's direction and opportunity to remedy the violation. Thereafter, Plaintiff failed to correctly identify the PMKs for several of the topics and several of the depositions required continuances. The Court acknowledges the difficulty in acquiring PMKs for 95 categories; however, Plaintiff had an extended amount of time to ensure it was done accurately. Accordingly, the Court orders an imposition of $500.00 in sanctions payable to the Court by Plaintiff within thirty (30) days of the Court's order.

TENTATIVE RULING #1:

FINDING GOOD CAUSE EXISTS FOR THE IMPOSITION OF SANCTIONS, PLAINTIFF IS ORDERED TO PAY $500.00 TO THE COURT WITHIN THIRTY (30) DAYS OF THE COURT'S ORDER.

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2.	**25CV1880**	**KELLY WILSON VS. TESLA, INC.**
MOTION TO COMPEL		

This matter was continued from October 23, 2026. The tentative ruling issued on October 23, 2026, remains in effect.

TENTATIVE RULING #2:

THE TENTATIVE RULING ISSUED ON OCTOBER 23, 2026, REMAINS IN EFFECT.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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3.	**25CV3075**	**DEEPAK PATEL ET AL VS. ARVO SOLAR, A BUSINESS ENTITY FORM UNKNOWN ET AL**
MOTION FOR ORDER PERMITTING DISCOVERY OF FINANCIAL CONDITION		

This matter was continued from October 23, 2026. The tentative ruling issued on October 23, 2026, remains in effect.

TENTATIVE RULING #3:

THE TENTATIVE RULING ISSUED ON OCTOBER 23, 2026, REMAINS IN EFFECT.

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4.	**26CV1525**	**GRIFFIN BURKE ET AL VS. DEB HOWARD & CO INC.**
MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT		

The Notice does not comply with Local Rules 7.10.05. Repeated violations will be grounds for sanctions pursuant to Local Rule 7.12.13.

On September 22, 2026, Plaintiffs, Griffin Burke and Gregory Burke (collectively "Plaintiffs"), filed a Motion for Leave to File Second Amended Complaint. No opposition has been filed.

Plaintiffs seek leave to file the Second Amended Complaint which has been lodged with the underlying motion. The proposed amendment adds allegations concerning Pearson Properties based upon facts relating to Pearson's relationship to Deb Howard & Co., Inc., the January 3, 2023, transition of the licenses and business of Debra K. Howard and Walter K. Johnson to Pearson Properties, Pearson's alleged supervisory role while the transaction remained in escrow, the disposition of the transaction commission, and the subsequent transfer of Deb Howard & Co.'s operating business and economic value. Based upon those newly discovered facts, Plaintiffs add claims directed to Pearson Properties, including negligence, negligence per se/breach of statutory duty, and fraudulent transfer. The amendment arises from the same transaction and the same underlying facts already at issue in this action.

The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, 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; and may upon like terms allow an answer to be made after the time limited by this code. Code of Civil Procedure, § 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. Code of Civil Procedure § 576.

There is a general policy in this state of great liberality in allowing amendment of pleadings at any stage of the litigation to allow cases to be decided on their merits. (*Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1047.) The rule of great liberality is particularly important where an amendment is sought to an answer. (*Hulsey v. Koehler* (1990) 218 Cal.App.3d 1150, 1159; *Hyman v. Tarplee* (1944) 64 Cal.App.2d 805, 813-814.) "…it is a rare case in which 'a court will be justified in refusing a party leave to amend his pleadings so that he may properly present his case.' (Citations omitted.) If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a

meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion. (Citations omitted.)" (*Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, 530.) "…absent a showing of prejudice to the adverse party, the rule of great liberality in allowing amendment of pleadings will prevail. (*Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 564, 176 Cal.Rptr. 704.)" (*Board of Trustees of Leland Stanford Jr. University v. Superior Court* (2007) 149 Cal.App.4th 1154, 1163.)

It is irrelevant that new legal theories are introduced in the proposed amended pleading as long as the proposed amendments relate to the same general set of facts in the pleading that will be superseded. (*Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048.)

The Court finds Plaintiffs have complied with the requirements of California Rules of Court, Rule 3.1324. Pursuant to Code of Civil Procedure §§ 473(a)(1) and 576, in the furtherance of justice, and in light of the liberal policy favoring amendment, Plaintiffs' Motion for Leave to File Second Amended Complaint is granted.

TENTATIVE RULING #4:

PLAINTIFFS' MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT IS GRANTED.

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5.	**26CV2365**	**IN THE MATTER OF FARMERS INSURANCE EXCHANGE**
MOTION TO COMPEL / DEEM REQUESTS FOR ADMISSION ADMITTED		

On September 16, 2026, Respondent, Farmers Insurance Exchange ("Respondent"), filed the following motions: 1) Motion to Have Requests for Admission Deemed Admitted and for Monetary Sanctions; 2) Motion to Compel Responses to Form Interrogatories, Set One, and Special Interrogatories, Set One; and 3) Motion to Compel Responses to Demand for Production, Set One (collectively the "Discovery Motions"). No opposition has been filed.

On June 10, 2026, Respondent electronically served Demand for Production, Set One, Form Interrogatories, Set One, and Special Interrogatories, Set One, and Requests for Admission, Set One (collectively the "Discovery Requests"), on Claimant, Stacey Marie Moore ("Claimant"), with a response date of July 14, 2026. To date, no response has been served.

Pursuant to Code of Civil Procedure § 2033.280, if a party to whom requests for admission are directed fails to serve a timely response, the requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for monetary sanctions. Such an order is mandatory unless the court finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with § 2033.220.

Code of Civil Procedure § 2030.290 provides if a party to whom interrogatories are directed fails to serve a timely response, the following rules apply:

> (a) The party to whom the interrogatories are directed waives any right to exercise the option to produce writings under Section 2030.230, as well as any objection to the interrogatories, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:
>
> > (1) The party has subsequently served a response that is in substantial compliance with Sections 2030.210, 2030.220, 2030.230, and 2030.240.
> >
> > (2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

Code of Civil Procedure § 2031.300 provides if a party to whom a demand for inspection, copying, testing, or sampling is directed fails to serve a timely response to it, the following rules shall apply:

(a) The party to whom the demand for inspection, copying, testing, or sampling is directed waives any objection to the demand, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:

(1) The party has subsequently served a response that is in substantial compliance with Sections 2031.210, 2031.220, 2031.230, 2031.240, and 2031.280.

(2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

The Court finds that Claimant failed to provide a response to the Discovery Requests. Respondent's Discovery Motions are granted as requested. Claimant is ordered to serve verified, code-compliant responses without objections to Demand for Production, Set One, Form Interrogatories, Set One, and Special Interrogatories, Set One, within ten (10) days of the Court's order.

Code of Civil Procedure § 2023.030 authorizes the Court to impose a monetary sanction against parties engaged in misuse of the discovery process, to pay the reasonable expenses including attorney's fees, incurred by anyone as a result of that conduct.

Code of Civil Procedure § 2023.010 defines "misuse of the discovery process" to include "failing to respond or to submit to an authorized method of discovery."

Regarding the request for monetary sanctions, sanctions are mandatory for one who "unsuccessfully makes or opposes a motion to compel a response...unless [the court] finds that one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust" Cal. Civ. Pro. §2030.290 (interrogatories), § 2031.300(c) (requests for production) & § 2033.280(c)(requests for admission). In all other circumstances, the imposition of discovery sanctions is permissive. This includes instances where there has been no opposition and discovery responses were served after the filing of the motion. Cal. Rule of Ct., Rule 3.1348(a).

The Court finds that Claimant's failure to provide to the Discovery Requests constitutes a misuse of the discovery process. Respondent's requests for sanctions is granted as requested, payable by Claimant within thirty (30) days of the Court's order.

TENTATIVE RULING #5:

RESPONDENT'S DISCOVERY MOTIONS ARE GRANTED AS REQUESTED. CLAIMANT IS ORDERED TO SERVE VERIFIED, CODE-COMPLIANT RESPONSES WITHOUT OBJECTIONS TO DEMAND FOR PRODUCTION, SET ONE, FORM INTERROGATORIES, SET ONE, AND SPECIAL INTERROGATORIES, SET ONE, WITHIN TEN (10) DAYS OF THE COURT'S ORDER.

RESPONDENT'S REQUEST FOR SANCTIONS IS GRANTED AS REQUESTED. CLAIMANT SHALL REMIT PAYMENT TO RESPONDENT WITHIN THIRTY (30) DAYS OF THE COURT'S ORDER.

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HEARING DATE. INSTRUCTIONS FOR REMOTE APPEARANCE CAN BE FOUND ON THE COURT'S WEBSITE AT: https://www.eldorado.courts.ca.gov/online-services/remote-appearances.

6.	**26CV2504**	**PETITION OF PEACHTREE SETTLEMENT FUNDING, LLC APPROVAL FOR TRANSFER OF PAYMENT RIGHTS**

The Notice does not comply with Local Rules 7.10.05. Repeated violations will be grounds for sanctions pursuant to Local Rule 7.12.13.

Prior to approving a petition for the transfer of payment rights, this Court is required to make a number of express written findings pursuant to Cal. Insurance Code § 10139.5, including the following:

1. The transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents. This finding is supported by the Declaration of Payee in Support of Petitioner's Petition (the "Declaration"). See also, Petition 4:7-20.
2. The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received that advice or knowingly waived, in writing, the opportunity to receive the advice. This finding is supported by Exhibit C to the Petition. *See also,* Petition 4:21-23.
3. The transferee has complied with the notification requirements pursuant to paragraph (2) of subdivision (f), the transferee has provided the payee with a disclosure form that complies with Section 10136, and the transfer agreement complies with Sections 10136 and 10138. This finding is supported by Exhibit A and B to the Petition and the Declaration.
4. The transfer does not contravene any applicable statute or the order of any court or other government authority. This finding is supported by Exhibit A to the Petition.
5. The payee understands the terms of the transfer agreement, including the terms set forth in the disclosure statement required by Section 10136. This finding is supported by Exhibit A to the Petition and the Declaration.
6. The payee understands and does not wish to exercise the payee's right to cancel the transfer agreement. This finding is supported by Exhibit A to the Petition and the Declaration.

In addition to the express written findings required by the applicable statutes, Cal. Ins. Code § 10139.5(b) requires the Court to determine whether, based on the totality of the circumstances and considering the payee's age, mental capacity, legal knowledge, and apparent maturity level, the proposed transfer is fair and reasonable, and in the payee's best interests. The Court may deny or defer ruling on the petition if the Court believes that the payee does not fully understand the proposed transaction, and/or that the payee should obtain independent legal or financial advice regarding the transaction.

The Petition submitted generally contains the information required by the Insurance Code for Court approval of this transaction. However, some information required by the statutes is missing, as required pursuant to § 10139.5(c)(4):

1. The amounts and sources of the monthly income and financial resources of the payee's spouse.

This Court cannot grant this Petition in compliance with the applicable statutes, without more information as described above, either through submittal of a declaration of the Payee, or by appearance and testimony.

TENTATIVE RULING #6:

APPEARANCES ARE REQUIRED FRIDAY, NOVEMBER 13, 2026, AT 8:30 A.M. IN DEPARTMENT NINE.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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7.	**26CV1466**	**MR. ROOF AND SOLAR INC. DBA AMERICAN EAGLE ROOFING VS. JOHN BARBOUR**
MOTION TO COMPEL ARBITRATION AND STAY COURT ACTION		

The Notice does not comply with Local Rules 7.10.05. Repeated violations will be grounds for sanctions pursuant to Local Rule 7.12.13.

On September 23, 2026, Defendant/Cross-Complainant, John Barbour ("Defendant"), filed a Motion to Compel Arbitration and Stay Court Action. No opposition has been filed.

Legal Principles

Code of Civil Procedure § 1281.2 provides, in part:

> On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party to the agreement refuses to arbitrate that controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that:
>
> (a) The right to compel arbitration has been waived by the petitioner; or
>
> (b) Grounds exist for rescission of the agreement.

Code of Civil Procedure § 1281.4 provides:

> If a court of competent jurisdiction, whether in this State or not, has ordered arbitration of a controversy which is an issue involved in an action or proceeding pending before a court of this State, the court in which such action or proceeding is pending shall, upon motion of a party to such action or proceeding, stay the action or proceeding until an arbitration is had in accordance with the order to arbitrate or until such earlier time as the court specifies.
>
> If an application has been made to a court of competent jurisdiction, whether in this State or not, for an order to arbitrate a controversy which is an issue involved in an action or proceeding pending before a court of this State and such application is undetermined, the court in which such action or proceeding is pending shall, upon motion of a party to such action or proceeding, stay the action or proceeding until the application for an order to arbitrate is determined and, if arbitration of such controversy is ordered, until an arbitration is had in accordance with the order to arbitrate or until such earlier time as the court specifies.

> If the issue which is the controversy subject to arbitration is severable, the stay may be with respect to that issue only.

Background

On May 26, 2026, Plaintiff, Mr. Roof and Solar Inc., a California corporation, dba American Eagle Roofing ("Plaintiff"), filed a Complaint for 1) Breach of Contract; 2) Quantum Meruit; 3) Common Count – Account Stated; and 4) Common Count – Open Book. To date, Defendant has not filed an Answer.

On August 20, 2026, Defendant filed a Cross-Complaint for 1) Breach of Contract; 2) Breach of Express Warranty; 3) Unfair Business Practices – Bus. & Prof. Code § 17200 Et Seq.; and 4) False or Fraudulent Inducement to Contract – Bus. & Prof. Code § 7160, wherein Defendant expressly asserted the Cross-Complaint was filed to preserve transactionally related claims and does not intend to relinquish his contractual right to arbitration.

Discussion

Defendant contends that on June 29, 2022, Plaintiff and Defendant entered into two written home-improvement contract agreements for roofing and related construction work. Each agreement includes the same provision, titled "Arbitration," which provides:

> Any dispute arising out of the work agreed herein must be raised and steeled[sic] in an arbitration proceeding held in accordance with the construction industry rules of the American Arbitration Association then in effect.

Defendant contends he attempted to meet and confer with Plaintiff's counsel on June 17, 2026, and September 21, 2026, regarding deficiencies in the Complaint and Defendant's intention to compel arbitration. Plaintiff declined to stipulate to arbitration and stay the action. Although Defendant filed a Cross-Complaint, he asserts it was filed to preserve compulsory cross-claims and expressly states that filing does not consent to judicial adjudication or waive the contractual right to arbitration, reserves all arbitration rights, and states Defendant's intent to seek a stipulation or move to compel arbitration and stay the action.

The Court finds that the executed Forms/Proposals dated June 29, 2022, contain valid arbitration agreements. The Court does not find that Defendant has waived his right to arbitrate or that grounds exist for recission of the agreement. Defendant's Motion to Compel Arbitration and Stay Court Action is granted.

TENTATIVE RULING #7:

DEFENDANT'S MOTION TO COMPEL ARBITRATION AND STAY COURT ACTION IS GRANTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL.

RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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8.	24CV2236	DEDRA COX VS. KENNETH L. BAZEMORE, JR.
JUDGMENT ON THE PLEADINGS		

On October 16, 2026, Defendant, Kenneth L. Bazemore ("Defendant"), filed a Motion for Judgment on the Pleadings. On October 30, 2026, Plaintiff, Dedra Cox ("Plaintiff"), filed an Opposition.

Background

On October 8, 2024, Plaintiff filed a Complaint ("SAC") alleging the following causes of action: 1) Negligence; 2) Statutory Liability (Dog Bite Statute); 3) Strict Liability; 4) Premises Liability; 5) Breach of Contract; 6) Breach of the Covenant of Good Faith and Fair Dealing; 7) Unjust Enrichment; 8) Work Environment Harassment; and 9) Retaliation.

On March 20, 2026, the Court granted Plaintiff's Motion for Summary Judgment as to the causes of action for Statutory Liability (Dog Bite Statute under Civil Code § 3342) and Breach of Contract.

Legal Principles

When a motion for judgment on the pleadings is made by a defendant, the court must find that the complaint on its face does not state facts sufficient to constitute a cause of action against the defendant. Code of Civil Procedure § 438(c)(1)(B)(ii). The court may consider the allegations of the complaint and any matter of which the court is required to take judicial notice. "Where the motion is based on a matter of which the court may take judicial notice pursuant to Section 452 or 453 of the Evidence Code, the matter shall be specified in the notice of motion, or in the supporting points and authorities, except as the court may otherwise permit." Code of Civil Procedure § 438(d).

In ruling on motions for judgment on the pleadings, the court need not treat as true contentions, deductions or conclusions of fact or law. *People ex rel. Harris v. Pac Anchor Transp., Inc.* (2014) 59 Cal.4th 772, 777.

A motion for judgment on the pleadings performs the same function as a general demurrer...." (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999, 79 Cal.Rptr.2d 544.) "It is axiomatic that a demurrer lies only for defects appearing on the face of the pleadings." (*Harboring Villas Homeowners Assn. v. Superior Court* (1998) 63 Cal.App.4th 426, 429, 73 Cal.Rptr.2d 646.) Consequently, when considering a motion for judgment on the pleadings, "[a]ll facts alleged in the complaint are deemed admitted...." (*Lance Camper Manufacturing Corp. v. Republic Indemnity Co.* (1996) 44 Cal.App.4th 194, 198, 51 Cal.Rptr.2d 622.) "Presentation of extrinsic evidence is therefore not proper on a motion for judgment on the pleadings." (*Cloud,* at p. 999, 79 Cal.Rptr.2d 544.) *Sykora v. State Department of State Hospitals* (2014) 225 Cal.App.4th 1530, 1534.

The hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of having the court take judicial notice of affidavits, declarations, depositions, and other such material which was filed on behalf of the adverse party and which purports to contradict the allegations and contentions of the plaintiff. (*Tyree v. Epstein*, 99 Cal.App.2d 361, 221 P.2d 1002.)" *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604-605.

If the allegations in the complaint conflict with attached exhibits, we rely on and accept as true the contents and legal effect of the exhibits. (*SC Manufactured Homes, Inc. v. Liebert* (2008) 162 Cal.App.4th 68, 83, 76 Cal.Rptr.3d 73; *Barnett v. Fireman's Fund Ins. Co.* (2001) 90 Cal.App.4th 500, 505, 108 Cal.Rptr.2d 657.)" *Chisom v. Board of Retirement of County of Fresno Employees' Retirement Association* (2013) 218 Cal.App.4th 400, 410.

A motion for judgment on the pleadings may be granted with or without leave to amend. Cal. Civ. Pro. § 438(h)(1). Generally speaking, leave to amend is to be liberally granted. *Mendoza v. Continental Sales Co.* (2006) 140 Cal. App. 4th 1395 ("When there is a reasonable possibility that a defect in pleading can be cured by amendment, the trial court considering the motion for judgment on the pleadings abuses its discretion by not granting leave to amend…"). However, where the defective pleading is not reasonably susceptible to cure, it is proper for the court to decline leave to amend. *Id*. When leave to amend is not granted, "…then judgment shall be entered forthwith in accordance with the motion granting judgment to the moving party." Cal. Civ. Pro. § 438(h)(3).

Meet and Confer

Code of Civil Procedure § 439(a) provides a meet and confer requirement in which the moving party must meet in confer in person, by telephone, or by video conference for the purpose of determining whether an agreement can be reached. A determination by the court that the meet and confer process was insufficient shall not be grounds to grant or deny the motion for judgment on the pleadings.

Defendant's counsel states that Plaintiff was sent a meet-and-confer letter regarding the underlying motion on October 6, 2026. Despite Plaintiff's counsel responding to the email chain, counsel did not address the grounds raised regarding the underlying motion and the parties were therefore unable to resolve the issues raised without Court intervention.

Discussion

1. Timeliness

Plaintiff argues Defendant's motion should be denied because the initial trial date was May 19, 2026, therefore making the motion untimely pursuant to Code of Civil Procedure § 438.

Code of Civil Procedure § 438(e) provides that no motion may be made pursuant to this section if a pretrial conference order has been entered pursuant to Section 575, or within 30 days of the date the action is initially set for trial, whichever is later, unless the court otherwise permits.

"It is evident that whether to grant ... leave [to file a late motion for judgment on the pleadings] is a matter residing in the trial court's discretion to control litigation before it." (*Sutherland v. City of Fort Bragg, supra,* 86 Cal.App.4th at p. 25, fn. 4, 102 Cal.Rptr.2d 736.) ... "The interests of all parties are advanced by avoiding a trial and reversal for defect in pleadings." (*Ion Equipment Corp. v. Nelson* (1980) 110 Cal.App.3d 868, 877, 168 Cal.Rptr. 361.) *Burnett v. Chimney Sweep* (2004) 123 Cal.App.4th 1057, 1063 [20 Cal.Rptr.3d 562, 567].

Section 438, subdivision (e) "authorizes the trial court to permit late filings of such motions and does not specify any grounds which might serve to limit its power to do so." (*Sutherland v. City of Fort Bragg* (2000) 86 Cal.App.4th 13, 25, fn. 4 [102 Cal. Rptr. 2d 736]; see *Burnett v. Chimney Sweep* (2004) 123 Cal.App.4th 1057, 1063 [20 Cal. Rptr. 3d 562] [§ 438, subd. (e) permits late filings of motions for judgment on the pleadings and does not impose a "good cause" requirement].) *Korchemny v. Piterman* (2021) 68 Cal.App.5th 1032, 1054 [284 Cal.Rptr.3d 104, 121].

The Court within its inherent discretion permits Defendant's motion to proceed on the merits.

2. First, Third, Fourth, and Sixth, Causes of Action - Negligence, Common-Law Strict Liability, Premises Liability, and Breach of Implied Covenant of Good Faith and Fair Dealing

Defendant argues that the First, Third, Fourth, and Sixth Causes of Action provide no independent basis for liability or recovery beyond Plaintiff's already adjudicated statutory dog-bite claim and should not remain as separate causes of action for trial. Additionally, Defendant asserts Plaintiff has abandoned these causes of action, yet those claims remain in the operative Complaint. Plaintiff's express abandonment supports resolving them now and eliminating any ambiguity regarding the claims remaining for trial.

Plaintiff concedes she does not intend to submit her First Cause of Action for Negligence, Third Cause of Action for Strict Liability, Fourth Cause of Action for Premises Liability, or Sixth Cause of Action for Breach of the Implied Covenant of Good Faith and Fair Dealing as separate causes of action at trial. Plaintiff requests that any order granting judgment on the pleadings should be expressly limited to the causes of action identified and should preserve the Court's prior adjudication of liability and the damages remaining for trial.

Finding Plaintiff has abandoned the First, Third, Fourth, and Sixth Causes of Action, Defendant's Motion for Judgment on the Pleadings is granted without leave to amend. The

Court's prior order granting Plaintiff's summary adjudication of the Second and Fifth Causes of Action remains in full force and effect.

3. Seventh Cause of Action – Unjust Enrichment

Defendant asserts California does not recognize a standalone cause of action for unjust enrichment and unjust enrichment is generally an inapplicable basis for restitution where the parties have an enforceable express contract. As Plaintiff's unjust enrichment claim is based on the same alleged project-management services underlying the breach of contract claim which has been adjudicated and seeks recovery for the same alleged benefit conferred upon Defendant, she cannot separately maintain an unjust enrichment claim.

Plaintiff concedes she does not seek additional recovery under the Seventh Cause of Action duplicating the damages available for Defendant's adjudicated Breach of Contract claim and does not oppose an appropriately limited disposition of those claims.

There is no cause of action in California for unjust enrichment. "The phrase 'Unjust Enrichment' does not describe a theory of recovery, but an effect: the result of a failure to make restitution under circumstances where it is equitable to do so." (L*auriedale Associates, Ltd. v. Wilson* (1992) 7 Cal.App.4th 1439, 1448, 9 Cal.Rptr.2d 774.) Unjust enrichment is " 'a general principle, underlying various legal doctrines and remedies,' " rather than a remedy itself. (*Dinosaur Development, Inc. v. White* (1989) 216 Cal.App.3d 1310, 1315, 265 Cal.Rptr. 525.) It is synonymous with restitution. (*Id*. at p. 1314, 265 Cal.Rptr. 525.).) *Melchior v. New Line Productions, Inc.* (2003) 106 Cal.App.4th 779, 793 [131 Cal.Rptr.2d 347, 357].

A plaintiff may plead inconsistent claims that allege both the existence of an enforceable agreement and the absence of an enforceable agreement. *Klein v. Chevron U.S.A., Inc.* (2012) 202 Cal.App.4th 1342, 1389 [137 Cal.Rptr.3d 293, 331–332], as modified on denial of reh'g (Feb. 24, 2012). In *Klein*, the court found that plaintiffs' breach of contract claim pleaded the existence of an enforceable agreement and their unjust enrichment claim did not deny the existence or enforceability of that agreement. *Id.* Plaintiffs were therefore precluded from asserting a quasi-contract claim under the theory of unjust enrichment. *Id*.

As Plaintiff's Unjust Enrichment Cause of Action is based on the same project-management services underlying the adjudicated breach of contract claim, Plaintiff is precluded from asserting a quasi-contract claim under the theory of unjust enrichment. Defendant's Motion for Judgment on the Pleadings is granted without leave to amend as to the Seventh Cause of Action.

4. Eighth Cause of Action – Work Environment Harassment

Defendant contends that the Complaint fails to allege facts establishing the challenged conduct occurred because of Plaintiff's membership in a protected class. Although Plaintiff alleges Defendant's conduct was directed toward her because she is a woman, no facts are pled

connecting his alleged invitation to socialize, offer of massage therapy, or physical contact to her sex, but rather to the injury she sustained. Furthermore, the Complaint does not allege facts demonstrating it was sufficiently severe or pervasive to alter the conditions of Plaintiff's work or create an objectively hostile or abusive work environment, Moreover, Plaintiff fails to allege compliance with the administrative prerequisites of bringing a FEHA claim, including exhaustion of administrative remedies.

Plaintiff argues the Complaint alleges she operated an independent project-management business and performed renovation-planning services and ongoing project-management services for Defendant pursuant to a compensated contractual relationship, as well as that Plaintiff rejected conduct she perceived as unwanted attempts to initiated physical intimacy and that Defendant subsequently withheld compensation and terminated her engagement. Whether Plaintiff falls within the scope of FEHA's protections presents factual and legal issues not appropriately resolved on the underlying motion. Plaintiff requests express leave to allege facts supporting the elements of a new Civil Code § 51.9 claim and punitive damages under Civil Code §§ 52(b) and 3294 should the Court conclude the cause of action is deficient.

A hostile work environment sexual harassment claim requires a plaintiff employee to show: (1) he or she was subjected to unwelcome sexual advances, conduct or comments; (2) the harassment was based on sex; and (3) the harassment was sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment. (*Lyle v. Warner Brothers Television Productions* (2006) 38 Cal.4th 264, 279, 42 Cal.Rptr.3d 2, 132 P.3d 211 (*Lyle*); *Kelley v. The Conco Companies* (2011) 196 Cal.App.4th 191, 202–203, 126 Cal.Rptr.3d 651 (*Kelley*).) *Lewis v. City of Benicia* (2014) 224 Cal.App.4th 1519, 1524 [169 Cal.Rptr.3d 794, 800–801].

To prove sexual harassment, a plaintiff must show he or she suffered discrimination because of sex. (*Lyle, supra,* 38 Cal.4th at pp. 279–280, 42 Cal.Rptr.3d 2, 132 P.3d 211; *Kelley, supra,* 196 Cal.App.4th at p. 203, 126 Cal.Rptr.3d 651.) *Id*. at 1525.

" 'Under the FEHA, the employee must exhaust the administrative remedy provided by the statute by filing a complaint with the [DFEH] and must obtain from the [DFEH] a notice of right to sue in order to be entitled to file a civil action in court based on violations of the FEHA. [Citations.] The timely filing of an administrative complaint is a prerequisite to the bringing of a civil action for damages under the FEHA. [Citations.]' " (*Medix Ambulance Service, Inc. v. Superior Court* (2002) 97 Cal.App.4th 109, 116, 118 Cal.Rptr.2d 249.) *Blum v. Superior Court* (2006) 141 Cal.App.4th 418, 422 [45 Cal.Rptr.3d 902, 904]

The Court finds that Plaintiff has failed to allege compliance with FEHA's administrative requirements. Defendant's Motion for Judgment on the Pleadings as to the Eighth Cause of Action is granted with leave to amend, finding a reasonable possibility of curing the default under Civil Code §§ 51.9, 52(b), and 3294, limited to facts and events already described in the Complaint.

5. Ninth Cause of Action – Retaliation

Defendant argues that Plaintiff's Ninth Cause of Action fails as a matter of law because the Complaint fails to allege facts establishing that Plaintiff engaged in a protected activity. Plaintiff only alleges that she rejected Defendant's proposals and "upon information and belief" her rejection was a substantial motivating reason for her termination. Plaintiff has alleged no facts to demonstrate she opposed conduct that she reasonably believed was prohibited by FEHA. Mere rejection of the alleged conduct without facts demonstrating Plaintiff reasonably believed was prohibited by FEHA is insufficient to plead protected activity. Additionally, the Complaint fails to establish Defendant is an "employer" subject to FEHA's anti-retaliation provision. Plaintiff only alleges Defendant is a private homeowner who retained Plaintiff to act as project manager for renovations to his residence.

Plaintiff asserts the Complaint alleges that Defendant withheld a scheduled $10,000 payment following the dog attack, made that payment approximately two weeks late, and terminated Plaintiff's project-management engagement on June 4, 2024, as well as that Defendant terminated Plaintiff because she rejected Defendant's invitation to socialize, rejected Defendant's offer to massage Plaintiff's injuries, and refused to permit Defendant to continue touching Plaintiff's person.

Past California cases hold that in order to establish a prima facie case of retaliation under the FEHA, a plaintiff must show (1) he or she engaged in a "protected activity," (2) the employer subjected the employee to an adverse employment action, and (3) a causal link existed between the protected activity and the employer's action. (*Iwekaogwu v. City of Los Angeles* (1999) 75 Cal.App.4th 803, 814–815, 89 Cal.Rptr.2d 505; *Flait v. North American Watch Corp.* (1992) 3 Cal.App.4th 467, 476, 4 Cal.Rptr.2d 522 [adopting the title VII (Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.) burden-shifting analysis of *McDonnell Douglas Corp. v. Green* (1973) 411 U.S. 792, 802–805, 93 S.Ct. 1817, 36 L.Ed.2d 668].) *Yanowitz v. L'Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1042 [32 Cal.Rptr.3d 436, 444–445, 116 P.3d 1123, 1130].

[S]ection 12940(h) makes it an unlawful employment practice "[f]or any employer ... to discharge, expel, or otherwise discriminate against any person because the person has *opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part.*" (Italics added.) *Id*… It is well established that a retaliation claim may be brought by an employee who has complained of or opposed conduct that the employee reasonably believes to be discriminatory, even when a court later determines the conduct was not actually prohibited by the FEHA. (See, e.g., *Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 473, 30 Cal.Rptr.3d 797, 820, 115 P.3d 77, 95–96; *Flait v. North American Watch Corp., supra,* 3 Cal.App.4th at p. 477, 4 Cal.Rptr.2d 522; *Moyo v. Gomez* (9th Cir.1994) 40 F.3d 982, 985; *Gifford v. Atchison, Topeka & Santa Fe Ry. Co.* (9th Cir.1982) 685 F.2d 1149, 1157.) *Id*. at 1043.

"Employer" includes any person regularly employing five or more persons, or any person acting as an agent of an employer, directly or indirectly, the state or any political or civil subdivision of the state, and cities, except as follows: "Employer" does not include a religious association or corporation not organized for private profit. Government Code § 12926.

The Court finds that Plaintiff has adequately pled a cause of action for retaliation. As to whether Defendant is considered an employer is a factual question not resolvable on a motion for judgment on the pleadings. Defendant's Motion for Judgment on the Pleadings as to the Ninth Cause of Action is denied.

TENTATIVE RULING #8:

DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS AS TO THE FIRST, THIRD, FOURTH, SIXTH, AND SEVENTH CAUSES OF ACTION IS GRANTED WITHOUT LEAVE TO AMEND. DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS AS TO THE EIGHTH CAUSE OF ACTION IS GRANTED WITH LEAVE TO AMEND, FINDING A REASONABLE POSSIBILITY OF CURING THE DEFAULT UNDER CIVIL CODE §§ 51.9, 52(B), AND 3294, LIMITED TO FACTS AND EVENTS ALREADY DESCRIBED IN THE COMPLAINT. DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS AS TO THE NINTH CAUSE OF ACTION IS DENIED.

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10.	**PC20210448**	**THOMAS STUART VS DAVID CORDANO**
ATTORNEY FEES		

On October 2, 2026, the Court ordered Plaintiffs, Thomas James Stuart and Teresa Marie Stuart (collectively "Plaintiffs"), to provide substantiation to Defendants, David Cordano and Jeanne Cordano (collectively "Defendants"), and the Court documenting the time spent on matters related to the named Defendants. In compliance with the Court's Order, Plaintiffs submitted substantiation on October 30, 2026. Defendant's Opposition was filed on November 6, 2026.

The Declaration of Megan A. Shapiro (1) Correcting the Attorneys' Fee Amount Stated in Plaintiffs' Moving and Reply Papers and (2) Providing the Substantiation Ordered on October 2, 2026, identifies that the previously requested amount of attorneys' fees in the amount of $540,339.00 was incorrect. In addition, the motion identified only six timekeepers which omitted time recorded by other firm personnel that was billed to Plaintiffs. Accordingly, Plaintiffs withdraw the request for $540,339.00 and make the corrected request in the amount of $309,575.51 consisting of fees actually billed to Plaintiffs for work categorized as Cordano or Common.

Defendants argue the submitted billing records contain impermissible vague entries, block billing, clerical and administrative work, and duplicative entries. Defendants have identified 700 billing entries that are impermissibly vague and ambiguous, amounting to $81,124.12. Of the entries identified as "Cordanos," 34 of them are vague, totaling $7,283.35. Of the entries classified as "Common," 666 entries are vague and ambiguous, totaling $73,840.77. It is unclear from the vague descriptions whether the work done was reasonable and necessary to the litigation, nor can the Court and Defense counsel evaluate whether the work done was truly relevant to the litigation, that the designation of "Common" is appropriate, whether the discussions and emails are internal and administrative in nature, or whether the subject of the work relates to other Defendants or claims that the Cordanos prevailed on.

Additionally, Defendants have identified 287 billing entries which appear to be block billed, with 97 "Cordanos" billing entries and 190 "Common" billing entries, amounting to $75,013.55. 134 time entries involve clerical and administrative tasks, which are not recoverable as attorneys fees, amounting to $14,213.59. Since these entries mix non-compensable clerical work with compensable attorney or paralegal work, the fees for such entries should be substantially reduced.

The Shapiro Declaration identified an additional eleven personnel who worked on the matter, for a total of 17 timekeepers, suggesting duplicative billing for the same services because multiple individual attorneys appear to have billed for the same task. The billing entries also include "Common" time for work relating to the mediation that Defendants did not

participate in, totaling 77.3 hours or $18,562.19 in fees. As the "Common" billing entries are not exclusive to the named Defendants, Defendants request they be apportioned equally between all Defendants.

As the moving party, the prevailing defendant seeking fees and costs " 'bear[s] the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates.' [Citation.] To that end, the court may require [a] defendant[ ] to produce records sufficient to provide " 'a proper basis for determining how much time was spent on particular claims.' " [Citation.] The court also may properly reduce compensation on account of any failure to maintain appropriate time records. [Citation.]" (*ComputerXpress, Inc. v. Jackson* (2001) 93 Cal.App.4th 993, 1020, 113 Cal.Rptr.2d 625 (*Computer Xpress*).) The evidence should allow the court to consider whether the case was overstaffed, how much time the attorneys spent on particular claims, and whether the hours were reasonably expended. (*Ibid.*) *Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1320 [81 Cal.Rptr.3d 866, 870].

Inflated fee requests constitute a special circumstance. In emphasizing that a trial court retains the discretion to award attorney fees in an amount that is *less* than the lodestar amount, the *Ketchum* court noted, " 'To the extent a trial court is concerned that a particular award is excessive, it has broad discretion to adjust the fee downward or deny an unreasonable fee altogether.' " (*Ketchum, supra,* 24 Cal.4th at p. 1138, 104 Cal.Rptr.2d 377, 17 P.3d 735.) Specifically, the *Ketchum* court stated, "A fee request that appears unreasonably inflated is a special circumstance permitting the trial court to reduce the award or deny one altogether." (*Id.* at p. 1137, 104 Cal.Rptr.2d 377, 17 P.3d 735, quoting *Serrano IV*, *supra,* 32 Cal.3d at p. 635, 186 Cal.Rptr. 754, 652 P.2d 985.) *Id*. at 1321-1322.

Blockbilling, while not objectionable per se in our view, exacerbated the vagueness of counsel's fee request, a risky choice since the burden of proving entitlement to fees rests on the moving party. (*ComputerXpress, supra,* 93 Cal.App.4th at p. 1020, 113 Cal.Rptr.2d 625.) Id. at 1325.

As our Supreme Court has observed: " 'If ... the Court were required to award a reasonable fee when an outrageously unreasonable one has been asked for, claimants would be encouraged to make unreasonable demands, knowing that the only unfavorable consequence of such misconduct would be reduction of their fee to what they should have asked in the first place. To discourage such greed, a severer reaction is needful....' " (*Serrano IV, supra,* 32 Cal.3d at p. 635, 186 Cal.Rptr. 754, 652 P.2d 985.) Similarly, counsel may not submit a plethora of noncompensable, vague, blockbilled attorney time entries and expect particularized, individual deletions as the only consequence. The trial court could reasonably conclude counsel made no effort to prune the fee request to comply with the law. Counsel erred grievously by attempting to transfer that responsibility onto the trial court. The trial court could reasonably conclude counsels disregard for the law undercut the credibility of their fee request and, as officers of the court, warranted a severe reaction. *Id*. at 1329.

The Court agrees that the billing records supplied by Plaintiffs are riddled with vague entries, block billing, clerical and administrative tasks, and duplicative entries. Such entries make it impossible for this Court to determine whether the fees requested are reasonable. The Court further questions the credibility of the billing entries based upon Plaintiffs erroneously requesting an additional $230,763.92 in their underlying motion without merit. Additionally, the Court does not agree it is reasonable that Defendants should bear the cost of a mediation they did not participate in, as well as the entirety of the "Common" costs without apportioning at least some of the costs to the other defendants. Therefore, the Court finds the circumstances warrant a severe reduction in the amount of attorneys' fees awarded.

Plaintiffs' request for attorneys' fees is granted in the amount of $154,787.76 constituting a 50% reduction. The Court's October 2, 2026, Order, regarding prejudgment interest and attorneys' fees and costs for preparation of the underlying motion remains in effect.

TENTATIVE RULING #10:

PLAINTIFFS' REQUEST FOR ATTORNEYS' FEES IS GRANTED IN THE AMOUNT OF $123,830.20.

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11.	**26CV0672**	**EVAN SPROAT ET AL VS. VICTOR DOMINGUEZ ET AL**
MOTION TO COMPEL		

On September 16, 2026, Plaintiffs, Evan and Emily Ellus (collectively "Plaintiffs"), filed a Motion for an Order with Respect to Defendants Victor Dominguez and Jose M. Dominguez: 1) To Have Requests for Admissions Deemed Admitted, 2) To Compel Responses to Form Interrogatories, 3) To Compel Responses to Plaintiffs' Request for Production of Documents and for Production of Documents, and 4) For Imposition of Monetary Sanctions Against Defendants Victor Dominguez, Jose M. Dominguez and their Counsel, Jesse Ortiz. No opposition has been filed.

On August 6, 2026, Plaintiffs electronically served Requests for Admissions, Set One, Form Interrogatories, Set One, and Demand for Production of Documents and Things, Set One (collectively the "Discovery Requests"), on Defendant, Victor Dominguez ("Defendant Victor"), and Defendant, Jose M. Dominguez ("Defendant Jose"), with responses due on September 10, 2026. To date, no response has been served.

Pursuant to Code of Civil Procedure § 2033.280, if a party to whom requests for admission are directed fails to serve a timely response, the requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for monetary sanctions. Such an order is mandatory unless the court finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with § 2033.220.

Code of Civil Procedure § 2030.290 provides if a party to whom interrogatories are directed fails to serve a timely response, the following rules apply:

> (a) The party to whom the interrogatories are directed waives any right to exercise the option to produce writings under Section 2030.230, as well as any objection to the interrogatories, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:
>
> > (1) The party has subsequently served a response that is in substantial compliance with Sections 2030.210, 2030.220, 2030.230, and 2030.240.
> >
> > (2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

Code of Civil Procedure § 2031.300 provides if a party to whom a demand for inspection, copying, testing, or sampling is directed fails to serve a timely response to it, the following rules shall apply:

> (a) The party to whom the demand for inspection, copying, testing, or sampling is directed waives any objection to the demand, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). The court, on motion, may relieve that party from this waiver on its determination that both of the following conditions are satisfied:
>
> > (1) The party has subsequently served a response that is in substantial compliance with Sections 2031.210, 2031.220, 2031.230, 2031.240, and 2031.280.
> >
> > (2) The party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

The Court finds that Defendant Victor and Defendant Jose failed to provide a response to the Discovery Requests. Plaintiffs' Discovery Motions are granted as requested. Defendant Victor and Defendant Jose are ordered to serve verified, code-compliant responses without objections to Demand for Production, Set One, and Form Interrogatories, Set One, within thirty (30) days of the Court's order.

Code of Civil Procedure § 2023.030 authorizes the Court to impose a monetary sanction against parties engaged in misuse of the discovery process, to pay the reasonable expenses including attorney's fees, incurred by anyone as a result of that conduct.

Code of Civil Procedure § 2023.010 defines "misuse of the discovery process" to include "failing to respond or to submit to an authorized method of discovery."

Regarding the request for monetary sanctions, sanctions are mandatory for one who "unsuccessfully makes or opposes a motion to compel a response...unless [the court] finds that one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust" Cal. Civ. Pro. §2030.290 (interrogatories), § 2031.300(c) (requests for production) & § 2033.280(c)(requests for admission). In all other circumstances, the imposition of discovery sanctions is permissive. This includes instances where there has been no opposition and discovery responses were served after the filing of the motion. Cal. Rule of Ct., Rule 3.1348(a).

The Court finds that Defendant Victor's and Defendant Jose's failure to provide to the Discovery Requests constitutes a misuse of the discovery process. Plaintiffs' requests for sanctions is granted as requested in the amount of $1,434.00, payable by Defendant Victor, Defendant Jose, and their counsel, jointly and severally, within thirty (30) days of the Court's order.

TENTATIVE RULING #11:

PLAINTIFFS' MOTION IS GRANTED AS REQUESTED. DEFENDANT VICTOR AND DEFENDANT JOSE ARE ORDERED TO SERVE VERIFIED, CODE-COMPLIANT RESPONSES WITHOUT OBJECTIONS TO DEMAND FOR PRODUCTION, SET ONE, AND FORM INTERROGATORIES, SET ONEWITHIN THIRTY (30) DAYS OF THE COURT'S ORDER.

PLAINTIFFS' REQUEST FOR SANCTIONS IS GRANTED AS REQUESTED IN THE AMOUNT OF $1,434.00, PAYABLE BY DEFENDANT VICTOR, DEFENDANT JOSE, AND THEIR COUNSEL, JOINTLY AND SEVERALLY, WITHIN THIRTY (30) DAYS OF THE COURT'S ORDER.

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12.	**26CV2549**	**PATRICIA ANN FOWLER ET AL VS. DAVID LUANI (LOGAN) NAUFAHU**
PETITION FOR ORDER ON UNLAWFUL USE OF PERSONAL IDENTIFYING INFORMATION		

On September 22, 2026, Petitioners, Patricia Ann Fowler and Matthew David Fowler (collectively "Plaintiffs"), filed a Petition for Order on Unlawful Use of Personal Identifying Information. On September 28, 2026, Petitioners filed a Notice of Errata Regarding Amended Petition.

Legal Principles

Civil Code § 1798.201 provides:

> A person who has learned or reasonably suspects that his or her personal identifying information has been used unlawfully, as described in subdivision (a) of Section 530.5 of the Penal Code, in a business entity filing, and has initiated a law enforcement investigation in accordance with subdivision (a) of Section 530.6 of the Penal Code, may petition the superior court in the county in which the person resides for an order, which may be granted ex parte, directing the alleged perpetrator of the act described in paragraph (1) of subdivision (c) of Section 530.5 of the Penal Code, if known, and the person using the personal identifying information in the business entity filing to appear at a hearing before the court and show cause for both of the following:
>
> > (a) Why the personal identifying information should not be labeled to show the information is impersonated and does not reflect the person's identity.
> >
> > (b) Why the personal identifying information should be associated with the business entity.

Civil Code § 1798.202 provides, in part:

> (a) A petition filed pursuant to Section 1798.201 shall be heard and determined based on declarations, affidavits, police reports, or other material, relevant, and reliable information submitted by the parties or ordered to be made part of the record by the court.
>
> (b) If the court determines the petition is meritorious and there is no reasonable cause to believe that the victim's personal identifying information has been used lawfully in the business entity filing, the court shall make a finding that the victim's personal identifying information has been used unlawfully in the business entity filing and shall issue an order certifying this determination.

(c) Upon making a determination pursuant to subdivision (b), the court shall do the following:

(1) Order the name and associated personal identifying information in the business entity filing to be redacted or labeled to show that the data is impersonated and does not reflect the victim's identity.

(2) Order the data to be removed from publicly accessible electronic indexes and databases.

Discussion

Petitioners argue that on August 28, 2026, they discovered their personal identifying information, specifically their address, was unlawfully used without authorization in a business entity filing with the California Secretary of State by the business entity Crowdbeats LLC, managed by Defendant, Secretary of State File Number B20260349621, filed on July 31, 2026. Petitioners did not authorize the use of their personal identifying information in the business entity filing, have no lawful association with the entity, and did not consent to the documents submitted to the Secretary of State. Petitioners initiated a law enforcement investigation regarding this identify theft pursuant to Civil Code § 1798.201 and Penal Code § 530.6.

Petitioners assert Defendant had lived in their home from August 2022 to February 2025 and is the ex-boyfriend of their daughter and father of her four children. Defendant was removed from their home in February 2025. Petitioners contend the unauthorized listing of their private residential address creates an immediate threat to personal privacy, financial security, and safety.

Petitioners request the following:

1. Schedule a hearing on this matter or grant this petition ex parte as permitted by Civil Code § 1798.201;
2. Find that the petition is meritorious and that there is no reasonable cause to believe Petitioner’s information was used lawfully;
3. Issue and order certifying that Petitioner’s personal identifying information was used unlawfully in the business entity filing;
4. Direct the California Attorney General’s Office to process the redaction, labeling, and removal of said information from publicly accessible databases maintained by the California Secretary of State pursuant to Section 1798.202; and
5. Order David Luani (Logan) Naufahu to Cease and Desist all use of our home address as he does not reside here. Close all businesses he had opened using this address. Notify DMV record on CA ID and revoke ID with our home address as his place of residence.

The Court finds Petitioners' personal identifying information has been used unlawfully in the business entity filing. The Court grants Petitioners' request, in part, and orders: 1) Petitioners' personal identifying information used in the business entity filing be redacted or labeled to show that the data is impersonated and does not reflect the victim's identity; 2) the data be removed from publicly accessible electronic indexes and databases. Petitioners' remaining requests identified in #5 are denied, as outside the scope of applicable relief.

TENTATIVE RULING #12:

PETITIONERS' PETITION IS GRANTED AS OUTLINED IN THE TENTATIVE RULING.

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13.	**25CV1733**	**MELISSA DIMON VS. JASON HALL**
ENFORCE SETTLEMENT AGREEMENT		

The Notice does not comply with Local Rules 7.10.05. Repeated violations will be grounds for sanctions pursuant to Local Rule 7.12.13.

On September 16, 2026, Plaintiff, Melissa Dimon ("Plaintiff"), filed a Motion to Enforce Settlement Pursuant to Code of Civil Procedure § 664.6. No opposition has been filed.

A Proof of Service by Mail was filed on November 3, 2026, indicating Defendant was served on October 31, 2026.

Code of Civil Procedure § 1005(b) provides, in part:

> **Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least 16 court days before the hearing**. The moving and supporting papers served shall be a copy of the papers filed or to be filed with the court. However, **if the notice is served by mail, the required 16-day period of notice before the hearing shall be increased by five calendar days if the place of mailing and the place of address are within the State of California**…(emphasis added).

The Court finds Defendant was not timely served in compliance § 1005(b). Plaintiff's Motion to Enforce Settlement Pursuant to Code of Civil Procedure § 664.6 is continued to December 4, 2026, to allow for proper notice.

TENTATIVE RULING #13:

PLAINTIFF'S MOTION TO ENFORCE SETTLEMENT PURSUANT TO CODE OF CIVIL PROCEDURE § 664.6 IS CONTINUED TO DECEMBER 4, 2026, TO ALLOW FOR PROPER NOTICE.

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REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

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14.	**26CV1618**	**POPPY RUSSELL VS. JEFF HEMMET**
SET ASIDE DEFAULT		

On September 28, 2026, Defendant, Jeff Hammett ("Defendant"), filed a Motion to Set Aside Default. No opposition has been filed.

Background

Plaintiff, Poppy Russell ("Plaintiff") filed a Complaint on June 11, 2026. The Complaint asserts the cause of action is an intentional tort; however, it does not specify or attach the specific cause of action as required, nor does Plaintiff request any damages. Plaintiff asserts loss of use of property, as well as other damages to livestock, trees, plants, cages, personal property withholding, but does not provide any facts that tie Defendant to these issues.

Legal Principles

[B]ecause the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default (*Waite v. Southern Pacific Co.* (1923) 192 Cal. 467, 470-471 [221 P. 204]; *Carli v. Superior Court* (1984) 152 Cal.App.3d 1095, 1099 [199 Cal.Rptr. 583] [in the context of deemed admissions § 473 should be applied liberally "so cases can be tried on the merits"]; *Flores v. Board of Supervisors*, supra, 13 Cal.App.3d at p. 483.)... A motion seeking such relief lies within the sound discretion of the trial court, and the trial court's decision will not be overturned absent an abuse of discretion. (*Weitz v. Yankosky* (1966) 63 Cal.2d 849, 854 [48 Cal.Rptr. 620, 409 P.2d 700]; Martin v. Cook (1977) 68 Cal.App.3d 799, 807 [137 Cal.Rptr. 434].) *Elston v. City of Turlock*, 38 Cal. 3d 227, 233, 695 P.2d 713 (1985).

Code of Civil Procedure § 473(b) provides, in part:

> (b) The court may, upon any terms as may be just, relieve a party or the party's legal representative from a judgment, dismissal, order, or other proceeding taken against the party through the party's mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken.

Discussion

On August 21, 2026, the clerk entered default against Defendant. Defendant argues default should be set aside as a result of mistake, inadvertence, and excusable neglect. Upon receipt of the Complaint, Defendant sought legal assistance from the El Dorado County Senior Legal Services but could not get an appointment to speak with an attorney until September 24,

2026. Prior to meeting with an attorney, Defendant was not aware that an answer or response was required because the Complaint did not request any affirmative relief. It was not until Defendant met with an attorney who advised a response was nevertheless required, which is also when he learned the default was entered.

Code of Civil Procedure § 425.10 provides, in part:

> (a) A complaint or cross-complaint shall contain both of the following:
>
> (1) A statement of the facts constituting the cause of action, in ordinary and concise language.
>
> (2) A demand for judgment for the relief to which the pleader claims to be entitled. If the recovery of money or damages is demanded, the amount demanded shall be stated.

It is well established a default judgment cannot properly be based on a complaint which fails to state a cause of action against the party defaulted because, as Witkin explains, "[a] defendant who fails to answer admits only facts that are well pleaded." *Falahati v. Kondo* (2005) 127 Cal.App.4th 823, 829 [26 Cal.Rptr.3d 104, 109].

A default judgment is void if the trial court lacked jurisdiction over the parties or the subject matter of the complaint or **if the complaint failed to "apprise[ ] the defendant of the nature of the plaintiff's demand," or if the court granted relief which it had no power to grant including a default judgment which exceeds the amount demanded in the complaint**. (emphasis added).

The default judgment in the present case is void for two reasons. The complaint contained no factual allegations with respect to [defendant]; therefore it failed to apprise him of the nature of plaintiffs' demand against him. In addition, the complaint does not specify the amount of damages plaintiffs seek from [defendant]; it is not possible to calculate an amount of damages from the complaint's allegations; the request for entry of default did not specify the amount of damages sought; and plaintiffs did not serve [defendant] with any other form of notice of the amount of damages sought from him. **Our Supreme Court has held "a default judgment greater than the amount specifically demanded is void as beyond the court's jurisdiction." Where no amount of damages is demanded any amount awarded is by definition greater than the amount demanded**. *Id*. at 830-831.

Finding the Complaint does not allege a cause of action against Defendant and does not specify the amount and type of damages Plaintiff seeks from Defendant, the entry of default is void. Defendant's Motion to Set Aside Default is granted.

TENTATIVE RULING #14:

DEFENDANT'S MOTION TO SET ASIDE DEFAULT IS GRANTED.

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15.	**26CV0464**	**STUDENT LOAN SOLUTIONS, LLC VS. GAIL WILLIAMS ET AL**
MOTION TO TRANSFER ACTION FOR COORDINATION		

This matter was continued from October 23, 2026. The tentative ruling issued on October 23, 2026, remains in effect.

TENTATIVE RULING #15:

THE TENTATIVE RULING ISSUED ON OCTOBER 23, 2026, REMAINS IN EFFECT.

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16.	**24CV0535**	**VALERIO RENDON VS. FCA US, LLC**
SUMMARY JUDGMENT		

Defendant, FCA US, LLC ("Defendant"), moves for summary judgment pursuant to Code of Civil Procedure § 437(c). Plaintiff's, Valerio Rendon ("Plaintiff"), Opposition was filed on October 23, 2026. Defendant's Reply was filed on October 29, 2026.

Legal Principles

[S]ummary judgment or summary adjudication is to be granted when there is no triable issue of material fact and the moving party is entitled to judgment as a matter of law." (*Mills v. U.S. Bank* (2008) 166 Cal.App.4th 871, 894–895, 83 Cal.Rptr.3d 146.) The "party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact." *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 861–862, 107 Cal.Rptr.2d 841, 24 P.3d 493.

In *Thatcher v. Lucky Stores, Inc.* (2000) 79 Cal.App.4th 1081, 1084, 94 Cal.Rptr.2d 575, a trial court granted summary judgment to defendant because plaintiffs failed to file any opposition, pursuant to a local court rule providing that the failure to oppose a motion may be deemed an admission that the motion is meritorious. On appeal, the local rule was held invalid because it conflicted with Code of Civil Procedure section 437c by authorizing the trial court "to grant summary judgment based solely on the absence of opposition, without a preliminary finding that the moving party has met its initial burden of proof." (*Thatcher v. Lucky Stores, Inc., supra,* at pp. 1086–1087, 94 Cal.Rptr.2d 575.) The *Thatcher* court emphasized that the statute requires that the moving party assume the initial burden of producing evidence that no triable issue of material fact exists. (*Id.* at p. 1085, 94 Cal.Rptr.2d 575.) *Boyle v. CertainTeed Corp.,* 137 Cal. App. 4th 645, 654, 40 Cal. Rptr. 3d 501, 508 (2006).

Under summary judgment law, any party to an action, whether plaintiff or defendant, "may move" the court "for summary judgment" in his favor on a cause of action (i.e., claim) or defense (Code Civ. Proc., § 437c, subd. (a))—a plaintiff "contend[ing] ... that there is no defense to the action," a defendant "contend[ing] that the action has no merit" (*ibid.*). The court must "grant[]" the "motion" "if all the papers submitted show" that "there is no triable issue as to any material fact" (*id.*, § 437c, subd. (c))—that is, there is no issue requiring a trial as to any fact that is necessary under the pleadings and, ultimately, the law (see *Riverside County Community Facilities Dist. v. Bainbridge 17* (1999) 77 Cal.App.4th 644, 653 [92 Cal.Rptr.2d 29]; *Kelly v. First Astri Corp.* (1999) 72 Cal.App.4th 462, 470 [84 Cal.Rptr.2d 810])—and that the "moving party is entitled to a judgment as a matter of law" (Code Civ. Proc., § 437c, subd. (c)). The moving party must "support[]" the "motion" with evidence including "affidavits, declarations, admissions,

answers to interrogatories, depositions, and matters of which judicial notice" must or may "be taken." (*Id.*, § 437c, subd. (b).)

Likewise, any adverse party may oppose the motion, and, "where appropriate," must present evidence including "affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice" must or may "be taken." (*Ibid.*) An adverse party who chooses to oppose the motion must be allowed a reasonable opportunity to do so. (*Id.*, § 437c, subd. (h).) In ruling on the motion, the court must "consider all of the evidence" and "all" of the "inferences" reasonably drawn therefrom (*id.*, § 437c, subd. (c)), and must view such evidence (e.g., *Molko v. Holy Spirit Assn.*, *supra*, 46 Cal.3d at p. 1107; *Stationers Corp. v. Dun & Bradstreet, Inc.* (1965) 62 Cal.2d 412, 417 [42 Cal.Rptr. 449, 398 P.2d 785]) and such inferences (see, e.g., *Crouse v. Brobeck, Phleger & Harrison* (1998) 67 Cal.App.4th 1509, 1520 [80 Cal.Rptr.2d 94] [review on appeal]; *Ales-Peratis Foods Internat., Inc. v. American Can Co.* (1985) 164 Cal.App.3d 277, 280, fn. * [209 Cal.Rptr. 917] [same]), in the light most favorable to the opposing party. *Aguilar v. Atl. Richfield Co.*, 25 Cal. 4th 826, 843, 24 P.3d 493 (2001), as modified (July 11, 2001).

Background

On March 12, 2024, Plaintiff filed a Complaint for Violation of Statutory Obligations, asserting the following causes of action: 1) Violation of Civil Code § 1793.2(d); 2) Violation of Civil Code § 1793.2(b); 3) Violation of Civil Code § 1793.2(a)(3); and 4) Breach of Implied Warranty of Merchantability (Civil Code §§ 1791.1, 1794, and 1795.5).

Discussion

Defendant moves for summary judgment, or in the alternative, summary adjudication, on each of Plaintiff's causes of action.

1. Statute of Limitations

Defendant argues each of Plaintiff's causes of action are time-barred, as the statute of limitations for Beverly-Song claims is four years, and one year for Breach of Implied Warranty of Merchantability, which began running on the date Plaintiff purchased the Subject Vehicle. As the date of accrual was February 4, 2016, Plaintiff would have needed to file the Complaint by February 4, 2020. As Plaintiff did not file the Complaint until March 12, 2024, his claims are time barred.

Plaintiff argues that Uniform Commercial Code § 2725(2) fixes accrual at tender of delivery only where no warranty explicitly extends to future performance, and Defendant's UMF No. 2 establishes that the Vehicle came with Defendant's New Vehicle Limited Warranty, which

supplies the future-performance exception. As Defendant's warranty extends to future performance, the period runs only from discovery. Defendant's evidence presented establishes October 9, 2019, as the date at which the dealer found the radiator leaking at a seam, replaced it, and found the vehicle "OK" on recheck, which is an improper accrual on tender of delivery theory. However, even if that was the date at issue, Plaintiff's claims are timely because of the Judicial Council's emergency rule 9, moving the deadline to April 4, 2024.

Additionally, Plaintiff maintains that § 1790.3 independently bars using the Commercial Code to shorten the Act's protections. Lastly, Plaintiff contends that Defendant's argument assumes Plaintiff must establish that the early visits were a breach and that Plaintiff should have recognized one, which is foreclosed on. Defendant has not presented evidence affirmatively negating the element or showing Plaintiff cannot acquire evidence, and therefore, Defendant's motion fails.

In reply, Defendant argues the future-performance exception cannot rescue the implied-warranty claim because an implied warranty does not extend to future performance. As such, the implied-warranty claim accrued at tender of delivery and expired on February 4, 2020. Further, Defendant argues that the express-warranty claims are untimely because by Plaintiff's own account, the engine condition manifested by November 2016, and the Subject Vehicle was presented repeatedly thereafter. As the breach was discoverable years before suit, the discovery rule does not defer accrual where discovery was possible earlier, making Plaintiff's' claims untimely.

Section 2725 of the California Uniform Commercial Code provides that an action for breach of warranty accrues on tender of delivery. An exception is made where a warranty "explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance." (Cal.U.Com.Code, § 2725, subd. (2).) *Krieger v. Nick Alexander Imports, Inc.* (1991) 234 Cal.App.3d 205, 215 [285 Cal.Rptr. 717, 723] … A defendant who moves for summary judgment bears the burden of negating the applicability of the discovery exception for accrual of an action on a future warranty. *Id*. at 216.

A promise to repair defects that occur during a future period is the very definition of express warranty of future performance, not only under the Act (Civ.Code, § 1791.2), but also in the California Uniform Commercial Code section 2313. Civil Code section 1791.2 defines an express warranty under the Act to include "[a] written statement arising out of a sale to the consumer of a consumer good pursuant to which the manufacturer, distributor, or retailer undertakes to preserve or maintain the utility or performance of the consumer good or provide compensation if there is a failure in the utility or performance; ..." *Id.* at 217. (emphasis added).

If we adopted the position urged by respondent and held that a cause of action for breach of express warranty accrues on tender of delivery, before the seller has an opportunity to repair any defects, we would undermine the legislative purpose that the parties attempt to resolve any deficiencies in performance before resorting to the remedies provided in the Act. In light of our conclusion that actions for breach of warranty under the Act and under the California Uniform Commercial Code are governed by the same statute of limitations, the same rule of accrual must apply to both causes of action. Application of California Uniform Commercial Code section 2725, subdivision (2) provides this consistency while meeting the policies of the Act. *Id.* at 219. (emphasis added).

The scope of the "future performance" exception has been the subject of numerous, and sometimes conflicting, decisions throughout the country. (See Annot., What Constitutes Warranty Explicitly Extending to "Future Performance" for Purposes of UCC § 2–725(2) (2000) 81 A.L.R.5th 483, 529–550; see also 1 White & Summers, Uniform Commercial Code (4th ed.1995) § 11–9, pp. 607–611.) But the majority view is that the exception must be narrowly construed, and that it applies only when the seller has expressly agreed to warrant its product *for a specific and defined period of time.* (See *Western Recreational Vehicles, Inc. v. Swift Adhesives, Inc.* (9th Cir.1994) 23 F.3d 1547, 1550; *Economy Housing Co. v. Continental Forest Products, Inc.* (8th Cir.1986) 805 F.2d 319, 321; *Standard Alliance Indus. v. Black Clawson Co.* (6th Cir.1978) 587 F.2d 813, 820–821; *Coady v. Marvin Lumber & Cedar Co.* (2001) 167 F.Supp.2d 166, 170; *Binkley Co. v. Teledyne Mid–America Corp.* (E.D.Mo.1971) 333 F.Supp. 1183, 1186; *Snyder v. Boston Whaler* (W.D.Mich.1994) 892 F.Supp. 955, 958; *Tolen v. A.H. Robins Co., Inc.* (N.D.Ind.1983) 570 F.Supp. 1146, 1153–1154; *Patton v. Mack Trucks, Inc.* (1986) 360 Pa.Super. 1, 519 A.2d 959, 964.) *Cardinal Health 301, Inc. v. Tyco Electronics Corp.* (2008) 169 Cal.App.4th 116, 130 [87 Cal.Rptr.3d 5, 16–17].

Krieger is also inapposite in that it provides an example of a warranty that explicitly extends to future performance because it contains an express time limit. The automobile warranty stated the defendant would repair defects for 36 months or the first 36,000 miles, whichever occurs first—thus creating a defined three-year outer limit for the warranty period. (*Krieger, supra,* 234 Cal.App.3d at p. 216, 285 Cal.Rptr. 717.) Moreover, the *Krieger* court focused on the promise to *repair* the vehicle during the warranty period. The court stated: "A promise to repair defects that occur during a future period is the very definition of express warranty of future performance...." (*Id.* at p. 217, 285 Cal.Rptr. 717.) Here, the warranty did not include a similar promise to repair. *Id*. at 133.

Code of Civil Procedure § 1791.1(c) provides that:

> The duration of the implied warranty of merchantability and where present the implied warranty of fitness shall be coextensive in duration with an express

> warranty which accompanies the consumer goods, provided the duration of the express warranty is reasonable; but **in no event shall such implied warranty have a duration of less than 60 days nor more than one year following the sale of new consumer goods to a retail buyer**. Where no duration for an express warranty is stated with respect to consumer goods, or parts thereof, the duration of the implied warranty shall be the maximum period prescribed above. (emphasis added)

The duration provision provides, in essence, that the **duration of the implied warranty of merchantability shall be the same as the duration of any reasonable express warranty that accompanies the product, but in no event shorter than 60 days or longer than one year**. (Civ.Code § 1791.1, subd. (c).) **There is nothing that suggests a requirement that the purchaser discover and report to the seller a latent defect within that time period**. If the Legislature intended to create a deadline by which a purchaser of goods covered by the Song–Beverly Act must report a defect to the seller, it had a ready model for doing so. As discussed above, section 2607 of the Uniform Commercial Code provides that when a buyer has accepted a tender of goods, he or she "must, within a reasonable time after he or she discovers or should have discovered any breach, notify the seller of breach or be barred from any remedy...." (U.Com.Code, § 2607, subd. (3)(A).) **If the Legislature intended the duration provision to impose a deadline for consumers to give notice of defects under the Song–Beverly Act, it could have easily done so. It did not**. *Mexia v. Rinker Boat Co., Inc.* (2009) 174 Cal.App.4th 1297, 1310 [95 Cal.Rptr.3d 285, 295]. (emphasis added).

In *Mexia v. Rinker Boat Co.*, the Court of Appeal held that the provision of the Song-Beverly Consumer Warranty Act defining the duration of the implied warranty of merchantability merely creates a limited, prospective duration for the implied warranty of merchantability; it does not create a deadline for discovering latent defects or for giving notice to the seller. (2009) 174 Cal. App.4th 1297. The *Mexia* court further held that a consumer's action was not barred by the consumer's failure to report a defect to the seller within the duration of the implied warranty. *Id*. at 1306. The one-year period in § 1791.1(c) defines when the warranty is operative — not when a lawsuit must be commenced. *Id*.

It is undisputed that at the time the Subject Vehicle was purchased, it came with Defendant's New Vehicle Limited Warranty, which included a three-year/36,000-mile Bumper-to-Bumper Warranty (whichever comes first) and a five-year/60,000-mile Powertrain Warranty (whichever comes first). (UMF No. 2, Sheridan Dec., Ex. A). Additionally, Defendant's California Emission Warranty for the Subject Vehicle covered specified emission-related parts for seven years or 70,000 miles, and its Federal Emission Warranty covers the catalytic converter and powertrain control module for eight years or 80,000 miles (Sheridan Decl., Ex. A, Duane Decl. Ex. A).

The Court accordingly finds the future-performance exception applies to Plaintiff's express warranty claims. As to the Fourth Cause of Action, the Court finds it is similarly subject to a four-year statute of limitations. The Court further finds triable issues of material fact exist as to when Plaintiff discovered, or should have discovered, that the manufacturer will not repair the vehicle after a reasonable number of attempts, and whether the defect existed during the applicable warranty period, in relation to the First, Second, Third and Fourth Causes of Action.

2. First, Second, and Third Causes of Action – Violations of Civil Code §§ 1793.2(d), 1793.2(b), and 1793.2(a)(3)

Defendant asserts that the First, Second, and Third Causes of Action are barred because Plaintiff did not present the Subject Vehicle for any repeat warranty repair. Defendant contends there was only one presentation in this case that was covered under the warranty and therefore, there have not been any repeated warrantable repair attempts made on the Subject Vehicle. As such, Plaintiff's First Cause of Action fails. Defendant contends Plaintiff's Second Cause of Action also fails as the repair orders on the Subject Vehicle show that any repair exceeded 30 days in service for a warrantable repair. As to the Third Cause of Action, Defendant argues the repair orders reflect there was no evidence that Defendant failed to make service literature and replacement parts available to authorized service and repair facilities to confirm the vehicle to warranty as there was only a single repair made under warranty and the vehicle was down for one day.

Plaintiff argues Defendant improperly seeks to lump Plaintiff's First, Second, and Third Causes of Action together while ignoring the repair visit requirement under Civil Code § 1793.2(d) solely affects Plaintiff's First Cause of Action. Plaintiff's Second and Third Causes of Action consist of different elements of which do not include a minimum repair visit requirement.

As to the First Cause of Action, Plaintiff contends he presented the Subject Vehicle for qualifying warranty repairs at least twice on November 22, 2016, due to the check engine light being on, and March 26, 2019, wherein recall V01 was performed. As such, triable issues of material fact exist.

In reply, Defendant argues Plaintiff's attempt to manufacture a second qualifying attempt fails, as the March 2019 visit was a recall that replaced a different component having nothing to do with the claimed engine nonconformity which is not an "attempt" to repair the engine nonconformity. As the Subject Vehicle was presented for a single qualifying repair of the claimed nonconformity, the First Cause of Action fails as a matter of law.

Civil Code § 1793.2(d) provides, in part:

> Except as provided in paragraph (2), if the manufacturer or its representative in this state does not service or repair the goods to conform to the applicable express warranties **after a reasonable number of attempts**, the manufacturer shall either replace the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer, less that amount directly attributable to use by the buyer prior to the discovery of the nonconformity. However, if the manufacturer or its representative in this state does not service or repair a travel trailer or a portion of a motor home designed, used, or maintained for human habitation, to conform to the applicable express warranties **after a reasonable number of attempts**, the buyer shall be free to elect reimbursement in lieu of replacement, and in no event shall the buyer be required by the manufacturer to accept a replacement travel trailer or motor home. (emphasis added).

It is undisputed that the Subject Vehicle was presented on November 22, 2016, March 26, 2019, and October 9, 2019. (UMF. 3, 6, 7, 8, Sheridan Decl., Ex. C). The Court finds triable issues of material fact exist as to whether these visits constitute a reasonable number of attempts under the First Cause of Action.

Plaintiff contends that the Second Cause of Action is brought under both theories of liability pursuant to Civil Code § 1793.2(b); however, Defendant's notice of motion only addresses the second theory of liability (i.e., the 30-day rule), while ignoring the failure to commence repairs within a reasonable time theory of liability. As Defendant did not identify the first theory of liability in its notice of motion or anywhere else in its motion, including the memorandum and separate statement, the issue is not before the Court and Defendant cannot obtain adjudication of Plaintiff's Second Cause of Action. Even if Plaintiff's Second Cause of Action consisted solely of a 30-day rule claim, Plaintiff has established a triable issue because the Subject Vehicle was first presented on November 22, 2016, for the cylinder 6 misfire and the software update did not confirm it, as the same misfire returned, and the dealer ultimately traced it to low compression and exhaust-valve leakage. Plaintiff was accordingly forced to present the Subject Vehicle again for the same defect, and a jury could find that Defendant never conformed the warranty within 30 days of any presentation.

Defendant counters that the gravamen of the Second Cause of Action is the 30-day conformity rule, and the undisputed records establish prompt commencement and completion of every repair. Plaintiff has not identified a repair that Defendant failed to commence within a reasonable time.

> Where those service and repair facilities are maintained in this state and service or repair of the goods is necessary because they do not conform with the

> applicable express warranties, **service and repair shall be commenced within a reasonable time by the manufacturer or its representative in this state**. Unless the buyer agrees in writing to the contrary, **the goods shall be serviced or repaired so as to conform to the applicable warranties within 30 days**. Delay caused by conditions beyond the control of the manufacturer or its representatives shall serve to extend this 30-day requirement. Where delay arises, conforming goods shall be tendered as soon as possible following termination of the condition giving rise to the delay. (emphasis added).
>
> Civil Code § 1793.2(b).

The Court finds that triable issues of material fact exist as to whether service and repair was commenced within a reasonable time and whether the Subject Vehicle was conformed to the applicable warranties within 30 days in relation to the Second Cause of Action. (UMF. 3, 6, 7, 8, Sheridan Decl., Ex. C).

As to the Third Cause of Action, Plaintiff asserts that Defendant's argument that Plaintiff cannot identify any parts or literature that were unavailable fails because none of Defendant's facts carries their own burden. None of the facts presented by Defendant affirmatively shows that Defendant made adequate literature and parts available, and none shows that Plaintiff cannot prove Defendant did not.

Defendant asserts that Plaintiff has not identified any literature or part were unavailable and no causal link between any claimed insufficiency and a failure to repair. The undisputed records show that when the Subject Vehicle was presented for warranty repair, the dealer diagnosed the condition and completed the repair in a single day; therefore, no triable issue exists.

Civil Code § 1793.2(a)(3) instructs:

> Every manufacturer of consumer goods sold in this state and for which the manufacturer has made an express warranty shall: Make available to authorized service and repair facilities sufficient service literature and replacement parts to effect repairs during the express warranty period.

"The moving party must satisfy his or her initial burden before the opposing party must controvert anything. (§ 437c, subd. (p)(1) & (2).) Accordingly, **a moving defendant who claims that the plaintiff cannot prove all the elements of his case must present evidence in support of this claim. The defendant cannot simply challenge the plaintiff to prove his case by opposition**. (*Aguilar, supra,* 25 Cal.4th at pp. 854–855 [107 Cal.Rptr.2d 841, 24 P.3d 493].)" (*Y.K.A. Industries, Inc. v. Redevelopment Agency of San Jose* (2009) 174 Cal.App.4th 339, 353, 94 Cal.Rptr.3d 424

(*Y.K.A.*).) In other words, "**a plaintiff resisting a motion for summary judgment bears no burden to establish any element of his or her case unless and until the defendant presents evidence either affirmatively *negating* that element (proving its absence in fact), or affirmatively showing that the plaintiff does not possess and cannot acquire evidence to prove its existence**." (*Reeves v. Safeway Stores, Inc.* (2004) 121 Cal.App.4th 95, 107, 16 Cal.Rptr.3d 717.) *Rutledge v. Hewlett-Packard Co.* (2015) 238 Cal.App.4th 1164, 1170 [190 Cal.Rptr.3d 411, 416–417], as modified on denial of reh'g (Aug. 21, 2015). (emphasis added).

Defendant misconstrues the parties' respective burdens. The Court finds that Defendant has not met its burden, as no evidence has been presented in support of the claim that sufficient service literature and replacement parts to effect repairs during the express warranty period were provided. As such, triable issues of material fact exist as to the Third Cause of Action.

3. Fourth Cause of Action – Breach of Implied Warranty of Merchantability

Defendant argues the Fourth Cause of Action fails because Plaintiff cannot meet his burden of proving the vehicle was operating below a minimum level of quality within the applicable implied warranty (i.e., the first three months following the sale of the vehicle). Defendant asserts there was only one presentation within the implied warranty period in which the vehicle was down one day, which does not amount to evidence that the Subject Vehicle operated below a minimum level of quality or rendered the vehicle unfit for its ordinary purpose of providing transportation. The repair history confirms the Subject Vehicle remains operable, capable of providing reliable transportation, and substantially free of defects.

Plaintiff asserts that the question is not when the defect showed itself, but rather whether the defect existed when Defendant sold the vehicle. Evidence that the defect is common to the vehicle line is evidence that it was present in the Subject Vehicle at the time of delivery and whether it was unmerchantable at delivery is a triable question of fact. The November 2016 repair followed labor operation 18-19-06-LN of Defendant's own Technical Service Bulletin 18-021-16 Revision B, which addresses exactly this symptom in 2016 Wranglers, and Defendant twice superseded that bulletin for the same condition.

[I]n order to prove a breach of the implied warranty, the purchaser was required to show that the defect existed at the time the product was sold or delivered. (1 White & Summers, Uniform Commercial Code (5th ed.2006), § 9–12, pp. 657–658; see, e.g., *Makuc v. American Honda Motor Co.* (1st Cir.1987) 835 F.2d 389, 392–393; *Hargett v. Midas International Corp.* (Miss.1987) 508 So.2d 663, 665.) *Mexia v. Rinker Boat Co., Inc.* (2009) 174 Cal.App.4th 1297, 1304 [95 Cal.Rptr.3d 285, 290].

The implied warranty of merchantability may be breached by a latent defect undiscoverable at the time of sale. (See *Moore v. Hubbard & Johnson Lumber Co.* (1957) 149 Cal.App.2d 236, 241, 308 P.2d 794; *Brittalia Ventures v. Stuke Nursery Co., Inc.* (2007) 153

Cal.App.4th 17, 24, 62 Cal.Rptr.3d 467; *Garlock Sealing Technologies, LLC v. NAK Sealing Technologies Corp.* (2007) 148 Cal.App.4th 937, 950–952, 56 Cal.Rptr.3d 177.) Indeed, "[u]ndisclosed latent defects ... are the very evil that the implied warranty of merchantability was designed to remedy." (*Willis Mining, Inc. v. Noggle* (1998) 235 Ga.App. 747, 749 [509 S.E.2d 731].) In the case of a latent defect, a product is rendered unmerchantable, and the warranty of merchantability is breached, by the existence of the unseen defect, not by its subsequent discovery. *Id*. at 1304-1305.

The Court finds triable issues of material fact exists as to whether the defect existed at the time of sale. (Duane Decl., Ex. B).

Defendant's Motion for Summary Judgment is denied.

TENTATIVE RULING #16:

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IS DENIED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

GENERAL REMOTE APPEARANCE INFORMATION DISCLAIMER:

IF A PARTY WISHES TO APPEAR REMOTELY, INSTRUCTIONS FOR REMOTE APPEARANCE CAN BE FOUND ON THE COURT'S WEBSITE AT: https://www.eldorado.courts.ca.gov/online-services/remote-appearances.

IF A PARTY PREVIOUSLY REGISTERED TO APPEAR REMOTELY FOR THE HEARING BUT ORAL ARGUMENT IS NOT REQUESTED AND THE PARTY DOES NOT INTEND TO APPEAR AT THE HEARING, THE PARTY MUST CANCEL THEIR REMOTE APPEARANCE REGISTRATION. THE COURT CANNOT CANCEL A REMOTE APPEARANCE ON BEHALF OF A PARTY. IF A PARTY FAILS TO

CANCEL THEIR REMOTE APPEARANCE REGISTRATION IN ACCORDANCE WITH THE COURT'S REMOTE APPEARANCE PROCEDURES, THE PARTY WILL NOT BE ISSUED A REFUND. TO CANCEL A REMOTE APPEARANCE REGISTRATION, VISIT: https://register.eldorado.courtroom.tech/login

IF YOU HAVE REGISTERED TO APPEAR REMOTELY FOR THIS HEARING, AND IT HAS BEEN CONTINUED, YOU WILL NEED TO VISIT THE COURT'S WEBSITE TO REVIEW THE GENERAL REMOTE APPEARANCE INFORMATION DISCLAIMER. PARTIES MUST CANCEL THEIR REMOTE APPEARANCE REGISTRATION THROUGH THE ONLINE SELF-REGISTRATION PLATFORM IF YOUR HEARING HAS BEEN CONTINUED. THE COURT CANNOT CANCEL A REMOTE APPEARANCE ON BEHALF OF A PARTY. IF A PARTY FAILS TO CANCEL THEIR REMOTE APPEARANCE REGISTRATION IN ACCORDANCE WITH THE COURT'S REMOTE APPEARANCE PROCEDURES, THE PARTY WILL NOT BE ISSUED A REFUND. PARTIES ARE REQUIRED TO REGISTER AGAIN FOR THE NEW HEARING DATE. INSTRUCTIONS FOR REMOTE APPEARANCE CAN BE FOUND ON THE COURT'S WEBSITE AT: https://www.eldorado.courts.ca.gov/online-services/remote-appearances.

17.	25CV1287	KENNEDY CAPOZZOLI VS. RALEY'S
DEMURRER /MOTION TO STRIKE		

Before the Court are the following matters: 1) Demurrer to Plaintiff's First Amended Complaint; and 2) Motion to Strike Allegations in Plaintiff's First Amended Complaint.

DEMURRER

On August 3, 2026, Defendant, Raley's ("Defendant"), filed a Demurrer to Plaintiff's First Amended Complaint. Plaintiff, Kennedy Capozzoli ("Plaintiff"), filed an Opposition on October 30, 2026. Defendant's Reply was filed on November 5, 2026,

Request for Judicial Notice

Defendant seeks judicial notice of the following the California Department of Resources Recycling and Recovery's ("CalRecycle") "SB 343 Material Characterization Study Final Findings 2023/2024", published on April 4, 2025 (Publication No. DRRR-2025-1750).

Plaintiff seeks judicial notice of the following: 1) Hon. William Q. Hayes's July 14, 2026, Order in California League of Food Producers v. Rob Bonta, Case No. 3:26-cv-01675-WQH-BLM, Southern District Court of California, (Dkt No. 24); 2) The Federal Trade Commission Guides for the Use of Environmental Marketing Claims ("Green Guides") updated on October 1, 2012; 3) The Federal Trade Commission Green Guides Statement of Basis and Purpose; 4) The Federal Trade Commission's Federal Register, Vol. 63, No. 84, Friday, May 1, 1998; 5) The order Denying Defendant's Motion to Dismiss in Swartz v. Coca-Cola Co., No. 3:21- cv-04643, 2022 WL 17881771, (N.D. Cal. April 8, 2024); and 6) The Order Overruling Defendant's Demurrer in Last Beach Cleanup v. Stater Bros, Case No. 22STCV18252.

Judicial notice is a mechanism which allows the Court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 govern the circumstances in which judicial notice of a matter may be taken. While Section 451 provides a comprehensive list of matters that must be judicially noticed, Section 452 sets forth matters which *may* be judicially noticed, including, but not limited to, "[r]ecords of (1) any court of this state or (2) any court of record of the United States or of any state of the United States."

Section 452 provides that the court "may" take judicial notice of the matters listed therein, while Section 453 provides a caveat that the court "shall" take judicial notice of any matter "specified in Section 452 if a party requests it and: (a) Gives each adverse party sufficient notice of the request…to enable such adverse party to prepare to meet the request; and (b) Furnishes the court with sufficient information to enable it to take judicial notice of the matter." Cal. Evid. Code § 453.

While the request made by the parties fall within the purview of Section 452, matters which *may* be judicially noticed, the Court does find that the parties provided each other and the Court sufficient notice of the request and copies of the documents requested to be noticed. As such, the parties have satisfied the requirements of Evidence Code § 453 and the requests for judicial notice are granted.

Meet and Confer Requirement

Code of Civil Procedure §430.41(a) provides: Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer.

Code of Civil Procedure §430.41(a)(3):

> The demurring party shall file and serve with the demurrer a declaration stating either of the following:
>
> (A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer.
>
> (B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.

Code of Civil Procedure §430.41(a)(4):

> A determination by the court that the meet and confer process was insufficient shall not be grounds to overrule or sustain a demurrer.

Dumas v. Los Angeles County Bd. of Supervisors (2020) 45 Cal. App. 5th 348 ("If, upon review of a declaration under section 430.41, subdivision (a)(3), a court learns no meet and confer has taken place, or concludes further conferences between counsel would likely be productive, it retains discretion to order counsel to meaningfully discuss the pleadings with an eye toward reducing the number of issues or eliminating the need for a demurrer, and to continue the hearing date to facilitate that effort").

Based on the Global Declaration of Meghan M. Baker, counsel attempted to meet and confer with Plaintiff prior to filing, but the dispute could not be resolved.

Background

On January 28, 2026, Plaintiff filed a First Amended Complaint ("FAC") for 1) Violation of California Business & Professions Code § 17500, et seq.; 2) Violation of California Business & Professions Code § 17200; and 3) Violation of Civil Code § 1750, et seq.

Legal Principles

[A] demurrer challenges only the legal sufficiency of the complaint, not the truth or the accuracy of its factual allegations or the plaintiff's ability to prove those allegations." (*Amarel v. Connell* (1998) 202 Cal.App.3d 137, 140.) A demurrer is directed at the face of the complaint and to matters subject to judicial notice. (Code Civ. Proc., § 430.30, subd. (a).) All properly pleaded allegations of fact in the complaint are accepted as true, however improbable they may be, but not the contentions, deductions or conclusions of facts or law. (*Blank v. Kirwan* (1985) 39 Cal.3d gives "the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (Blank, supra, 39 Cal.3d at p. 318.)

Discussion

Defendant demurs to each cause of action pursuant to Code of Civil Procedure §§ 430.10(e) and 430.10(f). Defendant argues Plaintiff's claims are barred on the following grounds: 1) the claims depend on a recyclability standard that the Legislature expressly deferred until October 4, 2026, pursuant to Public Resources Code § 42355.51; 2) the FAC fails to allege facts establishing Defendant's recyclability representations are misleading under the governing standard; and 3) the FAC fails to plead the challenged recyclability representations with the facts necessary to permit the Court to evaluate whether they are likely to mislead a reasonable consumer.

1. Public Resources Code § 42355.51

Defendant argues Plaintiff's theory is flawed because no operative California statute or regulation imposes the legal standard on which her claims depend. Rather, Plaintiff's allegations reflect her constructions of the recyclability framework adopted by Senate Bill 343 ("SB 343"), codified in Public Resources Code § 42355.51, which does not apply to products manufactured before October 4, 2026. This eighteen-month transition period functions as an express statutory safe harbor during which manufacturers cannot be subjected to liability for failing to comply with the deferred recyclability framework, as well as baring plaintiffs from repackaging the same theory under the UCL and CLRA.

Defendant asserts Plaintiff's theory depends upon treating § 42355.51's deferred recyclability criteria as the benchmark for determining whether Defendant's representations are misleading today. Plaintiff alleges Defendant's products are deceptively labeled because they do not satisfy the standards embodied in § 42355.51, which are not yet operative. As each cause of action rests upon a legal standard that is not yet operative, the FAC fails to state facts sufficient to constitute a cause of action.

Plaintiff contends the FAC never alleges, or even mentions, § 42355.51, and includes allegations which is never addressed in § 42355.51. Additionally, § 42355.51 is not a "safe harbor" but rather a statutory presumption for a deceptive or misleading recyclable claim.

In reply, Defendant maintains that Plaintiff alleges SB 343 in substance by quoting verbatim its legislative policy statement, alleging Defendant's packaging does not meet its statewide recyclability criteria, describing SB 343's facility sortation test, and measuring Defendant's packaging against whether that material will actually be recycled.

The Court does not find Defendant's argument to be colorable on demurrer, wherein the Court assumes the truth of the FAC's allegations. The face of the FAC does not mention § 42355.51 and does not plead allegations addressed by § 42355.51.

2. Governing Standard

Defendant argues the FAC rests upon the premise that a recyclability representation is deceptive whenever a product ultimately is not "actually recycled" after consumers place it into the recycling stream; however, until October 4, 2026, a recyclability claim is not deceptive if a product or package can be collected, separated, or otherwise recovered from the waste stream through an established recycling program for reuse or use in manufacturing or assembling another item. Reasonable consumers understand that a recyclability representation concerns the product's suitability for recycling, not a promise regarding the subsequent actions of consumers, recycling facilities, or downstream market participants, which the FAC does not allege fact establishing the challenged products fail this standard. As the FAC does not allege facts demonstrating Defendant's recyclability representations are false or misleading under the applicable legal framework, each cause of action fails as a matter of law.

Plaintiff asserts the challenged products contain false or untrue recyclability representations pursuant to Business & Professions Code § 1780.5 which codifies the Federal Trade Commission ("FTC") Green Guides. The FAC references or cites to the FTC Green Guides and alleges the products do not meet those standards to be labeled recyclable. The FTC expressly states that mere "capable of being recycled" does not allow for an unqualified recyclable claim, and instead, consumers must have access to recycling programs that will "actually recycle" the product. The FTC also clarifies that mere access does not satisfy the requirements for an unqualified recycling claim.

16 C.F.R. § 260.12 provides:

(a) It is deceptive to misrepresent, directly or by implication, that a product or package is recyclable. **A product or package should not be marketed as recyclable unless it can be collected, separated, or otherwise recovered from the waste stream through an established recycling program for reuse or use in manufacturing or assembling another item**.
(b) Marketers should clearly and prominently qualify recyclable claims to the extent necessary to avoid deception about the availability of recycling programs and collection sites to consumers.

1. **When recycling facilities are available to a substantial majority of consumers or communities where the item is sold, marketers can make unqualified recyclable claims. The term "substantial majority," as used in this context, means at least 60 percent**.
2. **When recycling facilities are available to less than a substantial majority of consumers or communities where the item is sold, marketers should qualify all recyclable claims**. Marketers may always qualify recyclable claims by stating the percentage of consumers or communities that have access to facilities that recycle the item. Alternatively, marketers may use qualifications that vary in strength depending on facility availability. The lower the level of access to an appropriate facility is, the more strongly the marketer should emphasize the limited availability of recycling for the product. For example, if recycling facilities are available to slightly less than a substantial majority of consumers or communities where the item is sold, a marketer may qualify a recyclable claim by stating: "This product [package] may not be recyclable in your area," or "Recycling facilities for this product [package] may not exist in your area." If recycling facilities are available only to a few consumers, marketers should use stronger clarifications. For example, a marketer in this situation may qualify its recyclable claim by stating: "This product [package] is recyclable only in the few communities that have appropriate recycling facilities."

(c) **Marketers can make unqualified recyclable claims for a product or package if the entire product or package, excluding minor incidental components, is recyclable**. For items that are partially made of recyclable components, marketers should clearly and prominently qualify the recyclable claim to avoid deception about which portions are recyclable.

(d) **If any component significantly limits the ability to recycle the item, any recyclable claim would be deceptive**. **An item that is made from recyclable material, but, because of its shape, size, or some other attribute, is not accepted in recycling programs, should not be marketed as recyclable**. (emphasis added).

The gravamen of Plaintiff's allegations rest on the following: 1) an item may not be labeled "recyclable" unless 60 percent of consumers or communities have access to recycling facilities that will actually recycle, not simply accept and ultimately discard, the product. (FAC ¶ 19); and 2) a product or package shall not be marketed as recyclable unless it can be collected, separated, or otherwise recovered from the waste stream through an established recycling program for reuse or use in manufacturing or assembling another item. In order to make a

recyclable claim, 60 percent of consumers or communities must have access to facilities that will actually recycle the product. (FAC ¶ 22).

Defendant's argument overlooks applying 16 C.F.R. § 260.12 in its entirety. The FAC directly pleads the governing recyclability standard. Plaintiff has supported the governing law standard with examples of products which, under 16 C.F.R. § 260.12, would be considered deceptive due to its failure to comply with the requirements.

3. Mislead a Reasonable Consumer

Defendant argues that the FCA fails to allege the complete representations consumers allegedly encountered and instead only pleads isolated snippets of language and generalized descriptions of the packaging, nor does Plaintiff explain how these materially different representations convey the same allegedly deceptive message to a reasonable consumer. Additionally, Plaintiff only specifically identifies four product categories and does not allege those categories are exhaustive.

" 'A "reasonable consumer" is "[an] ordinary consumer acting reasonably under the circumstances" [citation] ....' [Citation.] Such a consumer 'need not be "exceptionally acute and sophisticated," ' nor must they 'necessarily be wary or suspicious of advertising claims.' [Citation.] Rather, to meet the 'reasonable consumer' standard, 'a plaintiff need only show that members of the public are likely to be deceived' by the defendant's advertising. [Citation.] Members of the public are likely to be deceived by advertising that is false and by advertising that, ' "although true, is either actually misleading or ... has a capacity, likelihood, or tendency to deceive or confuse the public." [Citation.]' [Citation.]" (*Skinner, supra*, 53 Cal.App.5th at p. 948, 267 Cal.Rptr.3d 869.)

" ' "Likely to deceive" implies more than a mere possibility that the advertisement might conceivably be misunderstood by some few consumers viewing it in an unreasonable manner. Rather, the phrase indicates that the ad is such that it is probable that a significant portion of the general consuming public or of targeted consumers, acting reasonably in the circumstances, could be misled.' " (*Chapman v. Skype, Inc.* (2013) 220 Cal.App.4th 217, 226 [162 Cal.Rptr.3d 864].)

"California courts ... have recognized that whether a business practice is deceptive will usually be a question of fact not appropriate for decision on demurrer." (*Williams v. Gerber Products Co.* (9th Cir. 2008) 523 F.3d 934, 939 (*Williams*); see *Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 214 [197 Cal.Rptr. 783, 673 P.2d 660] [noting that "[t]he unsuitability of a demurrer to test the accuracy of a complaint is particularly marked" in false advertising cases].) Thus, whether a reasonable consumer is likely to be deceived as a matter of law may be decided "only in 'rare situation[s].' " (*Reid v. Johnson & Johnson* (9th Cir. 2015) 780 F.3d 952, 958.) This is because "[w]hat matters ... is how consumers actually behave—how they perceive advertising and how they make decisions. These are matters of fact, subject

to proof that can be tested at trial, even if as judges we might be tempted to debate and speculate further about them." (*Bell v. Publix Super Markets, Inc.* (7th Cir. 2020) 982 F.3d 468, 481 (*Bell*).) *Salazar v. Target Corporation* (2022) 83 Cal.App.5th 571, 578–579 [299 Cal.Rptr.3d 616, 621–622].

Plaintiff has identified four products, the packaging, and how it is deceptive under the governing standard, which is pled with sufficient specificity to put Defendant on notice of the claims. An exhaustive list of each deceptive product is not required to be pled to survive demurrer. Moreover, whether a reasonable consumer is likely to be deceived is a question of fact not resolvable on demurrer.

Defendant's demurrer to the FAC in its entirety is overruled.

MOTION TO STRIKE

Defendant, Raley's ("Defendant"), moves to strike specified portions of Plaintiff's, Kennedy Capozzoli ("Plaintiff"), First Amended Complaint ("FAC") pursuant to Code of Civil Procedure §§ 435 and 436. On October 30, 2026, Plaintiff filed an Opposition. Defendant's Reply was filed on November 5, 2026.

Legal Principles

A motion to strike is generally used to address defects appearing on the face of a pleading that are not subject to demurrer. (*Pierson v. Sharp Memorial Hospital* (1989) 216 Cal.App.3d 340, 342.) "The court may, upon a motion [to strike] …, or at any time in its discretion … [¶] … [s]trike out any irrelevant, false, or improper matter inserted in any pleading." (Code Civ. Proc., § 436, subd. (a).) Like a demurrer, the grounds for a motion to strike must appear on the face of the pleading or from any matter which the court is required to take judicial notice. (Code Civ. Proc., § 437, subd. (a).) On a motion to strike the trial court must read the complaint as a whole, considering all parts in their context, and must assume the truth of all well-pleaded allegations. (*Courtesy Ambulance*, supra, 8 Cal.App.4th at p. 1519.)

Discussion

Defendant moves to strike portions of the FAC on the following grounds: 1) the FAC fails to allege facts supporting a request for public injunctive relief; and 2) the class allegations are facially overbroad and should be stricken.

1. Public Injunctive Relief

Defendant argues that the FAC fails to identify what allegedly unlawful conduct remains ongoing that would warrant prospective injunctive relief. In addition, the FAC fails to identify the products, representations, or practices that would be subject to any injunction. The FAC alleges Defendant has remediated most of Plaintiff's complaints, but does not identify what conduct

Defendant should be ordered to perform or refrain from performing, and does not identify the products or representations that would be governed by any prospective injunction.

Plaintiff argues the FAC pleads that Defendant offered to remediate some, but not all of the challenged conduct, which Plaintiff declined due to the failure to remediate all of the conduct that Plaintiff has alleged is illegal. Plaintiff specifically requests a public injunction against Defendant to enjoin them from continuing to engage in the illegal conduct alleged. Plaintiff has also identified the products or representations, including obtaining an injunction regarding the false labeling, deceptive marketing, and consistent pattern and practice of falsely promoting natural claims.

[P]ublic injunctive relief under the UCL, the CLRA, and the false advertising law is relief that has "the primary purpose and effect of" prohibiting unlawful acts that threaten future injury to the general public. (*Broughton*, *supra*, at p. 1077, 90 Cal.Rptr.2d 334, 988 P.2d 67.) *McGill v. Citibank, N.A.* (2017) 2 Cal.5th 945, 955 [216 Cal.Rptr.3d 627, 633, 393 P.3d 85, 90].

[I]n order to grant injunctive relief under section 17204 or section 17535, there must be a threat that the wrongful conduct will continue. 'Injunctive relief will be denied if, at the time of the order of judgment, there is no reasonable probability that the past acts complained of will recur, i.e., where the defendant voluntarily discontinues the wrongful conduct.' " (*Colgan, supra, 135 Cal.App.4th at p. 702*, 38 Cal.Rptr.3d 36.) *In re Tobacco Cases II* (2015) 240 Cal.App.4th 779, 802 [192 Cal.Rptr.3d 881, 901].

As pleaded, the FAC alleges that Plaintiff served Defendant a notice letter pursuant to Civil Code § 1782(a) and that Defendant offered to remediate most, but not all of the issues, and failed to give notice to all affected consumers within 30 days of Plaintiff's notice (¶¶ 67-68, Exhibit 1). Exhibit 1 makes the following demands: 1) actual damages to Plaintiff, plus interest; 2) actual damages to every California based customer; 3) an additional $5,000.00 for every "senior citizen" and/or "disabled" California based customer who has paid Defendant any monetary amount within the last three years; and 4) **a complete removal of all written (i.e., on packaging) advertisements and/or representations that Raley's products are recyclable**; 5) attorneys' fees and costs incurred by Plaintiff and the class.

Although the FAC alleges that Defendant *offered* to remediate some, but not all of the challenged conduct, Plaintiff did not allege that Defendant *actually remediated* its conduct. As pleaded, a future threat remains as to Defendant's use of false advertising/representations regarding whether they are recyclable on its packaging. Additionally, Plaintiff expressly requests a public injunction against Defendant to enjoin them from engaging in illegal conduct described; i.e., Defendant's deceptive labeling on its packaging. Defendant's motion to strike requests for public injunctive relief is denied.

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2. Overbroad Class Allegations

Defendant contends that each of Plaintiff's causes of action is predicated on allegedly deceptive recyclability representations on Defendant's products, yet Plaintiff defines the proposed class to include every California consumer who purchased products that are branded, manufactured, distributed, and/or sold by Defendant, which is untethered from Plaintiff's theory of liability. As pleaded, the proposed class includes consumers who purchased products containing no recyclability representation whatsoever, as well as products that Plaintiff does not allege were deceptively labeled.

Plaintiff maintains that the FAC describes why there is more than a "reasonable possibility" that Plaintiff can establish a community of interest among class members and Plaintiff's motion to determine class sufficiency is premature at the pleading stage. After discovery, and at class certification, Plaintiff may seek to certify multiple classes after the opportunity to conduct discovery.

"The decision whether a case is suitable to proceed as a class action ordinarily is made on a motion for class certification." (*Bridgeford v. Pacific Health Corp*. (2012) 202 Cal.App.4th 1034, 1041, 135 Cal.Rptr.3d 905.) When the invalidity of the class allegations is revealed on the face of the complaint, the trial court may decide the issue by demurrer or motion to strike. (*Ortega v. Topa Ins. Co*. (2012) 206 Cal.App.4th 463, 478, 141 Cal.Rptr.3d 771.) But **California courts have long disfavored disposing of class allegations at the pleading stage**. (*Gutierrez v. California Commerce Club, Inc*. (2010) 187 Cal.App.4th 969, 976, 114 Cal.Rptr.3d 611 (*Gutierrez*).)

" '**If there is a reasonable possibility the plaintiffs can plead a prima facie community of interest among class members, " ' "the preferred course is to defer decision on the propriety of the class action until an evidentiary hearing has been held on the appropriateness of class litigation**." ' " ' " (*Tucker*, *supra*, 208 Cal.App.4th at p. 215, 145 Cal.Rptr.3d 340, citing *Gutierrez*, *supra*, 187 Cal.App.4th at p. 975, 114 Cal.Rptr.3d 611.) Thus, " 'all that is normally required for a complaint to survive demurrers to the propriety of class litigation is that the complaint allege facts that tend to show: **(1) an ascertainable class of plaintiffs, and (2) questions of law and fact which are common to the class**.' " (*Prince v. CLS Transportation, Inc.* (2004) 118 Cal.App.4th 1320, 1326, 13 Cal.Rptr.3d 725 (*Prince*); see *Blakemore v. Superior Court* (2005) 129 Cal.App.4th 36, 59, 27 Cal.Rptr.3d 877 (*Blakemore*) ["Absent 'strong factual showings' in the complaint that negate the possibility of a community of interest, determination of the propriety of a class action should be deferred 'until a time when [the court] may better make the decision.' "].)

"A motion to strike, like a demurrer, challenges the legal sufficiency of the complaint's allegations, which are assumed to be true." (*Blakemore*, *supra*, 129 Cal.App.4th at p. 53, 27 Cal.Rptr.3d 877.) Thus, as with a demurrer, **a "motion to strike the class allegations 'raises only the narrow issue whether this suit as a matter of law lacks sufficient community of interest to**

sustain a class action.' " (*Id.* at p. 54, 27 Cal.Rptr.3d 877.) *Shaw v. Los Angeles Unified School Dist.* (2023) 95 Cal.App.5th 740, 760–761 [313 Cal.Rptr.3d 617, 636]. (emphasis added).

The Court finds that the FAC has sufficiently pleaded facts providing a reasonable possibility that Plaintiff can establish a community of interest among class members. Defendant's motion to strike class allegations is denied.

TENTATIVE RULING #17:

DEFENDANT'S DEMURRER TO THE FAC IN ITS ENTIRETY IS OVERRULED.

DEFENDANT'S MOTION TO STRIKE IS DENIED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

GENERAL REMOTE APPEARANCE INFORMATION DISCLAIMER:

IF A PARTY WISHES TO APPEAR REMOTELY, INSTRUCTIONS FOR REMOTE APPEARANCE CAN BE FOUND ON THE COURT'S WEBSITE AT: https://www.eldorado.courts.ca.gov/online-services/remote-appearances.

IF A PARTY PREVIOUSLY REGISTERED TO APPEAR REMOTELY FOR THE HEARING BUT ORAL ARGUMENT IS NOT REQUESTED AND THE PARTY DOES NOT INTEND TO APPEAR AT THE HEARING, THE PARTY MUST CANCEL THEIR REMOTE APPEARANCE REGISTRATION. THE COURT CANNOT CANCEL A REMOTE APPEARANCE ON BEHALF OF A PARTY. IF A PARTY FAILS TO CANCEL THEIR REMOTE APPEARANCE REGISTRATION IN ACCORDANCE WITH THE COURT'S REMOTE APPEARANCE PROCEDURES, THE PARTY WILL NOT BE ISSUED A REFUND. TO CANCEL A REMOTE APPEARANCE REGISTRATION, VISIT: https://register.eldorado.courtroom.tech/login

IF YOU HAVE REGISTERED TO APPEAR REMOTELY FOR THIS HEARING, AND IT HAS BEEN CONTINUED, YOU WILL NEED TO VISIT THE COURT'S WEBSITE TO REVIEW THE GENERAL REMOTE APPEARANCE INFORMATION DISCLAIMER. PARTIES MUST CANCEL THEIR REMOTE APPEARANCE REGISTRATION THROUGH THE ONLINE SELF-REGISTRATION PLATFORM IF YOUR HEARING HAS BEEN CONTINUED. THE COURT CANNOT CANCEL A REMOTE APPEARANCE ON BEHALF OF A PARTY. IF A PARTY FAILS TO CANCEL THEIR REMOTE APPEARANCE REGISTRATION IN ACCORDANCE WITH THE COURT'S REMOTE APPEARANCE PROCEDURES, THE PARTY WILL NOT BE ISSUED A REFUND. PARTIES ARE REQUIRED TO REGISTER AGAIN FOR THE NEW HEARING DATE. INSTRUCTIONS FOR REMOTE APPEARANCE CAN BE FOUND ON THE COURT'S WEBSITE AT: https://www.eldorado.courts.ca.gov/online-services/remote-appearances.