TENTATIVE RULINGS: CIVIL LAW & MOTION

Wednesday, January 13, 2026 at 3:00 p.m.
Courtroom 18 – Hon. Dana Simonds
Civil and Family Law Courthouse
3055 Cleveland Avenue
Santa Rosa, California 95403

The tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument, **YOU MUST NOTIFY** the Judge's Judicial Assistant by telephone at **(707) 521-6729**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

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

TO JOIN ZOOM ONLINE:

Department 18:
Meeting ID: **160—739—4368**
Password: **000169**
https://sonomacourtorg.zoomgov.com/j/1607394368?pwd=aW1JTWlIL3NBeE9LVHU2NVVpQlVRUT09

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By Phone (same meeting ID and password as listed for each calendar):
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Unless notification of an appearance has been given as provided above, the tentative ruling shall become the ruling of the Court the day of the hearing at the beginning of the calendar.

1. 24CV05322, Trask v Keystrone RV Company

Defendant Keystone RV Company's motion for summary judgment is **GRANTED**. Defendant's counsel shall submit a proposed order consistent with this tentative ruling and in compliance with Rule 3.1312.

Background:

Plaintiff filed a complaint against Defendant Keystone RV Company ("Keystone") alleging one cause of action for violation of the Song-Beverly Consumer Warranty Act. Plaintiff alleges that he purchased a 2023 Keystone Montana High Country 295RL Fifth Wheel Coach from RV Country Arizona, LLC on January 12, 2023 "for personal and household use." Plaintiff alleges that at the time of the purchase, he was provided with an express warranty from Keystone. Plaintiff alleges that within a few months of the purchase, Plaintiff began noticing issues with the coach, that he tendered the coach to RV Country for repairs, but that it has still failed to be repaired. He alleges that the coach does not conform with the express warranty issued by Keystone, and it is therefore subject to repurchase under the Song-Beverly Consumer Warranty Act.

Defendant moves for summary judgment based on three arguments. First, Defendant argues that the Song-Beverly Consumer Warranty Act ("the Act") applies only to vehicles purchased in California, but Plaintiff's vehicle was purchased in Arizona. As such, Defendant argues that Plaintiff has no standing to raise a claim under the Act. Second, Defendant argues that Plaintiff never presented the trailer to an authorized Keystone repair facility in California, as required by the Act. Finally, Defendant argues that Plaintiff failed to comply with the terms of Keystone's limited warranty by using the trailer as his residence, rather than as a recreational vehicle.

Plaintiff opposes summary judgment by arguing that he has standing under the Act because the trailer was delivered to California. As such, title passed to him in California. Plaintiff does not dispute that he did not present the trailer to an authorized Keystone repair facility in California, but argues that an exception applies pursuant to Civil Code § 1793.2. Finally, Plaintiff argues that Defendant has not submitted sufficient proof to show that Plaintiff used the trailer as his residence.

Facts:

On January 3, 2023, Plaintiff signed a Purchase Order at RV Country in Quartzsite, Arizona for a 2023 Keystone Montana High Country 295RL trailer, bearing VIN: 4YDFHMP22PA740779. (Undisputed Material Facts "UMF," 1.) One of the terms and conditions of the purchase order states:

> Title to the Unit will remain with Dealer until the agreed-upon purchase price is paid in full in cash or Buyer has signed a retail installment contract that has been accepted by a bank or finance company, at which time title shall pass to Buyer or the finance company, as may be required by law, even though the actual delivery of the Unit may be made at a later date.

(UMF, 2.) Plaintiff traded in his 2011 Keystone Mountaineer trailer and used some of the proceeds towards the down payment on the Trailer. (UMF, 3.) Plaintiff did not take delivery of the Trailer on January 3, 2023. (UMF, 4.)

Plaintiff returned to RV Country on January 12, 2023, to finalize the purchase of the Trailer and to trade in his 2011 Keystone Mountaineer trailer. (UMF, 5.) On that date, Plaintiff signed a Retail Installment Contract and Security Agreement ("Contract") for the purchase of the Trailer from RV Country in Quartzsite, Arizona. (UMF, 6.) The Contract expressly states it is governed by the laws of Arizona and applicable federal law and regulations. (UMF, 7.) The Contract does not contain any provision requiring delivery of the Trailer to be made at a different time or place. (UMF, 8.)

That day Plaintiff also signed the "PHYSICAL POSSESSION" and "Delivery Receipt & Storage Agreement" while at RV Country. (UMF, 10.) The "PHYSICAL POSSESSION" document states:

> I/We Michael John Trask understand that all sales are final and there is no automatic right of rescission applicable to this sale. I/We have also taken delivery and physical possession of this Vehicle ID# 4YDFHMP22PA740779 and have instructed Paul Evert's RV Country to start doing requested service work on my/our vehicle.

(UMF, 11.) The Delivery & Storage Agreement states:

> This agreement, made this 12th day of January 2023 between MICHAEL JOHN TRASK and RV Country Arizona LLC to acknowledge that I (we), MICHAEL JOHN TRASK have accepted delivery and taken physical possession of the following described merchandise: 2023 MONTANA HIGH COUNTRY 295RL 4YDFHMP22PA740779 and that the corresponding retail finance contract and security agreement are in full force. The above listed collateral may be located on the premises of: 610 S Central Ave, Quartzsite, AZ 85346. It is also understood and agreed that the above dealer will store the merchandise until 1/12/2023 at no charge to the above customer. Dealer waives all rights to the merchandise and storage will be free of any liens or encumbrances."

(UMF, 12.) Plaintiff signed all purchase documents while at RV Country in Quartzsite, Arizona. (UMF, 15.)

On the same day of purchase, the parties executed an "Arizona Department of Revenue Certificate to Establish Out-Of-State Delivery of Motor Vehicle to Nonresident." (Michael Trask Decl., Ex. 1.) The trailer was ultimately delivered to Blythe, California. Plaintiff registered and insured the trailer in California. (Michael Trask Decl., Ex. 2-3.) Plaintiff submits that he "was told" to take delivery and possession of the trailer in California and that RV Country arranged and executed the delivery. (Plaintiff's Additional Material Facts (unnumbered).)

In conjunction with the sale of the Trailer, Keystone issued a Limited Warranty which covers defects in materials and workmanship attributable to Keystone when the Trailer is used solely for its intended purpose of recreational camping. (UMF, 19.) The Limited Warranty expressly excludes coverage for trailers used for "residential" or "any purpose other than recreational travel and family camping." (UMF, 20.) The Limited Warranty also expressly excludes coverage for "damage or loss caused in whole or in part by misuse" or "failure to follow instructions supplied with the RV." (UMF, 21.)

Defendant contends that Plaintiff lived in the trailer at Black Meadow Campground for several months in winter. (UMF, 23.) Plaintiff states that he parks the trailer at that campground during the winter months, but that he and his wife stay in it for short periods of time in between taking trips. (Michael Trask Decl., ¶ 13; Def. Evidence, Ex. B, p. 71-72.) Plaintiff states that for the majority of the year, the trailer is parked at his home in Janesville, California. (Michael Trask Decl., ¶ 14.)

Plaintiff never presented the Trailer to an authorized Keystone repair facility in California. (UMF, 24.) It was only ever presented to RV Country in Nevada for repairs. (UMF, 25.)

Analysis:

I. The Song-Beverly Consumer Warranty Act Does Not Apply to the Purchase of Plaintiff's Trailer

The Song-Beverly Consumer Warranty Act applies only to goods sold in California. (See Civil Code § 1792, et seq.) "[T]he structure and language of the existing statutory provisions indicate that the Legislature intended the Act to apply only to vehicles sold in California." (*Cummins, Inc. v. Superior Court* (2005) 36 Cal.4th 478, 493."

The Act defines a "sale" as either (1) The passing of title from the seller to the buyer for a price, or (2) A consignment for sale. (Civ. Code, § 1791.) Commercial Code § 2401 governs when and where title passes between seller and buyer. It provides,

> (2) Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance with reference to the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place; and in particular and despite any reservation of a security interest by the bill of lading
>
> > (a) If the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but
> >
> > (b) If the contract requires delivery at destination, title passes on tender there.

(Comm. Code, § 2401(2).)

"'If the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at destination, title passes to the buyer at the time and place of shipment; but [¶] (b) If the contract requires delivery at destination, title passes on tender there.'" (*California State Electronics Assn. v. Zeos Internat. Ltd.* (1996) 41 Cal.App.4th 1270, 1276–1277.)

"Thus, when the parties agree to or contemplate shipment by the seller, title passes to the buyer upon that shipment, unless the agreement specifically requires the seller to make delivery at the destination." (*Id*. at 1277.) "As used in Section 6396 of the Tax and Revenue Code, 'delivery' is not synonymous with 'passage of title' to the goods (although the two may occur at the same time). Rather, it is a term of art denoting the point at which ownership is transferred, and the goods are no longer property of the seller." (*Gusse v. Damon Corp.* (C.D. Cal. 2007) 470 F.Supp.2d 1110, 1115.)

Here, Defendant argues that the parties' contract did not require delivery of the trailer at any specific time or location and, thus, it was a "shipment" contract and title to the trailer passed to Plaintiff at the time of signing the sales contract. Defendant points to several cases that support its position.

In *California State Electronics Assn. v. Zeos Internat. Ltd.* (1996) 41 Cal.App.4th 1270, Zeos Internat. Ltd. was a non-California manufacturer and mail-order distributor of personal computers that made its sales outside of California, but that delivered its goods directly to California residents. In finding that the Song-Beverly Consumer Warranty Act did not apply, the Court noted that there did not exist any provision requiring Zeos to deliver its goods to the buyer. (*Id*. at 1277.) Accordingly, their sales contracts were "shipment contracts," resulting in title passing to the consumer in Minnesota where the shipment commenced, not in California where the goods ended up. (*Ibid*.)

In *Davis v. Newmar Corp.* (2006) 136 Cal.App.4th 275, a sales contract that was negotiated in California expressly required the retailer to deliver a motor home to the buyer in Nevada. Since there was an express provision for delivery outside of the state, the Court found that title passed upon delivery in Nevada. As such, the plaintiff did not have a claim in California under the Song-Beverly Consumer Warranty Act. (*Id*. at 278.)

Finally in *Gusse v. Damon Corp.* (C.D. Cal. 2007) 470 F.Supp.2d 1110, the plaintiff signed a purchase agreement in California to buy an RV manufactured by the defendant. The defendant argued at summary judgment that the Song-Beverly Consumer Warranty Act did not apply because the RV was delivered to the plaintiff in Arizona. The Court ultimately found that the sales contract was a "shipment" contract and that title transferred to Plaintiff in California upon signing of the sales agreement. Therefore, the Act *did* apply.

The *Gusse* Court pointed to the following facts supporting its finding: (1) The sale agreement contained no language requiring La Mesa RV to make delivery outside of California and (2) the sale agreement expressly stated, "Seller agrees to deliver the vehicle to you on the date this contract is signed by Seller and you." The evidence showed the contract was signed on April 12, 2004, in California. (*Gusse, supra,* at 1114.)

The *Gusse* Court made this finding even though it was "clear from the surrounding facts that the parties intended for the Motorhome to be transported to Arizona as part of the sale, so as to legally avoid California sales tax." (*Ibid*.) There was evidence that the parties executed DMV forms for out-of-state delivery. Nonetheless, the *Gusse* Court found,

> The fact that the parties may have agreed to transport the Motorhome to Arizona for tax purposes does not, however, necessarily create a delivery contract. Importantly, the contract does not provide for delivery to a specific location and it does not require that the Motorhome be tendered for Gusse's acceptance in Arizona.

(*Ibid*.)

This Court finds the *Gusse* case to be highly persuasive. The facts and arguments are substantially similar to those of the present case. Here, as in *Gusse*, the sales contract contained no language requiring RV Country to deliver the trailer anywhere. Rather, the "PHYSICAL POSSESSION" document signed by Plaintiff at the time of sale while in Arizona expressly states that Plaintiff took physical possession and delivery of the vehicle at that time. Furthermore, though

the record in this matter indicates that the parties intended for the trailer to be transported to California as part of the sale, this does not create a delivery contract. This is so since the parties' sales agreement did not require delivery to a specific location.

Plaintiff argues that the *Gusse* case is distinguished because (1) Gusse was given the keys to the motorhome and used the keys to load his belongings into the motorhome before it was transported, and (2) Gusse was responsible for insuring the RV prior to shipping it. Plaintiff argues that he was not given the keys to his trailer until after the trailer was delivered in California. Plaintiff's declaration states, "After notarizing the delivery of the Trailer, Mr. Christensen gave us the keys to the Trailer to perfect the transfer of possession, and drove us back to Quartzite, Arizona, where we retrieved our belongings from our trade-in coach and put them in our new Trailer." Plaintiff does not represent that he was denied access to the keys or the trailer before reaching California. Rather, according to the express language of the parties' agreement, Plaintiff was entitled to possession of the trailer at the time of sale in Arizona. Furthermore, Plaintiff insured the trailer on the same day it was purchased. Accordingly, the differences in facts between the *Gusse* case and the case at bar are not significant enough to persuade this Court against following the *Gusse* reasoning.

The Court finds that the purchase and sale of the trailer in this case was made pursuant to a shipment contract, with title passing to Plaintiff in Arizona on January 12, 2023. The transport of the Trailer was not made pursuant to a delivery contract because the transaction for the purchase and sale of the trailer did not require RV Country to deliver the trailer to Plaintiff at a specific destination. Plaintiff expressly agreed that he took delivery of the trailer in Arizona. Accordingly, the trailer was not sold in California and the Song-Beverly Consumer Warranty Act does not apply here.

Since the Song-Beverly Warranty Act does not apply here, the two additional points raised by Defendant regarding presenting the trailer to an authorized repair facility in California and regarding compliance with the terms of the warranty are moot. Nonetheless, the Court has provided an analysis of those two points below.

II. Plaintiff Did Not Present the Trailer to an Authorized Keystone Repair Facility in California

A plaintiff pursuing an action under the Song-Beverly Consumer Warranty Act has the burden to prove that,

> (1) the vehicle had a nonconformity covered by the express warranty that substantially impaired the use, value or safety of the vehicle (the nonconformity element); (2) the vehicle was presented to an authorized representative of the manufacturer of the vehicle for repair (the presentation element); and (3) the manufacturer or his representative did not repair the nonconformity after a reasonable number of repair attempts (the failure to repair element).

(*Oregel v. American Isuzu Motors, Inc.* (2001) 90 Cal.App.4th 1094, 1101.) Civil Code § 1793.2(c) provides,

> The buyer shall deliver nonconforming goods to the manufacturer's service and repair facility *within this state*, unless, due to reasons of size and weight, or method of attachment, or method of installation, or nature of the nonconformity, delivery cannot reasonably be accomplished. If the buyer cannot return the nonconforming goods for any of these reasons, the buyer shall notify the manufacturer or its nearest service and repair facility within the state.

(Italics added.) The plain language of the statute is clear that the buyer must deliver the nonconforming goods to an authorized repair facility *within California*.

Here, even if the Song-Beverly Consumer Warranty Act did apply, it is undisputed that Plaintiff never presented the trailer to a repair facility in California. Plaintiff only ever delivered the

trailer to a repair facility in Nevada. Plaintiff represents that he did so because the Nevada repair facility was closer to him in distance than any of Defendant's authorized repair facilities in California. Plaintiff argues that it would have been "unreasonable" to have to take the trailer to a California-based repair facility because the closest one was about 3-4 times the number of miles away as opposed to the one in Nevada. Accordingly, Plaintiff argues that the above-referenced exception applies to the statutory requirement.

The exception to the requirement of presenting the trailer to a repair facility in California applies if "delivery cannot reasonably be accomplished." Plaintiff has not made such a showing. Plaintiff has shown that it was more convenient for him to deliver the trailer to a repair facility in Nevada because the California repair facilities were farther in distance. This is not sufficient to show that delivery to a California repair facility could not reasonably have been accomplished. Therefore, Plaintiff has failed to show that the exception applies.

Since the record is clear that Plaintiff did not present the trailer to a repair facility within this state, Defendant has sufficiently shown that Plaintiff could not meet his burden to prove a claim under the Song-Beverly Consumer Warranty Act. As such, even if the Act applied to Plaintiff's claim, this would be independent grounds for granting summary judgment.

III. Compliance with the Terms of Keystone's Limited Warranty

"A manufacturer's liability for breach of an express warranty derives from, and is measured by, the terms of that warranty. Accordingly, the 'requirement[s]' imposed by an express warranty claim are not 'imposed under State law,' but rather imposed by the warrantor." (*Cipollone v. Liggett Group, Inc.* (1992) 505 U.S. 504, 525.)

Here, Defendant provided a limited warranty that "covers defects in material and workmanship supplied by and attributable to Keystone's manufacturing and assembly of the RV when the RV is used solely for its intended purpose of recreational camping." The "What is Not Covered" section states that the warranty will not apply to RV's used for residential or any purposes other than recreational travel and family camping.

Defendant argues that Plaintiff lived in the trailer for several months at a time and, therefore, used it for purposes other than recreational travel and family camping. As such, Defendant argues that Plaintiff's use of the trailer is not covered under the warranty. The record reflects that Plaintiff parked the trailer at one campsite for several months, but would camp in it on and off in between travel. The record reflects that Plaintiff would park the trailer at his residence in Janesville, California, for the remainder of the year. The Court does not agree that the record reflects a lack of triable issue of material fact as to whether Plaintiff used the trailer in a manner that is not covered by the limited warranty. However, Defendant has already shown that Plaintiff cannot meet his burden of proving a claim under the Act. Therefore, this analysis is immaterial.

2. SCV- 269767, Ravioli v Master Bango

Cross-Defendants' motion to compel arbitration is **GRANTED**. Cross-Defendants' request for judicial notice is **GRANTED**.

Cross-Defendants' counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

Background

On December 1, 2021, Plaintiffs, Ravioli LLC, Spaghetti LLC, and Tortellini LLC, initiated this action against Defendants alleging several causes of action arising out of Defendants' alleged breach of the parties' contract, which is attached and incorporated by reference to the Plaintiffs' original complaint and amended complaint. The attached contract is labeled "Bulk Flower Purchase Agreement" (hereafter, "Purchase Agreement") and was executed on February 16, 2021 between "Buyer" who is identified as "Master Bango Inc. dba Elyon Cannabis" and "Seller" who is only identified on the signature page as "Pasta Farm." The Purchase Agreement provides that seller agrees to sell and buyer agrees to buy bulk cannabis flower of the types, prices, and quantities specified in Section E. Section E provides a list of the products, quantities, and prices to be purchased from which entities. The entities listed as providers of these products include Fettuccine LLC, Farfalle LLC, Gnocchi LLC, Rigatoni LLC, Linguini LLC, Spaghetti LLC, Tortellini LLC, Penne LLC, and Ravioli LLC.

The Purchase Agreement also contains an arbitration clause which provides,

> 8. Disputes; Binding Arbitration. ALL DISPUTES ARISING OUT OF THIS AGREEMENT SHALL BE SUBMITTED TO JAMS FOR ARBITRATION PURSUANT TO ITS COMPREHENSIVE ARBITRATION RULES & PROCEDURES, INCLUDING ITS EXPEDITED ARBITRATION PROCEDURES, WHICH ARE HEREBY ELECTED. THE ARBITRATION SHALL BE SCHEDULED TO TAKE PLACE IN SACRAMENTO, CALIFORNIA, AND ALL OF THE FEES AND COSTS OF THE ARBITRATION SHALL BE SHARED EQUALLY BY THE PARTIES. ATTORNEY'S FEES MAY BE AWARDED TO THE PREVAILING PARTY AT THE DISCRETION OF THE ARBITRATOR, BUT THE ARBITRATOR SHALL HAVE NO POWER TO ALTER OR AMEND THIS AGREEMENT OR TO AWARD ANY RELIEF INCONSISTENT WITH THE PROVISIONS HEREIN OR UNAVAILABLE IN A COURT OF LAW.

The Purchase Agreement is signed by Ronald Ferrero on behalf of Defendant, Master Bongo Inc., and by Peter Simon, CEO of "Seller," which is identified as "Pasta Farm."

On October 11, 2022, Defendant Master Bango Inc. ("Master Bango") filed a Cross-Complaint against Plaintiffs alleging several causes of action arising out of Plaintiffs' alleged breaches of the same Purchase Agreement, which was attached to the Cross-Complaint.

On February 16, 2024, Master Bango filed arbitration demands against four other entities listed in the Purchase Agreement: Rigatoni LLC, Linguini LLC, Farfalle LLC, and Gnocchi LLC, alleging breaches by them of the same Purchase Agreement. This arbitration proceeding remains ongoing. Master Bango states in its opposition that the arbitration has been withdrawn, but no declaration has been submitted to provide evidentiary foundation to any factual assertions made within the opposition.

On November 6, 2024, this Court issued an order denying Plaintiffs (Ravioli LLC, Spaghetti LLC, and Tortellini LLC)'s motion to compel arbitration. The Court found that Plaintiffs had shown an enforceable arbitration agreement existed between the parties. However, since Plaintiffs had litigated their case against Master Bango for years before bringing the motion, the Court found that the right to compel arbitration had been waived by them.

On September 24, 2025, Master Bango filed a First Amended Cross-Complaint adding as cross-defendants Pasta Farm (several "Pasta Farm" entities alleged), Fettucine LLC, Penne LLC, Farfalle LLC, Gnocchi LLC, Rigatoni LLC, Linguini LLC, and Ziti LLC. As mentioned above, Master Bango had already initiated arbitration proceedings against several of these newly-named cross-defendants (Rigatoni LLC, Linguini LLC, Farfalle LLC, and Gnocchi LLC). In Master Bango's amended cross-complaint, they allege each of the individually named LLC's are members of the "Pasta Farm" entity.

Having recently been brought into the case, Cross-Defendants Farfalle LLC, Gnocchi LLC, Fettuccine LLC, Linguine LLC, Rigatoni LLC, Penne LLC, Ziti LLC, and Pasta Farm now move the Court for an order compelling arbitration of Defendant's cross-claims against them. Master Bango opposes the motion by arguing (1) that these entities are not signatories to the contract and thus cannot enforce the arbitration agreement; and (2) the Court should exercise its discretion under CCP § 1281.2(c) not to order arbitration.

Analysis:

I. An Enforceable Arbitration Agreement Exists Between the Parties

"The party seeking to compel arbitration has the initial burden to plead and prove the existence of a valid arbitration agreement that applies to the dispute. Once that burden is satisfied, the party opposing arbitration must prove any defense to the agreement's enforcement, such as unconscionability." (*Dennison v. Rosland Cap. LLC* (2020) 47 Cal.App.5th 204, 209.)

Here, Cross-Defendants have provided a copy of the agreement described above that is signed by the owner of Master Bango Inc. as the "buyer" and by Peter Simon as the CEO of "Pasta Farm" as the "seller." While the purchase agreement does not explain what the term "Pasta Farm" refers to, the entities who were to provide the bulk cannabis product are listed in the agreement and include all but one of the moving cross-defendants. The remaining moving cross-defendant is Ziti, LLC, which Cross-Defendant alleges is the entity into which all other moving cross-defendants merged.

The record does not reflect any lack of understanding by any party that "Pasta Farm" was a term used to refer to the entire group of entities listed as providers of the product. Rather, Master Bango alleges as such in its Cross-Complaint. Furthermore, Master Mango initiated arbitration proceedings against several of the moving cross-defendants. This evidences Master Bango's understanding that each individually named entity in the purchase agreement was bound by the arbitration agreement. Finally, Master Bango alleges that all of the individual LLCs listed as product providers in the purchase agreement were consolidated into Ziti, LLC. As such, Ziti LLC is alleged to be the agent of the rest. Accordingly, Master Bango's argument that these moving cross-defendants cannot compel arbitration because they are not signatories to the agreement is not compelling. There exists a valid and enforceable arbitration agreement between the parties and, as explained below, Master Bango has failed to show that a defense to enforcement applies.

II. CCP § 1281.2(c) Does Not Apply

Master Bango argues that the Court should exercise its discretion under CCP § 1281.2(c) not to compel arbitration. CCP § 1281.2 provides that if the Court finds the existence of a written agreement to arbitrate a controversy, the Court "shall" order arbitration "unless,"

> (c) A party to the arbitration agreement is also a party to a pending court action or special proceeding *with a third party*, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact…

(Emphasis added.)

Master Bango argues that CCP § 1281.2 applies here because, according to Master Bango, the Plaintiffs are a third party to the arbitration agreement since the Court found that they waived their right to compel arbitration. As such, the action commenced by Plaintiffs against Master Bango constitutes a pending court action with a third party that would fall under the statutory exception.

However, as cited by Master Bango, "As used in the statute, a 'third party' is one who is neither bound by nor entitled to enforce the arbitration agreement." (*Maxwell v. Atria Mgmt. Co., LLC* (2024) 105 Cal. App. 5th 230, 247.) By this definition, Plaintiffs are not third parties. This

Court has already found that Plaintiffs would have been entitled to enforce the arbitration provision if they had not waived the right by litigating the case for years.

Master Bango points to *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348 for the notion that a waiver means that a contractual right to arbitration has been lost. It is true that waiver means a party has lost the right to *enforce* a contractual provision. However, nowhere in the *Iskanian* decision does the Court state that when a party waives a contractual right to arbitrate that party becomes a third party to the arbitration agreement within the meaning of CCP § 1281.2(c). Furthermore, the decision does not provide that waiving the right to enforce a contractual provision means that the party is no longer bound by that provision. Rather, Plaintiffs are still bound by the arbitration provision even though they do not have the right to compel Master Bango to arbitrate the current controversy between the parties. As further cited by Master Bango, CCP § 1281.2(c) "'addresses the peculiar situation that arises when a controversy also affects claims by or against other parties not bound by the arbitration agreement.'" (*Maxwell, supra,* at 247.) That is not the situation here.

Master Bango has failed to show that the narrow exception of CCP § 1281.2(c) is applicable here. Master Bango has not shown that it has any other defenses to enforcement. Accordingly, pursuant to CCP § 1281.2, this Court "*shall"* order Master Bango's claims against these cross-defendants to arbitration.

SECOND MOTION:

This matter is on calendar for review of the recommendations of the discovery referee regarding Plaintiffs' motion for protective order. Having reviewed the related documents and the reports of the discovery referee, the Court **ADOPTS** the referee's recommendation. Plaintiffs' motion for protective order is **GRANTED**. The Court adopts the proposed protective order that is attached as "Attachment 'A'" to the July 31, 2025 report of the discovery referee.

Plaintiffs' counsel shall submit a written report consistent with this tentative ruling and in compliance with Rule 3.1312.

3. 25C03029, Aquil v Saran

Defendant Karm Saran Real Estate LLC's demurrer to Plaintiff's first amended complaint is **SUSTAINED**. Leave to amend is **DENIED**. Defendant's request for judicial notice is **GRANTED**.

Defendant's counsel shall submit a written order consistent with this tentative ruling and in compliance with Rule 3.1312.

Analysis:

This matter has previously come before the Court for Defendant Amritpal Saran's demurrer to Plaintiff's complaint. The Court sustained the demurrer to each cause of action, but granted Plaintiff leave to amend. Defendant Karm Saran Real Estate LLC ("KSRE") did not demur to the original complaint.

Plaintiff amended the complaint, but realleges all the same causes of action against the same defendants as before. Defendant KSRE now demurs to each cause of action on the basis that they fail to state facts sufficient to state a claim. As will be explained in detail below, Plaintiff has failed to cure the deficiencies outlined in the Court's ruling on Defendant Amritpal Saran's original demurrer. As such, Plaintiff has still failed to state a claim against either defendant.

Plaintiff alleges in the First Amended Complaint that he was the highest bidder at a trustee foreclosure auction for a property located in Santa Rosa. Following the auction, Plaintiff alleges that Defendant Amritpal Saran submitted a Notice of Intent to Bid under Civil Code § 2924m (SB 1079) claiming owner-occupant status to trigger the 45-day extension period. Plaintiff alleges that Defendant subsequently recorded a grant deed in his individual name, asserting purchase rights under SB 1079. Plaintiff claims that thereafter, Defendant Amritpal Saran transferred title to the property to Defendant Karm Saran Real Estate LLC, an entity under Mr. Saran's brother's control. Plaintiff alleges that Defendants used this transfer as a loophole in SB 1079. As alleged, Defendant Amritpal Saran never intended to occupy the property and never did occupy the property.

Plaintiff's First Amended Complaint fails to comply with Cal. Rules of Court, Rule 2.112, since each cause of action does not state its number nor the party against whom it is directed. It appears the same causes of action of Plaintiff's original complaint are now being reasserted, with the exception of the injunctive relief cause of action. Accordingly, Plaintiff asserts causes of action for fraud and misrepresentation, unjust enrichment, and declaratory relief. Though not specified, for the purposes of analyzing this motion, the Court will assume that each cause of action is alleged against each defendant. The present motion before the Court is a demurrer by Defendant KSRE to each cause of action of the complaint.

Standing to Bring Action

Defendant KSRE argues that Plaintiff lacks standing to bring any of the causes of action raised in the First Amended Complaint because they are each predicated on an alleged violation of Civil Code § 2924m, but that code section does not create a private cause of action. As explained by the Court in its order on the previous demurrer by Defendant Amritpal Saran, the Court agrees that Civil Code § 2924m does not create a private cause of action. The code section specifically states, "The Attorney General, a county counsel, a city attorney, or a district attorney may bring an action for specific performance or any other remedy at equity or at law to enforce this section." (Civ. Code, § 2924m(j).) It does not mention a private right to bring action for violation of the code section. The fact that the Legislature specifically listed the persons permitted to bring action under the code, and the fact that the code is silent as to private rights of action, indicates the Legislature's intent that there be no private cause of action.

However, Plaintiff has not raised a cause of action for violation of Civil Code § 2924m. It is true that Plaintiff alleges conduct consistent with a violation of that statute as the basis of the causes of action alleged. However, with the exception of Plaintiff's declaratory relief cause of action (discussed further below), Plaintiff has raised torts that are separate from a violation of the statute. So long as Plaintiff's allegations can meet the elements of the torts alleged, Plaintiff does have standing to allege those torts, even if conduct violative of that statute is alleged as underlying those causes of action. Nonetheless, as is discussed further below, Plaintiff has failed to state facts sufficient to allege each element of the asserted causes of action.

First Cause of Action – Fraud and Misrepresentation

The general elements of fraud are "misrepresentation, knowledge of falsity, intent to induce reliance on the misrepresentation, justifiable reliance on the misrepresentation, and resulting damages." (*Reeder v. Specialized Loan Servicing LLC* (2020) 52 Cal.App.5th 795, 803, citing *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638.) "To withstand demurrer, facts constituting every element of fraud must be alleged with particularity." (*Kalnoki v. First American Trustee Servicing Solutions, LLC* (2017) 8 Cal.App.5th 23, 35.) "This particularity requirement necessitates pleading *facts* which 'show how, when, where, to whom, and by what means the representations were tendered.'" (*Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 73.)

Plaintiff alleges that the defendants knowingly and falsely represented that Defendant Amritpal Saran intended to occupy the property as his principal residence to invoke rights under SB

1079; however, at the time of submitting the Notice of Intend to Bid, they had no genuine intent to satisfy the statutory requirements of occupancy. Plaintiff alleges that Defendants made these misrepresentations with the intention to mislead the trustee, the public and Plaintiff. Plaintiff alleges that he "relied on the integrity of the statutory process and suffered harm as a result, including financial loss and the deprivation of a rightful property interest."

The Court previously sustained Defendant Amritpal Saran's demurrer to this cause of action for three reasons. First, Plaintiff had failed to allege that Defendants never occupied the property, and thus failed to allege Defendants' knowledge of the falsity of the representation. Second, Plaintiff failed to allege that he relied on the alleged misrepresentation made by Defendants. Rather, Plaintiff merely alleged that he relied on the fairness of the foreclosure auction process. Third, Plaintiff failed to allege his damages with specificity.

Plaintiff has now alleged that Defendants never intended for Amritpal Saran to occupy the property. However, Plaintiff still fails to allege that he relied on their false representation regarding occupancy to his detriment. He still alleges that his reliance was on the "integrity of the statutory process." As previously explained by the Court, in order to state a cause of action for fraud, the plaintiff must allege that he relied *on the misrepresentation*. It is insufficient to allege reliance on the integrity of a statutory system to state a cause of action against individuals. Finally, Plaintiff has still failed to allege his damages with specificity. He only generally alleges that he was damaged by the misrepresentation in an amount exceeding $500,000. This is insufficient to meet the heightened pleading standards for fraud.

Second Cause of Action – Unjust Enrichment

"'Generally, one who is unjustly enriched at the expense of another is required to make restitution. [Citations.] The elements of a cause of action for unjust enrichment are simply stated as 'receipt of a benefit and unjust retention of the benefit at the expense of another.'" (*Tufeld Corp. v. Beverly Hills Gateway, L.P.* (2022) 86 Cal.App.5th 12, 31–32.)

Plaintiff alleges that Defendants were unjustly enriched by acquiring the property through false pretenses by misusing SB 1079 and transferring the property to a non-qualifying LLC. The Court previously sustained the demurrer to this cause of action because Plaintiff had failed to allege that the defendants received a benefit *at Plaintiff's expense*. Plaintiff has still failed to do so. Accordingly, Plaintiff has failed to state a cause of action for unjust enrichment.

Third Cause of Action – Declaratory Relief

Plaintiff's third cause of action is for declaratory relief, seeking a judicial declaration that the transfer of the property to Defendant was invalid and that Plaintiff is entitled to having his interest restored. Plaintiff alleges that an actual controversy exists between Plaintiff and Defendants concerning the respective rights and obligations with regard to the property.

The Court previously sustained the demurrer to this cause of action because Plaintiff had not alleged facts supporting his claim to ownership. He seeks a declaration restoring his interest in the property, but has failed to state facts supporting his claim to an interest in the property. As explained by the Court, Plaintiff alleges that he was the highest bidder at the foreclosure auction, but he does not allege that his bid was accepted. He does not allege facts that would indicate that being the highest bidder automatically entitled him to ownership. He does not allege, for instance, that a contract was made for the sale of the property to him. He does not allege that the property entered escrow. Rather, the complaint fails to state sufficient facts supporting Plaintiff's claim of rightful ownership and possession of the property. Plaintiff failed to cure these deficiencies in the First Amended Complaint.

Leave to Amend

It is an abuse of discretion for the court to deny leave to amend where there is any reasonable possibility that plaintiff can state a good cause of action. (*Goodman v. Kennedy*

(1976) 18 Cal.3d 335, 349.) However, "Leave to amend should be denied where the facts are not in dispute and the nature of the claim is clear, but no liability exists under substantive law." (*Lawrence v. Bank of Am.* (1985) 163 Cal.App.3d 431, 436.)

Plaintiff's original complaint came before this Court for review once before. The Court issued a detailed ruling outlining the deficiencies of Plaintiff's pleading. However, in amending the pleading, Plaintiff failed to cure the deficiencies outlined by the Court. Plaintiff argues in his opposition that leave to amend should be granted because Plaintiff can allege further facts "concerning the circumstances of the transfer, the LLC' s knowledge, and the equitable basis for relief."

First, Plaintiff failed to articulate what those additional facts are that could be alleged. Second, alleging further facts of the transfer, the LLC's knowledge, and the equitable basis for relief would not cure the deficiencies outlined by the Court. In order to allege fraud, Plaintiff must allege that he relied *on the misrepresentation* to his detriment. Plaintiff does not argue that he will be able to allege such facts. In order to allege unjust enrichment, Plaintiff must allege that Defendant's obtained a benefit *at Plaintiff's expense*. Plaintiff does not argue that he will be able to allege such facts. In order to allege his declaratory relief cause of action, Plaintiff must allege facts supporting his claim of a legal interest in the property. Again, Plaintiff does not argue that he will be able to allege such facts. Finally, Plaintiff does not identify any other potential causes of action that could be alleged against these defendants besides those currently alleged.

Accordingly, given the fact that Plaintiff has had an opportunity to correct the deficiencies, has failed to amend the complaint in any meaningful way, and has failed to articulate how the complaint can be amended in order to state a good cause of action against the defendants, leave to amend is denied.

4. SCV-273169, Tansey v Ledger

The motion by George V. Wolff to be relieved as counsel for Cross-Defendant Angel Brothers Lath & Plastering, Inc. is **GRANTED**. The trial in this matter is not yet scheduled. If no hearing is requested, the Court will sign the proposed order lodged with the moving papers.

5. SCV-271088, Young v Brown

The motion by Matthew Siroka to be relieved as counsel for Plaintiff is **DENIED**. The second page of the Notice of Motion to Be Relieved as Counsel is entirely blacked out, with the exception of an unidentified signature. Furthermore, counsel failed to file a proof of service. Therefore, it is unclear whether his client has been notified of this hearing.

The Court's minute order shall constitute the order of the Court.

6. 25CV03161, Molica v Sonoma County

The hearing on Petitioner Cody Molica's Petition for Writ of Mandate is **DROPPED from calendar**. This hearing appears to have been placed on calendar due to clerical error. There has been no noticed motion filed as required by CCP § 1094. CCP § 1094 provides that if a matter

presents no triable issue of material fact then it may be determined by the Court "by noticed motion of any party…" No noticed motion has been filed. As such, this matter is not properly before the Court for determination at this time.

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