October 3, 2025
Dept. 9
Tentative Rulings

1.	**23CV2000**	**SOMMER v. LEMONADE INSURANCE CO.**
Motion to Stay and Petition to Confirm Contractual Arbitration Award		

TENTATIVE RULING #1:

APPEARANCES REQUIRED ON FRIDAY, OCTOBER 3, 2025, AT 8:30 AM IN DEPARTMENT NINE.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

2.	**25CV0770**	**WELLS FARGO BANK v. LACALLE**
Motion to Deem Matters Admitted		

Pursuant to the September 12, 2025 Request for Dismissal, this case was dismissed without prejudice on September 22, 2025. Therefore, this hearing is dropped from calendar.

TENTATIVE RULING #2:

HEARING DROPPED FROM CALENDAR.

3.	**23CV1828**	**DISCOVER BANK v. BAILEY**
Motion to Quash Summons and Dismiss Case		

Defendant brings a motion to quash summons and dismiss case, based on lack of jurisdiction as Defendant no longer resides in El Dorado County. However, this Motion is untimely as the Court entered default against Defendant on August 4, 2025.

TENTATIVE RULING #3:

MOTION TO QUASH SUMMONS AND DISMISS CASE 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).

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4.	**25CV0356**	**YOUNGBLOOD-GRIFFITH et al v. BEJARANO et al**
Motion to Compel (2)		

Tami Youngblood-Griffith and Tim Griffith seek an order from the Court compelling responses to Plaintiff's Form Interrogatories, Special Interrogatories, and Requests for Production, Set One, (collectively "discovery requests") and an award of sanctions against Oscar Bejarano ("Defendant").

On May 30, 2025, Plaintiffs served discovery requests on Defendant. (White Dec. ¶2-5). Defendant did not respond and on July 1st, 3rd, 8th, 14th and 19th, 2025, Plaintiffs' counsel states he emailed Defense Counsel to meet and confer. On July 8, 2025, Plaintiffs' counsel states he called Defense Counsel and left a message to meet and confer. Plaintiffs' counsel states that Defendant did not respond to a single attempt and has instead ignored all of Plaintiff's meet and confer efforts.

Code Civ. Proc. §§ 2023.010 and 2023.020 warrant sanctions when a party fails to respond to discovery, makes unmeritorious objections, and/or provides evasive responses. Courts "shall" impose monetary sanctions against a losing party on a motion to compel further discovery unless the court finds the losing party "acted with substantial justification." (Code Civ. Proc. § 2031.300(c).) This sanction includes attorney's fees. (Code Civ. Proc. § 2023.030(a).)

Plaintiffs request sanctions in the amount of $2,500.00 per motion, for a total of $5,000.00. Plaintiffs' counsel's hourly billing rate in this matter is $500.00 per hour. (White Dec. ¶10). Plaintiffs' counsel states he has spent 4 hours drafting and editing each of the instant motions and anticipates spending another hour appearing at the hearing on this matter. Plaintiffs' 3- and 4-page motions are identical aside from the Plaintiff bringing the motion, and do not reasonably necessitate four hours of attorney time each, particularly for a 20-year attorney. The Court awards sanctions in the amount of two hours of attorney time at $500.00 per hour, for a total of $900.00.

There is no Opposition.

TENTATIVE RULING #4:

1. **PLAINTIFF TAMI YOUNGBLOOD-GRIFFITH'S MOTION TO COMPEL IS GRANTED.**
2. **PLAINTIFF TIM GRIFFITH'S MOTION TO COMPEL IS GRANTED.**
3. **SANCTIONS IN THE AMOUNT OF $900.00 AWARDED TO PLAINTIFFS, PAYABLE BY DEFENDANT BEJARANO BEFORE DECEMBER 4, 2025.**

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5.	**24CV0118**	**KEYZER et al v. CUEVAS et al**
Motion for Leave		

Defendant Tino Cuevas ("Cuevas" or "Defendant") hereby requests leave of court to file a compulsory Cross-Complaint for indemnity and apportionment of fault against fellow Defendants Spraytech Systems, Inc. doing business as S T S, Inc. ("STS"), River City Window & Door, Inc. doing business as Renewal by Anderson ("RBA"), and Vision Construction Deglazing, Inc. ("VCD") (collectively "Cross-Defendants"). Defendant argues the proposed Cross-Complaint is compulsory because it arises out of the same transactions and/or occurrences as the causes of action in the underlying Complaint in this action and Cuevas' motion must be granted absent substantial evidence of bad faith.

If a party does not plead a compulsory cross-complaint along with its answer, "whether through oversight, inadvertence, mistake, neglect, or other cause," he or she may apply for leave of court to do so. (Code Civ. Proc., § 426.50.) The court has no discretion to deny such a motion absent a showing that the moving party acted in bad faith. (*Ibid*; *Silver Organizations Ltd. v. Frank* (1990) 217 Cal. App. 3d 94, 98–100 ["substantial evidence" of bad faith required to negate good faith].) Indeed, the court "shall grant" such a motion, so long as the moving party acted in good faith. (Code Civ. Proc., § 426.50.) The code sections governing motions for leave to file cross-complaints "shall be liberally construed to avoid forfeiture of causes of action." (*Ibid*.)

Defendant argues that the proposed Cross-Complaint is compulsory; it contains two causes of action: (1) apportionment of fault against Cross-Defendants, and (2) indemnification from Cross-Defendants. The proposed causes of action seek relief from the same allegations that are the basis of Plaintiffs' claims in the Complaint. <u>The Court agrees that the proposed Cross-Complaint is compulsory.</u>

Code of Civil Procedure section 426.50 provides the applicable standard:

> A party who fails to plead a cause of action subject to the requirements of this article, whether through oversight, inadvertence, mistake, neglect, or other cause, may apply to the court for leave . . . to file a cross-complaint, to assert such cause at any time during the course of the action. The court, after notice to the adverse party, shall grant, upon such terms as may be just to the parties, leave . . . to file the cross-complaint, to assert such cause if the party who failed to plead the cause acted in good faith. This subdivision shall be liberally construed to avoid forfeiture of causes of action.

Absent a finding of bad faith, the trial court has no discretion to deny a motion to file a compulsory cross-complaint under section 426.50. (*Silver Organizations Ltd., supra*, 217 Cal. App. 3d at 98 [rejecting proposition stated in *Gherman v. Colburn* (1977) 72 Cal. App. 3d 544, 559, that section 426.50 allowed courts a "modicum of discretion."].) "A motion to file a cross-complaint at any time during the course of the action must be granted unless bad faith of the

moving party is demonstrated." (*Silver Organizations, supra*, 217 Cal. App. 3d at 98, emphasis added.) Oversight, inadvertence, neglect, mistake or other cause are insufficient grounds to deny the motion absent bad faith. (*Id*.) Moreover, any decision to deny a motion to file a compulsory cross-complaint must be support by substantial evidence of bad faith. (*Id*. at 99.)

Defendant argues that there is no evidence of bad faith – he substituted his attorney April 30, 2025, who notified Cross-Defendants of the intent to file a Cross-Complaint, provided a proposed Cross-Complaint and requested a stipulation for leave to file it. (Laino Decl., ¶3).

In its Opposition, STS does not argue that the Cross-Complaint is not compulsory, nor does it argue that there is bad faith. The only arguments raised by STS are that Defendant does not have a good faith basis to claim attorney fees, that STS has no liability for attorney fees, and that STS will be prejudiced by the proposed amendment. The first two arguments are subject to a Motion to Strike, and not grounds for denying Leave to Amend. In regards to prejudice, STS argues that in *Garcia v. Roberts* (2009) 173 Cal.App.4th 900, the court, in denying a proposed amendment, leaned heavily on the fact that the opposing party did not have time to conduct discovery and otherwise investigate the new allegations. As admitted by STS, *Garcia* involved a proposed amendment during trial. Furthermore, STS fails to identify what additional discovery would be required, and the Court finds that there are not necessarily new allegations. STS has not demonstrated alleged prejudice to it, and certainly does not demonstrate bad faith on behalf of Defendant, especially in light of the liberal standard to allow amendment of pleadings.

TENTATIVE RULING #5:

MOTION FOR LEAVE TO FILE CROSS-COMPLAINT IS GRANTED.

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6.	**22CV1608**	**CRAMER v. NORTON**
Motion to Compel		

Petitioner brings a Motion to Compel further responses to admissions. Petitioner fails to include any statement regarding meet and confer efforts. Additionally, the Petition fails to indicate when the requests were served (and whether the Petition is timely).

Defendant objects, arguing that Petitioner again failed to meet and confer prior to filing the instant motion. Consistent therewith, Petitioner, like his prior motions, failed to accompany this motion with the mandatory declaration stating facts showing a reasonable and good faith attempt to resolve informally the issues presented by the motion before filing. [CCP §§ 2016.040, 2030.300(b)(1); *Golf & Tennis Pro Shop, Inc. v. Sup.Ct. (Frye)* (2022) 84 Cal.App. 5th 127, 138, fn. 9—declaration must accompany notice of motion, along with all other documents supporting notice of motion]. Petitioner requests that the Motion be denied for failure to comply with the requirements of the CCP, and on the merits, as Defendant argues her responses to all four of the requests for admission are legally sufficient.

Sanctions under CCP §128.5 are justified here as Cramer, despite being warned by counsel for Defendant and as set forth in CCP §§ 2023.010(i) and §2023.020, failed to comply with the pre-filing meet and confer requirements. California Law is clear that failing to make a reasonable and good faith attempt to resolve the issues informally before a motion to compel is filed constitutes a misuse of the discovery process. CCP § 2023.010(i). Indeed, as set forth in CCP §2023.020, "the court shall impose a monetary sanction ordering that any party or attorney who fails to confer as required pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct."

Based on the failure to comply with the requirements of the CCP, and the sufficiency of Defendant's responses, the Motion is hereby denied. As required by CCP §2023.020, the Court is required to impose monetary sanctions, and finds the amount of $300.00 to be reasonable based on Petitioner's repeated violations of the CCP.

TENTATIVE RULING #6:

1. **MOTION TO COMPEL DENIED.**
2. **SANCTIONS IN THE AMOUNT OF $300.00 PAYABLE BY CRAMER TO NORTON'S COUNSEL BEFORE NOVEMBER 3, 2025.**

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.	**25CV2200**	**SANFILIPPO v. MARTINEZ**
Petition for Release of Property from Lien		

Petitioner is the owner of 5065 Greyson Creek Drive (the "property"). Respondent performed work on the property and on August 7, 2025, recorded a claim of mechanic's lien against the property in the amount of $79,042.74. Petitioner states that all work on the property ceased on April 3, 2025, and that Petitioner recorded a Notice of Cessation on July 28, 2025.

Civil Code § 8412:

A direct contractor may not enforce a lien unless the contractor records a claim of lien after the contractor completes the direct contract, and before the earlier of the following times:

(a) Ninety days after completion of the work of improvement.

(b) Sixty days after the owner records a notice of completion or cessation.

Petitioner argues that Respondent was required to record his line no later than June 2, 2025; however, the Court calculates the date as July 2, 2025. Petitioner further argues that Respondent acknowledged that no work was performed but refuses to release the lien.

Based on the untimeliness of the recording of the mechanic's lien, the Court hereby grants Petitioner's Petition.

TENTATIVE RULING #7:

PETITION FOR RELEASE OF PROPERTY FROM LIEN 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.	**23CV2180**	**WILSON et al v. TURNER et al**
Motion to Compel		

Cross-Complainant Norcal Gold, Inc. ("Norcal") submits the following Memorandum of Points and Authorities in support of its Motion to Compel responses to Special Interrogatories Set, One; Request for Production of Documents Set One; Request for Admissions Set One; and Form Interrogatories, Set One (collectively "discovery requests") from Cross-Defendant Romboad Alborzi ("Alborzi").

On March 13, 2025, Norcal propounded discovery requests on Alborzi, with responses due on April 13, 2025. Norcal did not receive any responses. On June 5, 2025, a meet and confer letter was sent to Alborzi and no response was received.

When a party makes a discovery demand under Code of Civil Procedure §2016 et seq. and the party to whom the demand is directed fails to respond, the demanding party may move for an order compelling response. Cal. Civ. Proc. Code 2030.300; Cal. Civ. Proc. Code §2031.300; Cal. Civ. Proc. §2033.280. If a party to whom interrogatories are directed fails to serve a timely response, the propounding party may move for an order compelling responses and for monetary sanction. (Code of Civ. Proc. §2030.290(b), 2031.300(b), 2033.280 ([including] a party who fails to serve a timely response to a request for admission; *Leach v. Super. Ct.* (1980) 111 Cal.App.3d 902, 905-906.) "Once [a party] 'fail[ed] to serve a timely response,' the trial court had authority to grant [opposing party's] motion to compel responses." (*Sinaiko Health. Couns., Inc. v. Pac. Health Consultants* (2007) 148 Cal.App4th 390, 405.)

By failing to respond to an inspection demand, the offending party waives any objection to the demand. (Code Civ. Proc. §2031.300(a).) "Unsworn responses are tantamount to no responses at all" (*Appleton v. Super. Ct.* (1988) 206 Cal.App.3d 632, 636.) Failure to timely respond waives all objections, including privilege and work product (Code Civ. Proc., §2030,290(a), 2031.300(a).) Thus, unless the party to whom the demand was directed obtains relief from waiver, he or she cannot raise objections to the documents demanded.

The appropriate remedy for a party who does not respond to propounded requests for admission is an order deeming the requests admitted. "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" Cal. Code Civ. Proc. §2033. 280.

"The court shall impose a monetary sanction under §2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response" Cal. Code Civ. Proc. §2030.300(d), 2031.300(c). "It is mandatory that the court impose a monetary sanction under §2023 on the party or attorney, or both, whose failure to serve timely response to requests for admission necessitated this motion" Cal. Code Civ. Proc. §2033.280(b). Accordingly, the moving arty requests sanctions against Alborzi in the amount of $1800, based on 6 hours of

attorney time at $300 per hour. The Court finds 3 hours of attorney time to be reasonable, based on the length of the Motion, and hereby awards sanctions in an amount of $900.

The Court notes that at the time the Motion was served, Alborzi was self-represented, but he has since obtained counsel. However, there is no Opposition.

TENTATIVE RULING #8:

1. **MOTION TO COMPEL RESPONSES TO SPECIAL INTERROGATORIES, SET ONE, REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE, AND FORM INTERROGATORIES, SET ONE, GRANTED.**
2. **REQUEST TO DEEM MATTERS ADMITTED IS GRANTED.**
3. **SANCTIONS IN THE AMOUNT OF $900.00 AWARDED, PAYABLE BEFORE DECEMBER 4, 2025.**

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9.	**24CV2241**	**GROLL et al v. FCA US, LLC et al**
Motion to Strike & Demurrer		

The Notices do not comply with Local Rule 7.10.05. Repeated violations will be grounds for sanctions pursuant to Local Rule 7.12.13.

Defendants FCA US, LLC and Thompsons Chrysler Dodge Jeep Ram (collectively "Defendants") move the Court for an order sustaining their demurrer to the fifth and sixth causes of action in the First Amended Complaint ("FAC") filed by Plaintiffs. This Demurrer is made pursuant to California Code of Civil Procedure § 430.10 (e) and (f) on the grounds that Plaintiffs' fifth and sixth causes of action fail to allege facts sufficient to state claims against Defendants as a matter of law.

Standard of Review - Demurrer

> A demurrer tests the sufficiency of a complaint by raising questions of law. *Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 20. In determining the merits of a demurrer, all material facts pleaded in the complaint and those that arise by reasonable implication, but not conclusions of fact or law, are deemed admitted by the demurring party. (*Moore v. Conliffe,* 7 Cal.4th 634, 638; *Interinsurance Exchange v. Narula,* 33 Cal.App.4th 1140, 1143. **The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded. *Flynn v. Higham* (1983) 149 Cal.App.3d 677, 679.**
>
> Rodas v. Spiegel (2001) 87 Cal. App. 4th 513, 517.

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.

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 Declaration of Arya Shirani, the Court is satisfied that the parties engaged in meet and confer efforts as required by the Code.

Fraudulent Inducement

Defendants' first and second arguments are that Plaintiffs' FAC fails to state facts sufficient to constitute a cause of action and fails to establish a direct transaction, giving rise to a duty to disclose. "[T]he elements of a cause of action for fraud based on concealment are: '(1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damages.'" Lovejoy v. AT&T Corp., 92 Cal. App. 4th 85, 96 (2001) *citing* Marketing West, Inc. v. Sanyo Fisher (USA) Corp., 6 Cal. App. 4th 603, 612-613 (1992). "Suppression of a material fact is actionable when there is a duty of disclosure, which may arise from a relationship between the parties, *such as buyer and seller*" (emphasis added) (Dhital v. Nissan N. Am., Inc., 84 Cal. App. 5th 828, 843 (2022)) "…or parties entering into *any kind of contractual agreement.*" (emphasis added) Rattagan v. Uber Technologies, Inc. 17 Cal. 5th 1, 40-41 (2024) *citing* LiMandri v. Judkins, 52 Cal. App. 4th 326, 337 (1997).

While the court concedes, "[f]raud, including concealment, must be pleaded with specificity" (*Dhital,* 84 Cal. App 5th at 843-844 *citing* Linear Technology Corp. v. Applied Materials, Inc., 152 Cal. App. 4th 115, 132 (2007)); here, the court does find that each of the aforementioned elements of fraudulent inducement are sufficiently pled in the FAC.

Allegations pertaining to the first element, concealment of a material fact, can be found riddled throughout the complaint. Namely, in ¶ 17-22; ¶ 32; ¶ 34-36; ¶ 38-39; ¶41-42; and ¶ 60-62. The content of ¶ 33 also indicates that the issue was a safety condition thereby making the concealed fact in question material, as required for a fraudulent inducement cause of action.

Element number two is a duty to disclose. Again, the court finds this to be sufficiently pleaded as follows. Paragraph 10 establishes the contractual relationship between the parties by way of the vehicle's warranty. Paragraphs 41-43 and ¶ 62 demonstrate Defendants' "exclusive knowledge of material facts not known to the plaintiff" (LiMandri v. Judkins, 52 Cal. App. 4th 326, 336 (1997)).

Element number 3, an intent to conceal, is also well established simply by the fact that, taking the allegations as true, Defendant had knowledge of the engine defect from pre-production testing, early consumer complaints, aggregate warranty data compiled from the network of dealers, testing conducted by FCA and warranty repair and part replacement data. FAC ¶62. While it may be argued that these statements are conclusory, Plaintiff has sufficiently pled that Defendant knew or should have known of the defect and concealed it. With these facts in mind, it can be reasonably inferred that Defendant intentionally withheld this information from the consumer with for the purpose of inducing the consumer to purchase the vehicle.

Finally, element number 4, damages. Paragraph 51 asserts damages sustained by Plaintiff as a result of the alleged fraudulent concealment.

Defendants further argue that Plaintiffs' claim is barred by the economic loss doctrine. The Economic Loss Doctrine restricts recovery of tort damages to non-economic losses, precluding actions where a plaintiff seeks compensation for purely economic damages resulting from frustrated expectations in a commercial transaction. Seely v. White Motor Co. (1965) 63 Cal.2d 9, 17-18 [superseded by statute on other grounds]. Plaintiffs do not allege actual property damage or physical injury and rather seeks purely economic damages in connection with the fraudulent concealment cause of action, alleging these damages arose from entering a contract based on misrepresented or concealed facts.

Plaintiffs oppose, arguing that the California Supreme Court has repeatedly allowed tort damages where a contract was induced by fraud. "[F]raudulent inducement of contract—as the very phrase suggests—is not a context where the 'traditional separation of tort and contract law' [citations] obtains. To the contrary, this area of the law traditionally has involved both contract and tort." (Lazar v. Sup. Ct. (1996) 12 Cal.4th 631, 645.) Because the Court finds that Plaintiff has sufficiently alleged fraudulent inducement, the Court also finds that the fraudulent inducement claim is not barred by the economic loss doctrine.

Defendants' demurrer as to the fifth cause of action is overruled.

Negligent Repair

Defendants argue that Plaintiffs' claim for negligent repair is barred by the economic loss doctrine because they have failed to plead sufficient facts showing that the dealership's conduct caused any actual damages. Plaintiffs oppose, arguing to state a viable claim for negligent repair, a plaintiff need only allege that the repair facility (1) owed a duty to use ordinary care and skill, (2) breached its duty, (3) caused damage to the plaintiff, and (4) that this was causation of damages. (Lytle v. Ford Motor Co. (E.D.Cal. 2018) 2018 WL 4793800; citing Burgess v. Superior Court (1992) 2 Cal.4th 1064, 1072.

Plaintiffs allege the first element in ¶ 69-70, the second in ¶ 71, the third in ¶ 72, and the fourth in ¶ 51. However, the Court agrees that Plaintiffs only make conclusory statements and

fail to establish damage to one component of the vehicle caused physical damage to a larger product. (Jimenez v. Superior Court (2002) 29 Cal.4th 473, 483-484). While Plaintiffs do not demonstrate or argue their ability to cure this deficiency through leave to amend, the Court acknowledges the liberal standard at this stage of the pleadings, and hereby sustains Defendants' demurrer as to the sixth cause of action, with leave to amend.

Motion to Strike

Defendants have moved to strike the punitive damage request from Plaintiffs' FAC. Defendants argue its position on the basis that punitive damages are not recoverable because Plaintiffs' claim for fraud fails (for the reasons set forth in Defendants' demurrer) and therefore punitive damages are not recoverable under the remaining claim being made pursuant to the Song-Beverly Consumer Warranty Act.

Plaintiffs oppose the Motion to Strike arguing that because the demurrer fails, so too does the Motion to Strike.

Exemplary, otherwise known as punitive, damages are recoverable "where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice…" Cal. Civ. Code § 3294(a). A claim for punitive damages may be decided at the pleadings phase "…only 'when no reasonable jury could find the plaintiff's evidence to be clear and convincing proof of malice, fraud or oppression." Pac. Gas & Elec. Co. v. Sup. Ct., 24 Cal. App. 5th 1150, 1159 (2018).

Fraud, for purposes of recovering punitive damages, is defined as "…intentional misrepresentation, deceit, or *concealment of a material fact*…" with the intention of depriving an individual of a legal right or causing injury. Cal. Civ. Code § 3294(c)(3). Where the allegation of fraud is against a corporate defendant, it must be shown that the fraudulent act was ratified by "an officer, director, or managing agent of the corporation." Cal. Civ. Code § 3294(b).

Here, as discussed above, the court does find that Plaintiffs have sufficiently pled a claim for fraudulent concealment on the part of Defendants. As such, the court does find that the request for punitive damages is sufficiently supported by the allegations in the FAC and as such the Motion to Strike is denied.

TENTATIVE RULING #9:

1. **DEFENDANTS' DEMURRER AS TO THE FIFTH CAUSE OF ACTION IS OVERRULED.**
2. **DEFENDANTS' DEMURRER AS TO THE SIXTH CAUSE OF ACTION IS SUSTAINED, WITH LEAVE TO AMEND WITHIN 10 DAYS FROM THE COURT'S ORDER.**
3. **DEFENDANTS' 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.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

10.	**23CV0577**	**MOHR v. STATE FARM MUTUAL INS. CO.**
MSJ		

On June 26, 2025, Defendant State Farm Mutual Auto Insurance Company (herein after referred to as either "Defendant" or "State Farm") filed its Notice of Motion and Motion for Summary Judgment and supporting documents. Plaintiff filed its opposition papers on August 29, 2025. This includes a Memorandum of Points and Authorities in Support of Opposition, an Index of Exhibits, Response to Separate Statement and a Declaration of Amanda C. Schuchhardt. Defendant filed its Reply Brief, Objections, and Reply to Plaintiff's Response to Separate Statement on September 8, 2025. Plaintiff filed a Notice of Errata to Opposition on September 30th.

The facts of this case are as follows. On August 7, 2018, Plaintiff was issued an insurance policy by Defendant with limits of $50,000 per occurrence and $100,000 aggregate for uninsured/underinsured motorist limits. On August 29, 2018, Plaintiff was involved in a motor vehicle accident with a third party in Folsom, California. On November 15, 2018, Plaintiff submitted a request to increase the uninsured/underinsured limits to $250,000 per occurrence and $500,000 aggregate. On November 20th, Plaintiff renewed his request to increase the policy limits and make the increase retroactive to the inception of the policy. On November 26th, Plaintiff received a revised declaration page with the increased limits. It wasn't until that day that he finally notified Defendant of his August 29th accident. Ultimately, On July 25, 2019, Plaintiff sent a demand for payment of his underinsured motorist policy. Defendant denied the demand disputing the alleged damages. After conducting an arbitration on the matter, Plaintiff was awarded $199,940.52 in October of 2022. Defendant paid the award in December of 2022. In April of 2023, Plaintiff filed his complaint in the present action.

Defendant now moves for summary judgment of Plaintiff's complaint which alleges one cause of action for breach of the covenant of good faith and fair dealing. Defendant bases its motion on three main arguments. First, Plaintiff's concealment of the accident when requesting a retroactive increase to his underinsured motorist limits negates any obligation on the claim and therefore there can be no claim for bad faith. Second, Plaintiff's claim is barred under the doctrine of unclean hands. And third, Defendant did not waive its right to rescind the policy as Plaintiff did not notify Defendant about the modification to his policy, and an arbitrator cannot decide coverage issues. Plaintiff opposes the motion on all grounds, arguing that questions of fact exist as to Plaintiff's intent in failing to disclose his accident and the materiality of the non-disclosure.

Defendant asserts numerous objections to Plaintiff's proposed evidence. Rulings on those objections are set forth in the attached.

A motion for summary judgment shall be granted if there is no triable issue as to any material fact and the papers submitted show that the moving party is entitled to judgment as a matter of law. Cal. Civ. Pro. § 437c. A defendant moving for summary judgment need only show that one or more elements of the cause of action cannot be established. Aguilar v. Atlantic Richfield Co., (2001) 25 Cal.4th 826, 849. This can be done in one of two ways, either by affirmatively presenting evidence that would require a trier of fact *not* to find any underlying material fact more likely than not; or by simply pointing out "that the plaintiff does not possess and cannot reasonably obtain, evidence that *would* allow such a trier of fact to find any underlying material fact more likely than not." *Id.* at 845; Brantly v. Pisaro, 42 Cal. App. 4th 1591, 1601 (1996).

Here, the complaint asserts a single cause of action for breach of the covenant of good faith and fair dealing, often colloquially referred to as bad faith. The core elements of a claim for bad faith require that the plaintiff was insured under a valid insurance policy, the plaintiff asserted a legitimate claim for benefits under that policy, and the insurer unreasonably withheld payment. *See* Major v. Western Home Ins. Co., 169 Cal. App. 4th 1197, 1209 (2009). Where an insurer can establish the invalidity or rescission of the insurance policy, there can be no claim for bad faith. This is the crux of Defendant's argument.

Defendant argues that Plaintiff's failure to disclose his motor vehicle accident constitutes a material misrepresentation which is grounds for rescission of the policy *ab initio.* Defendant further argues that even without rescinding the contract, there was no coverage for the subject accident pursuant to the concealment and fraud provision in the insurance policy. While Defendant's arguments in this regard are rather compelling, the court need not reach these issues because, even if the court were to find grounds for recission as a matter of law, there remains a genuine issue of material fact as to whether or not Defendant waived its right to claim rescission or enforce the concealment and fraud provision.

"'In general, to constitute a waiver, there must be an existing right, a knowledge of its existence, an actual intention to relinquish it, *or conduct so inconsistent with the intent to enforce the right as to induce a reasonable belief that it has been relinquished*.'" Pacific Business Connections, Inc. v. St. Paul Surplus Lines Ins. Co., 150 Cal. App. 4th 517, 525 (2007) *citing* Klotz v. Old Line Life Ins. Co. of America, 955 F. Supp. 1183, 1186 (1996) (emphasis added). In keeping with the general rule for waiver, "[a]n insurance company will be deemed to waive any ground which would otherwise entitle it to rescind a policy or treat it as forfeited when, despite knowledge of the facts giving it the option, it impliedly recognizes the continuing effect of the policy. [Citations.]" DuBeck v. Cal. Physicians' Service, 234 Cal. App. 4th 1254, 1265 (2015). For example, an insurance company may be found to have waived the right to rescission where it has all of the pertinent facts that would allow for rescission, yet it fails to do so for two years. *See* DuBeck v. Cal. Physicians' Service, 234 Cal. App. 4th 1254 (2015) (holding that the insurance company's "decision to cancel, rather than rescind…its affirmation of policy coverage up to that date and assurance that it would pay for services covered prior to the cancellation, its retention of appellant's premiums, and its failure to assert a right to rescind until more than two years after it concededly had all the pertinent facts, constituted a waiver of its right to rescind as a

matter of law.") "Waiver is ordinarily a question for the trier of fact." Gill v. Rich, 128 Cal. App. 4th 1254, 1264 (2005). It is only "where there are no disputed facts and only one reasonable inference may be drawn [that] the issue can be determined as a matter of law." *Id.*

Plaintiff submitted his request increase the uninsured/underinsured limits on November 15, 2018, and again on November 20th. His requests were submitted to Defendant on both occasions. On November 26th, Defendant approved the request, and Plaintiff received a revised declaration page with the increased limits. Thereafter, on the same day, Plaintiff notified Defendant of his August 29th accident. Arguably Defendant had all of the information it needed to rescind the policy as of that date. Nevertheless, Plaintiff maintains that "State Farm internally recognized the misrepresentation issue by early 2019." Memo. of Points and Auth. In Opposition, pg. 12:19. Defendant points to Plaintiff's failure to provide any supporting evidence for this assertion. However, at no time in Defendant's pleadings does it account for the fact that the request to increase coverage was submitted to Defendant, thereafter the claim for the accident was also submitted to Defendant. It is unclear how Defendant can argue Plaintiff's ongoing failure to point out his requested increase in coverage, when Defendant was already in possession of that information.

Defendant states that "[a]ny delayed reporting of claim until after retroactive changes have been accepted ensures that the Claims Department would received [sic] only information stating the new policy limits, rather than a record of historical coverages and limits reflecting that the higher limits were only recently requested and only recently made retroactive" Memo of Points and Auth. in Support, pg. 7:24-26. True as this may be, it does not account for the fact that Defendant had possession of the information regarding Plaintiff's historical coverages and his requested increase. Because Defendant was in possession of that information at the time the accident claim was submitted, the court finds that reasonable minds could differ as to whether or not Defendant should have or could have asserted its right to rescind at that time and whether its failure to do so in the ensuing years constituted a waiver. Such is a question of fact for a jury to decide.

Defendant relies on *DeCampos v. State Compensation Ins. Fund,* 122 Cal. App. 2d 519 (1954) for the proposition that even without rescinding, the law allows an insurer to defend against a claim caused by a concealed or misrepresented risk. While this may be true, *DeCampos* does not address the issue of whether the insurer can assert rescission as an affirmative defense where the insurance company already waived its right to rescind, which is arguably the case here. As such, *DeCampos* is not on point.

Defendant further relies on *Lunardi v. Great-West Life Assurance Co.,* 37 Cal. App. 4th 807 (1995) arguing that "[a]n insurer does not waive its right to rescind a policy on the ground of false representations if it was unaware of the falsity of those representations. [Citations]." *Lunardi* at pg. 824. Once again, while this may be true, such is not the case at hand. Here Defendant was unaware of the falsity of Plaintiff's representations at the time the application for retroactive increase was submitted. Nevertheless, as soon as Plaintiff made a claim for the accident, Defendant not only had in its possession information to show that a retroactive increase was made, but it also had in its possession information to establish that the subject accident took place

at a date prior to submitting the request to increase limits. Unlike *Lunardi*, the issue before the court is the passage of time *from the time Defendant was aware of the falsity* until the claim for rescission was made and whether that passage of time, and Defendant's actions in the interim, constituted a waiver of Defendant's right to claim rescission. The court finds that under the circumstances reasonable minds may differ and as such, this is a question of fact for the jury.

Finally, Defendant argues that regardless of whether there was a right to rescind, and regardless of whether Defendant waived that right, Plaintiff still cannot recover as a matter of law under the doctrine of unclean hands.

"The defense of unclean hands arises from the maxim: 'He who comes into Equity must come with clean hands.'" Blain v. Doctor's Co., 222 Cal. App. 3d 1048 (1990). The test for unclean hands requires an analysis of the analogous case law, the nature of the misconduct, and the relationship of the misconduct to the claimed injuries. *Id.* This analysis is "heavily fact dependent" and thus is generally a question of fact. CrossTalk Productions, Inc. v. Jacobson, 65 Cal. App. 4th 631 (1998).

Under the facts alleged, this case presents no exception to the general rule. Because the doctrine of unclean hands is a doctrine of equity, a defendant seeking to enforce the doctrine must establish that Plaintiff engaged in some wrongdoing. Here, there is a question of material fact as to Plaintiff's intent in failing to disclose the accident. Plaintiff maintains that he did not delay reporting the accident with the intent to deceive Defendant and obtain the increased limits. He argues that his request to increase the limits was simply a request to correct an error and therefore he did not believe the accident needed to be disclosed. Defendant argues that the factual circumstances indicate otherwise. Yet again, this is a question for the jury.

For the reasons stated above, the court finds there to be questions of material fact on the issues of waiver and unclean hands. As such, Defendant's motion for summary judgment is denied.

TENTATIVE RULING #10:

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT IS DENIED FOR THE REASONS SET FORTH ABOVE.

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