TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, June 3, 2026, 3:00 p.m.
Courtroom 16 – Hon. Rene A. Chouteau for Hon. Patrick M. Broderick
3035 Cleveland Avenue, Suite 200, Santa Rosa

TO JOIN "ZOOM" ONLINE,
Courtroom 16
Meeting ID: 161-460-6380
Passcode: 840359
https://sonomacourt-org.zoomgov.com/j/1614606380?pwd=NUdpOEZ0RGxnVjBzNnN6dHZ6c0ZQZz09

TO JOIN "ZOOM" BY PHONE,
By Phone (same meeting ID and password as listed above):
(669) 254-5252 US (San Jose)

The following 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 as to any motion, YOU MUST notify the Court by telephone at **(707) 521-6725**, and all other opposing parties of your intent to appear by 4:00 p.m. the court day immediately before the day of the hearing.
Parties in motions for claims of exemption are exempt from this requirement.

PLEASE NOTE: The Court WILL NOT provide a court reporter for this calendar. If there are any concerns, please contact the Court at the number provided above.

1. 24CV06604, Looney v. Shoor and Sons, LLC.

Plaintiff Gary E. Looney dba Collectronics of California ("Plaintiff") moves for an order appointing Landon McPherson as receiver to take possession of and, if necessary, sell the liquor license of Shoor and Sons, LLC dba Cold Springs Food Mart ("Judgment Debtor") in order to carry out the judgment entered in this case in the amount of $3,675.93.

Specific statutory procedures are established for enforcement of money judgments. This includes the appointment of a receiver after judgment to carry the judgment into effect. (CCP section 564(b)(3). The judgment debtor's interest in an alcoholic beverage license may be applied to the satisfaction of a money judgment. (CCP § 708.630(a).)

The availability of other remedies "does not, in and of itself, preclude the use of a receivership. [citation] Rather, a trial court must consider the availability and efficacy of other remedies in determining whether to employ the extraordinary remedy of a receivership." (*City & Cty. of San Francisco v. Daley* (1993) 16 Cal.App.4th 734, 745.) In making this decision, the court must depend upon competent and admissible evidence submitted by the parties, and not conclusions and hearsay. (*McCaslin v. Kenney* (1950) 100 Cal.App.2d 87, 94.)

"California rigidly adheres to the principle that the power to appoint a receiver is a delicate one which is to be exercised sparingly and with caution." (*Morand v. Superior Ct.* (1974) 38 Cal.App.3d 347, 351.) "It is said by the state's courts that the appointment of a receiver is 'an extraordinary and harsh,' and 'delicate,' and 'drastic,' remedy to be used 'cautiously and only where less onerous remedies would be inadequate or unavailable…'" (*Ibid*.)

Mere difficulty in trying to collect a debt is not sufficient basis for the court to appoint a receiver. (*Medipro Medical Staffing LLC v. Certified Nursing Registry, Inc.* (2021) 60 Cal.App.5th 622, 628-629.) The *Medipro* Court explained, "Medipro's evidentiary showing demonstrated that it had, at most, encountered some difficulty in its initial efforts to collect on its money judgment. If this was sufficient to constitute the 'necessity' required to justify the 'extraordinary' remedy of the appointment of a receiver to take over a judgment debtor's business, it is difficult to see how the appointment of receivers would not become a routine part of the collection of judgments—a result at odds with the solid wall of precedent holding to the contrary."

On February 7, 2025, judgment was entered in this action for the above stated amount. Plaintiff states he has attempted to collect on the judgment by attempting to locate a bank or deposit account, mailing a letter requesting payment, serving post-judgment interrogatories and requests for production of documents, and mailing a letter requesting responses to the post-judgment discovery. (Looney decl., ¶¶8-10.) On July 22, 2025, Plaintiff filed a motion to compel responses to his post-judgment discovery requests. That motion was granted on September 10, 2025. The order granting that motion was mailed on October 20, 2025. Judgment Debtor's business is open and located at 1628 Cold Springs Road in Placerville. (*Id.,* at ¶¶4, 7.)

According to Plaintiff, the sheriff's office will not sell liquor inventory; the installation of a sheriff's keeper is ineffective; the size of the judgment makes it impractical to levy upon equipment, fixtures, or inventory; plus, the value of equipment and fixtures is depressed. Thus, Plaintiff concludes there is no other option but to appoint a receiver to seize and sell the liquor license to satisfy the judgment.

Plaintiff has not made a sufficient factual showing that appointing a receiver to seize and sell the liquor license is necessary. Plaintiff has failed to show the absence of alternate remedies, or if alternate remedies exist, their inadequacy. Rather, as in *Medipro*, *supra*, Plaintiff has only shown that he has encountered some difficulties in his initial efforts to collect the judgment. While Plaintiff states in his declaration that he investigated Defendant's finances, there is no explanation regarding the depth of this investigation. The court is not convinced that no bank accounts exist linked to a business that is purportedly still open. Plaintiff's representations regarding the inadequacy of alternative remedies are not supported by foundation.

Mere difficulties in collecting the judgment are insufficient grounds for appointing a receiver. Plaintiff has failed to meet his burden of proving that a receiver is necessary in this matter. **The motion is DENIED.** Due to the lack of opposition, the court's minutes shall constitute the order of the court.

2. <u>25CV02048, Looney v. Askar</u>

Plaintiff Gary E. Looney dba Collectronics of California ("Plaintiff") moves for an order appointing Landon McPherson as receiver to take possession of and, if necessary, sell the liquor license of Ramez Issa Askar, individually dba Media Wine & Spirits #1 ("Judgment Debtor") in order to carry out the judgment entered in this case in the amount of $16,469.00.

Specific statutory procedures are established for enforcement of money judgments. This includes the appointment of a receiver after judgment to carry the judgment into effect. (CCP section 564(b)(3). The judgment debtor's interest in an alcoholic beverage license may be applied to the satisfaction of a money judgment. (CCP § 708.630(a).)

A trial court must consider the availability and efficacy of other remedies in determining whether to employ the extraordinary remedy of a receivership. (*City & Cty. of San Francisco v. Daley* (1993) 16 Cal.App.4th 734, 745.) In making this decision, the court must depend upon

competent and admissible evidence submitted by the parties, and not conclusions and hearsay. (*McCaslin v. Kenney* (1950) 100 Cal.App.2d 87, 94.)

"California rigidly adheres to the principle that the power to appoint a receiver is a delicate one which is to be exercised sparingly and with caution." (*Morand v. Superior Ct.* (1974) 38 Cal.App.3d 347, 351.) "It is said by the state's courts that the appointment of a receiver is 'an extraordinary and harsh,' and 'delicate,' and 'drastic,' remedy to be used 'cautiously and only where less onerous remedies would be inadequate or unavailable…'" (*Ibid*.)

Mere difficulty in trying to collect a debt is not sufficient basis for the court to appoint a receiver. (*Medipro Medical Staffing LLC v. Certified Nursing Registry, Inc.* (2021) 60 Cal.App.5th 622, 628-629.) The *Medipro* Court explained, "Medipro's evidentiary showing demonstrated that it had, at most, encountered some difficulty in its initial efforts to collect on its money judgment. If this was sufficient to constitute the 'necessity' required to justify the 'extraordinary' remedy of the appointment of a receiver to take over a judgment debtor's business, it is difficult to see how the appointment of receivers would not become a routine part of the collection of judgments—a result at odds with the solid wall of precedent holding to the contrary."

On August 5, 2025, judgment was entered in this action for the above stated amount. Plaintiff states he has attempted to collect on the judgment by attempting to locate a bank or deposit account, mailing a letter requesting payment, serving post-judgment interrogatories and requests for production of documents, and mailing a letter requesting responses to the post-judgment discovery. (Looney decl., ¶¶8-10.) Judgment Debtor's business is open and located at 7435 Melrose Avenue in Los Angeles. (*Id.,* at ¶¶4, 7.)

According to Plaintiff, the sheriff's office will not sell liquor inventory; the installation of a sheriff's keeper is ineffective; the size of the judgment makes it impractical to levy upon equipment, fixtures, or inventory; plus, the value of equipment and fixtures is depressed. Thus, Plaintiff concludes there is no other option but to appoint a receiver to seize and sell the liquor license to satisfy the judgment.

Plaintiff has not made a sufficient factual showing that appointing a receiver to seize and sell the liquor license is necessary. Plaintiff has failed to show the absence of alternate remedies, or if alternate remedies exist, their inadequacy. Rather, as in *Medipro*, *supra*, Plaintiff has only shown that he has encountered some difficulties in his initial efforts to collect the judgment. While Plaintiff states in his declaration that he investigated Defendant's finances, there is no explanation regarding the depth of this investigation. The court is not convinced that no bank accounts exist linked to a business that is purportedly still open. Plaintiff's representations regarding the inadequacy of alternative remedies are not supported by foundation. Finally, Plaintiff has not filed a motion to compel further responses to his post-judgment discovery requests.

Mere difficulties in collecting the judgment are insufficient grounds for appointing a receiver. Plaintiff has failed to meet his burden of proving that a receiver is necessary in this matter. **The motion is DENIED.** Due to the lack of opposition, the court's minutes shall constitute the order of the court.

3. <u>25CV02065, Mencarini v. General Motors, LLC.</u>

Defendant General Motors LLC ("GM") demurs to the First Amended Complaint ("FAC") filed by Antonio R Mencarini ("Plaintiff") on the grounds that, pursuant to Section 430.10(e) of the Code of Civil Procedure, Plaintiff's Fourth cause of action for breach of the implied warranty is time-barred by the applicable four-year statute of limitations; and, Plaintiff's fifth cause of action for fraudulent inducement – concealment is barred by the three-year statute of limitations; Plaintiff

fails to plead the essential elements of a fraud claims; and the fraud claim is barred by the economic loss rule and independent tort principle. **The demurrer is OVERRULED.**

1. FAC

Plaintiff's FAC alleges that on June 16, 2019, he entered into a warranty contract with GM regarding a 2019 GMC Sierra 1500 ("the Vehicle"). The warranty contract contained various warranties, including but not limited to the bumper-bumper warranty, powertrain warranty, and emission warranty.

Plaintiff alleges that starting on the day of the purchase, he presented the Vehicle to an authorized GM repair facility with complaints of an oil leak and rough idling. Thereafter, Plaintiff presented the Vehicle for additional complaints in August of 2023, and February and December of 2024. Plaintiff alleges the Vehicle is incapable of repair and that GM has a duty to promptly offer to repurchase or replace the Vehicle as it does not comply with the express warranty.

1. Fourth Cause of Action – Breach of the Implied Warranty of Merchantability (Civil Code sections 1791.1, 1794, and 1795.5)

Plaintiff's fourth cause of action alleges that the Vehicle was sold with latent defects, which constitutes a breach of the implied warranty of merchantability.

The Song-Beverly Consumer Warranty Act consists of Civil Code sections 1790 through 1795.8. Civil Code section 1791.1 defines the implied warranty of merchantability. Civil Code section 1790(c) provides: "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."

Plaintiff alleges delayed discovery—that he was not suspicious of GM's concealment of the latent defects and its inability to repair the Vehicle until shortly before the filing of the complaint when the issue persisted following GM's (representative's) representations that the Vehicle was repaired and/or working as designed. (FAC, ¶39.)

GM argues that Plaintiff's fourth cause of action began to run upon tender of delivery and does not extend to future performance of the goods.

The statute of limitations for breaches of the implied warranty of merchantability is four years. (*Montoya v. Ford Motor Co.* (2020) 46 Cal.App.5th 493, 495, citing *Mexia v. Rinker Boat Co., Inc.* (2009) 174 Cal.App.4th 1297, 1306.)

The Song–Beverly Act does not include its own statute of limitations. (*Mexia v. Rinker Boat Co., Inc.*, *supra,* 174 Cal.App.4th at p. 1305.) California courts have held that the statute of limitations for an action for breach of warranty under the Song–Beverly Act is governed by the same statute that governs the statute of limitations for warranties arising under the Uniform Commercial Code: section 2725 of the Uniform Commercial Code. (*Id.* at pp. 1305-1306.)

Under this statute, "(1) An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued.... [¶] (2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered." (*Mexia, supra,* citing Com.Code, § 2725, subds. (1), (2).) " Under that statute, a cause of action for breach of warranty accrues, at the earliest, upon tender of delivery." (*Id.,* at p. 1306.)

Here, the Vehicle was tendered to Plaintiff in 2019. Plaintiff did not file this action until March 24, 2025. Therefore, unless the delayed discovery or tolling doctrines are applicable to extend the time for filing the complaint, it is barred.

Citing cases pertaining to the Commercial Code, GM argues that the delayed discovery doctrine does not apply to implied warranty claims because an implied warranty is one that arises by operation of law rather than by an express agreement of the parties.

However, *Mexia* notes how the Song Beverly Consumer Warranty Act was a change from the Commercial Code. "To say that a warranty exists is to say that a cause of action can arise for its breach. Defining the time period during which the implied warranty exists, therefore, also defines the time period during which the warranty can be breached. Thus, by giving the implied warranty a limited prospective existence beyond the time of delivery, the Legislature created the possibility that the implied warranty could be breached after delivery. As discussed above, this is a change from the Uniform Commercial Code, under which the implied warranty could be breached only at the time of delivery. Giving the implied warranty a prospective existence, however, is not new under the law. Prior to the adoption of the Uniform Commercial Code, California courts recognized that the implied warranty of merchantability could have a prospective existence." (*Mexia, supra,* at p. 1309.)

"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." (*Id.,* at p. 1310.)

A purchaser can sue more than five years after the purchase on the theory that a latent defect lurked within the vehicle not reasonably discoverable by him until after the year ran such that the four-year limitations period began only upon discovery. (*Yeager v. Ford Motor Company* (N.D. Cal., Jan. 8, 2020, No. C 19-06750 WHA) 2020 WL 95645, at *3.) Where a latent defect exists, the statute of limitations is tolled "until the plaintiff discovers, or has reason to discover, the cause of action[.]" (*Id.,* citing *Fox v. Ethicon Endo-Surgery, Inc*. (2005). 35 Cal.4th 797, 807.)

In sum, the latent defect must exist during the one-year period but the Song-Beverly Consumer Warranty Act does not require its discovery within that short time frame and the statute of limitations is tolled until a plaintiff discovers or should have discovered the defect.

2. Plaintiff's Fifth Cause of Action – Fraudulent Inducement – Concealment

Plaintiff alleges GM committed fraud by allowing the Vehicle to be sold to Plaintiff without disclosing that the Vehicle and its 10-speed transmission were defective and susceptible to sudden and premature failure. (FAC, ¶¶74-77.) The FAC alleges causes of action are subject to equitable tolling, the discovery rule, equitable estoppel, the repair rule, and/or class action tolling. (FAC, ¶¶34-50.)

a. Statute of Limitations

GM argues this cause of action is barred by the three-year statute of limitations for fraud and that there are no allegations justifying its late filing. (See Code Civ. Proc., § 338, subd. (d).) GM does not address the specific allegations in the FAC which does not contain facts showing that Plaintiff should have known of the alleged defect prior to March 24, 2022, such that the three-year statute of limitations bars this action brought on March 24, 2025.

b. Specificity

GM argues this cause of action fails because Plaintiff has not alleged it with the required specificity.

The required elements for fraudulent concealment are (1) concealment or suppression of a material fact; (2) by a defendant with a duty to disclose the fact; (3) the defendant intended to

defraud the plaintiff by intentionally concealing or suppressing the fact; (4) the plaintiff was unaware of the fact and would have acted differently if the concealed or suppressed fact was known; and (5) plaintiff sustained damage as a result of the concealment or suppression of the material fact. (*Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1, 40.)

GM argues that the FAC fails to plead that GM knew of undisclosed facts at the time Plaintiff purchased the vehicle; what advertisements, brochures, or other materials GM could have disclosed the allegedly omitted "facts" that Plaintiff reviewed and relied upon in purchasing the Subject Vehicle; how long prior to purchasing the vehicle materials were viewed; and whether those materials, if any, were prepared by GM or someone else (such as a dealership). GM also argues that Plaintiff fails to plead with specificity, as required, facts supporting any allegation that GM intended to defraud by either making affirmative statements or failing to disclose material facts.

The FAC alleges sufficient facts. It alleges GM knew about specific defects with the Vehicle's transmission which GM did not disclose to its customers. (See FAC, ¶¶74-84.) In addition, it is difficult to allege non-disclosure: "How does one show 'how' and 'by what means' something didn't happen, or 'when' it never happened, or 'where' it never happened?" (*Alfaro v. Community Housing Improvement System & Planning Assn., Inc.* (2009) 171 Cal.App.4th 1356, 1384.)

GM also argues, "the requirement of specificity in a fraud action against a corporation requires the plaintiff to allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written." (*Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 157.) However, it should be well known to GM that there is a recognized exception to the strict pleading standard in fraud actions when it appears that the facts lie more within the defendant's knowledge than plaintiff's: i.e., less specificity is required where "defendant must necessarily possess full information concerning the facts of the controversy." (*Committee on Children's Television, Inc. v. General Foods Corp*. (1983) 35 Cal.3d 197, 216.)

c. Duty to Disclose

GM argues that Plaintiff has not alleged the requisite transactional relationship showing a duty to disclose.

A duty to disclose a material fact can arise if (1) it is imposed by statute; (2) the defendant is acting as plaintiff's fiduciary or is in some other confidential relationship with plaintiff that imposes a disclosure duty under the circumstances; (3) the material facts are known or accessible only to defendant, and defendant knows those facts are not known or reasonably discoverable by plaintiff (i.e., exclusive knowledge); (4) the defendant makes representations but fails to disclose other facts that materially qualify the facts disclosed or render the disclosure misleading (i.e., partial concealment); or (5) defendant actively conceals discovery of material fact from plaintiff (i.e., active concealment). (*Rattagan v. Uber Technologies, Inc, supra,* 17 Cal.5th at p. 40.).) Circumstances (3), (4), and (5) presuppose a preexisting relationship between the parties, such as "between seller and buyer, employer and prospective employee, doctor and patient, or parties entering into any kind of contractual agreement." (*Ibid*.) All of these relationships are created by transactions between parties from which a duty to disclose facts material to the transaction arises under certain circumstances. (*Id.,* at p. 41.) "Such a transaction must necessarily arise from direct dealings between the plaintiff and the defendant; it cannot arise between the defendant and the public at large." (*Ibid*.)

Our Supreme Court has described the necessary relationship giving rise to a duty to disclose as a "transaction" between the plaintiff and defendant: "In transactions which do not involve fiduciary or confidential relations, a cause of action for non-disclosure of material facts may arise in at least three instances: (1) the defendant makes representations but does not disclose facts which

materially qualify the facts disclosed, or which render his disclosure likely to mislead; (2) the facts are known or accessible only to defendant, and defendant knows they are not known to or reasonably discoverable by the plaintiff; (3) the defendant actively conceals discovery from the plaintiff. (*Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, 311.) 'As a matter of common sense, such a relationship can only come into being as a result of some sort of transaction between the parties.'" (*Ibid*.)

The cases cited by GM are distinguishable such that GM has not shown that its warranty with Plaintiff is insufficient to create the necessary transactional relationship.

Davis v. Nissan North America, Inc. (2024) 100 Cal.App.5th 825 involved the purchase of a new vehicle with an allegedly defective transmission. The plaintiff in that case did not allege a cause of action for fraud based upon a duty to disclose. (*Id.,* at p. 832-833.) The discussion of the parties' relationships in that case involved the issue of whether the defendants, who were not parties to the sale contract between plaintiffs and the dealership containing the arbitration clause, could compel arbitration based upon the doctrine of equitable estoppel.

The full paragraph including the portion quoted by GM states: "We agree with the holdings of these recent cases and adopt their reasoning as our own. 'Equitable estoppel would apply if the plaintiffs had sued [Nissan] based on the terms of the sale contract yet denied [Nissan] could enforce the arbitration clause in that contract.' [Citation.] But equitable estoppel does not apply here because plaintiffs are not relying on the terms of the sale contract to impose liability on Nissan. [Citation.] Plaintiffs' complaint does not allege that Nissan breached any obligations under the sale contract between them and the dealership. Rather, the complaint alleges violations of manufacturer warranties under the Song-Beverly Act and a related tort claim. Under California law, manufacturer warranties that accompany the sale of a vehicle without regard to the substantive terms of the sale contract between the buyer and the dealer are independent of the sale contract." Causes of action based upon the Song Beverly Act are not based upon a contract and do not require privity. (*Id.* at p. 842.) As such, the provision of warranties by the manufacturer did not allow it to invoke the arbitration clause in the sales contract between the purchaser and the dealership. (*Id.,* at p. 844.)

Ford Motor Warranty Cases (2025) 17 Cal.5th 1122 also dealt with the issue of whether a manufacturer could compel arbitration.

The analysis in these cases does not establish the lack of a transactional relationship for the purpose of requiring a manufacturer to disclose known defects contrary to the warranty given to purchasers of its vehicles.

d. Exclusive Knowledge

GM also argues that Plaintiff fails to allege it had exclusive knowledge of the transmission defects. However, this is only one option to establish a duty to disclose and Plaintiff alleges a duty to disclose based upon the Vehicle's purchase and warranties. In addition, the FAC contains allegations that GM acquired knowledge of the defects through testing data and consumer complaints unavailable to consumers. (FAC, ¶77.)

e. Active Concealment

GM's argument that Plaintiff must allege how its agents actively concealed the transmission defects is not practical or legally required.

f. Justifiable Reliance

The FAC alleges justifiable reliance. (FAC, ¶¶84-85.)

g. "Information and Belief"

The FAC alleges sufficient factual allegations alongside the allegation that they are based upon Plaintiff's information and belief as they are based upon Plaintiff's purchase of the Vehicle and his experience driving it and attempting to have it repaired.

h. Economic Loss Rule

GM argues that this cause of action is barred by the economic loss rule. The economic loss rule does not apply to limit recovery for intentional tort claims like fraud. (*Rattagan v. Uber Technologies, Inc.*, *supra,* 17 Cal.5th at p. 38.) A plaintiff may assert an independent claim of fraudulent concealment in the performance of a contract. (*Ibid*.) "A plaintiff may assert a tort claim for fraudulent concealment based on conduct occurring in the course of a contractual relationship, if the elements of the cause of action can be established independently of the parties' contractual rights and obligations and the tortious conduct exposes the plaintiff to a risk of harm beyond the reasonable contemplation of the parties when they entered into the agreement." (*Ibid*.)

3. Conclusion and Order

The demurrer is OVERRULED.

Plaintiff's counsel is directed to submit a written order to the court consistent with this ruling and in compliance with Cal. Rules of Court, Rule 3.1312.

4. 25CV002397, Gelsinger v. Alliant Specialty Insurance Services

Defendant Alliant Specialty Insurance Services dba Tribal First ("Tribal First") demurs to the Third Amended Complaint ("TAC") of Plaintiff Sarah Gelsinger ("Plaintiff") for failure to state facts sufficient to constitute a cause of action. Tribal First argues each claim is brought under the Fair Employment and Housing Act ("FEHA"), which applies only to employers or entities that engage in employment-related conduct, and Plaintiff has not alleged, and cannot allege that Tribal First was her employer, exercised any control over the terms or conditions of her employment, or engaged in any conduct regulated by FEHA. The demurrer is SUSTAINED without leave to amend.

1. Third Amended Complaint

The TAC alleges Plaintiff Sarah Gelsinger is a disabled 47-year old woman who managed the Starbucks inside Graton Rancheria Casino. On May 6, 2022, she fell and broke her knee on the job. (TAC, ¶7.) She filed a workers' compensation claim with Graton's insurance carrier, Tribal First. Plaintiff's worker's compensation doctor, Jessica Rose Bruso, D.O., placed her on medical leave from May 7 through May 10, 2022. (*Id.,* ¶8.) Dr. Brusso sent her medical documentation to the Tribal First claims administrator assigned to her case. (*Ibid*.) Plaintiff returned to work performing light duties from May 11, 2022, to January 2023, which consisted mostly of administrative duties. (*Ibid*.) Dr. Bruso released Plaintiff to return to work full duty effective January 12, 2023. (*Ibid*.) On May 16, 2023 Dr. Bruso sent Tribal First's claims administrator a notice indicating Plaintiff would need further follow up treatment for her work related injury, including: physician visits as needed; anti-inflammatory medication as needed; physical therapy treatment as needed for flare-ups; bracing and other durable medical equipment; and, orthopedic follow up care to consider surgical intervention. (*Id.,* ¶10.)

Graton terminated Plaintiff's employment on June 23, 2023, for allegedly vague pretextual reasons related to performance. (*Id.,* ¶11.)

Plaintiff alleges Tribal First colluded with and aided and abetted Graton to take adverse employment actions against Plaintiff, including terminating Plaintiff's employment after her treating physician notified them that (1) Plaintiff was released to return to work full-duty, but (2) had a permanent disability, and (3) would require future medical care including possible surgery, for which Tribal First as Graton's insurer would be liable. (*Id.,* at ¶11.) Plaintiff further alleges that Tribal First and Graton took the aforementioned adverse employment actions because they both felt it was an opportune time to rid themselves of this disabled employee. (*Ibid*.) For example, Graton knew it could terminate Plaintiff's employment without being accused of violating Plaintiff's work restrictions since her doctor had just released her to return to work full-duty, and Tribal First knew

that, as Graton's insurer, it would not be exposed to additional liability should Plaintiff return to work and experience a re-injury or new injury. (*Ibid*.)

Plaintiff alleges causes of action for: (1) Disability Discrimination (Gov. Code §12940(a)); (2) Failure to Provide a Reasonable Accommodation (Gov. Code §12940(m); (3) Failure to Engage in a Timely, Good Faith Interactive Process (Gov. Code §12940(n)); and (4) Retaliation for Requesting Reasonable Accommodation (Gov. Code §12940(h),(m)(2).

2. FEHA

As relevant here, Government Code section 12940 makes it an unlawful employment practice for an employer to discharge or discriminate against an employee due to a physical disability if the employee, with reasonable accommodations, can perform the essential duties of the position. The TAC does not allege that Tribal First employed Plaintiff. Rather, it alleges that Tribal First, who administered workers compensation insurance benefits on behalf of Graton, affected Plaintiff's employment by influencing Graton's decision to terminate Plaintiff.

a. Employer's Agents

The definition of an "employer" under the FEHA includes, in part, "any person regularly employing five or more persons, or any person acting as an agent of an employer, directly or indirectly. (Gov. Code section 12926(d).) Accordingly, a business entity acting as an agent of an employer can be held directly liable as an employer for employment discrimination in violation of the FEHA in appropriate circumstances when the business-entity agent has at least five employees and carries out FEHA-regulated activities on behalf of an employer. (*Raines v. U.S. Healthworks Medical Group* (2023) 15 Cal.5th 268, 291.)

Plaintiff's first cause of action is based upon allegations she was discharged because of her physical disability. There are no allegations that Tribal First discharged Plaintiff. While the TAC alleges Tribal First may have influenced Graton's decision, there are no allegations that it acted on Graton's behalf to evaluate Plaintiff's job performance or otherwise determine whether her employment with Graton's Starbucks should be terminated.

Plaintiff's second cause of action alleges that she was not provided a reasonable accommodation for her physical disability. Plaintiff's third cause of action is based upon alleged failure to engage in a timely, good faith interactive process. Plaintiff's fourth cause of action alleged she was retaliated against, by having her employment terminated, for requesting an accommodation. Again, there are no allegations that Tribal First was acting as Graton's agent and had any involvement in determining whether Plaintiff could be provided a reasonable accommodation, was required to engage in any interactive process with Plaintiff on Graton's behalf, or was involved on Graton's behalf in determining whether Plaintiff's employment should be terminated.

In opposition, Plaintiff appears to argue that providing workers' compensation benefits itself is a FEHA-regulated activity. Plaintiff cites "*Vasquez v. Largo Concrete, Inc*. 2025 Cal. Super. LEXIS 37195 at pp 8-9." This court cannot locate any case entitled *Vasquez v. Largo Concrete.* Plaintiff cites no case holding a workers compensation insurer is liable under the FEHA for the conduct of the employer.

Plaintiff also argues that Tribal First disregards that FEHA "explicitly regulates medical examinations and the delivery of healthcare services, the exact nature of the conduct that gave rise to liability for US Healthworks' third-party agent in *Raines*." (Oppo., 2:26-3:1.)

The allegations in *Raines* are that applicants were offered jobs contingent upon passing a preemployment medical screening, which was conducted by U.S. Healthworks Medical Group ("USHW") as an agent of the prospective employers. (*Raines, supra,* at p. 274.) During those examinations, USHW allegedly required applicants to answer invasive medical questions unrelated to their ability to perform job-related functions. (*Ibid*.) When that plaintiff did not respond to one

question, the exam was terminated and the offer of employment was withdrawn. (*Ibid*.) There are no similar allegations in the TAC.

Plaintiff argues Tribal First controlled which medical providers she could see, decided whether to accept or deny her claim and requests for medical treatment, received and memorialized her work restrictions, communicated them to Graton, and maintained detailed knowledge of her disability and medical condition throughout her employment. None of these activities support finding it was Tribal First, on Graton's behalf, who terminated Plaintiff, failed to reasonably accommodate her disability, failed to engage in the interactive process, or who retaliated against her by terminating her employment for requesting an accommodation.

It appears Plaintiff's complaint against Tribal Health is that its decisions impacted her ability to recover from her injury: "These decisions were inextricably intertwined with Ms. Gelsinger's rate of recovery, her ability to achieve maximal medical improvement, her level of permanent impairment, and ultimately her ability to return to work." (Oppo., 3:7-9.) No case is cited that administering healthcare equates to acting as an agent of an employer for the purpose of employer related decisions in terminating an employee or in the failure to provide a reasonable accommodation or engage in the interactive process. Nor is there any case cited establishing that transmitting medical information to an employer makes the one transmitting that information liable for any decision an employer makes based upon that information.

Plaintiff also argues that Tribal First dismisses the "collusion allegations." However, there is no basis for liability for collusion of a violation of FEHA if there is no employment practice taken on behalf of Graton by Tribal First. While there might be some other theory under which Tribal First may be liable, the FEHA does not apply.

3. Conclusion and Order

Plaintiff has been given a chance to amend her complaint to state a valid cause of action against Tribal First for violation of the FEHA. Her TAC continues to fail in this regard. Nor has she shown any possibility that she could amend her complaint to state a valid cause of action against Tribal First for violation of the FEHA. Accordingly, the demurrer is SUSTAINED without leave to amend.

Tribal First's counsel is directed to submit a written order to the court consistent with this ruling and in compliance with Cal. Rules of Court, Rule 3.1312.

5. 25CV03106, Gentry v. Scarritt

Plaintiff Cindy Gentry ("Plaintiff") moves for leave to file a First Amended Complaint adding a fifth cause of action for intentional infliction of emotional distress and additional factual allegations concerning Defendant's threats, intimidation, and acts of violence toward Plaintiff that came to light during Plaintiff's deposition.

"The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading." (CCP § 473(a)(1).) Judicial policy dictates the court's discretion be applied liberally to allow amendments. (*Nestle v. Santa Monica* (1972) 6 Cal. 3d 920, 939.) It is only when there is prejudice to the other side that cannot be alleviated by imposing conditions on the moving party that leave should not be allowed. (*Hirsa v. Sup.Ct. (Vickers)* (1981) 118 Cal. App. 3d 486, 490.) Arguments regarding the validity of the proposed amended complaint, such as that a cause of action is barred by the statute of limitations, are not considered on a motion for leave. (See *Kittredge Sports Co. v. Sup.Ct. (Marker, U.S.A.*) (1989) 213 Cal. App. 3d 1045, 1048.)

In opposition, Defendant Curt Scarritt ("Defendant") argues allowing Plaintiff to amend now leaves Defendant with insufficient time to conduct discovery on the issues raised in the new

cause of action. However, trial is not until August and Defendant was aware of Plaintiff's intention to add a cause of action for intentional infliction of emotional distress back in February. None of Defendant's reasons for denying the motion cannot be alleviated through other means beyond denying the motion.

The motion is GRANTED. Plaintiff is directed to file and serve the First Amended Complaint within 10 days of this order.

Plaintiff's counsel is directed to submit a written order to the court consistent with this ruling and in compliance with Cal. Rules of Court, Rule 3.1312.

6. SCV-272535, Banuelos v. American Honda Motor Co., Inc

Plaintiff Luis Banuelos ("Plaintiff") moves for an award of attorney fees, costs, and expenses pursuant to Civil Code section 1794(d) of the Song-Beverly Consumer Warranty Act. Plaintiff seeks $21,312.50 in attorney fees plus a multiplier of 1.5 in the amount of $10,656.25, for a total fee award of $31,968.75. Plaintiff also requests reimbursement for costs and expenses in the amount of $6,255.49. **The motion is GRANTED, with the modification that this court will grant a modifier of 1.1, for a total attorney fee award of $23,443.75.**

1. Litigation and Settlement

Plaintiff filed this action on January 31, 2023, against Defendant American Honda Motor Co., Inc. ("Defendant") alleging the violation of the Song-Beverly Consumer Warranty Act based upon Plaintiff's purchase of a 2021 Honda Passport for $21,850.39. On August 21, 2025, the parties settled the matter with Defendant agreeing to pay Plaintiff $58,536.00. (Kirnos decl., ¶14.) As part of the settlement agreement Defendant agreed to pay reasonable attorney fees to be determined by the parties or this motion. (Kirnos decl., Exhibit C., ¶2.) For the purposes of the attorney fee motion, the parties agreed Plaintiff is the prevailing party. (*Ibid*.)

2. Attorney Fees - Civil Code section 1794(d)

"If the buyer prevails in an action under this section, the buyer shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action." (Civ. Code, § 1794(d).)

A court exercises its discretion to determine the amount of attorney fees reasonably incurred. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 50.)

Plaintiff's counsel utilized nine attorneys and one paralegal on this case. (Kirnos decl., Exhibit A.) The attorneys billed hourly rates from $375 to $575. (*Ibid*.) The paralegal was billed at $145 per hour. (*Ibid*.) Plaintiff's counsel explains that the use of multiple attorneys in lemon law cases is beneficial as each attorney specializes in certain stages of litigation. Each attorney's experience in particular niches relating to the Song-Beverly Act allows attorneys to spend less time on each case. The invoices provided support this explanation. The time spent on each task is within reason and the tasks performed appear reasonably necessary to the litigation. In addition, Plaintiff's counsel did not bill for some meetings between counsel and/or staff.

3. Fee Enhancement

A fee enhancement or multiplier is applicable to an attorney fee award under Civil Code section 1794(d). (*Robertson v. Fleetwood Travel Trailers of California, Inc.* (2006) 144 Cal.App.4th 785, 819-821.) A touchstone or lodestar figure based on a careful compilation of the actual time spent and reasonable hourly compensation for each attorney may then be augmented or diminished by taking various relevant factors into account, including (1) the novelty and difficulty

of the questions involved and the skill displayed in presenting them; (2) the extent to which the nature of the litigation precluded other employment by the attorneys; and (3) the contingent nature of the fee award, based on the uncertainty of prevailing on the merits and of establishing eligibility for the award. (*Id*. at p. 819.) The initial lodestar amount is based on the reasonable rate for *noncontingent* litigation of the same type, which amount may then be enhanced to account for factors such as the contingent nature of the case: "The purpose of such adjustment is to fix a fee at the fair market value for the particular action. In effect, the court determines, retrospectively, whether the litigation involved a contingent risk or required extraordinary legal skill justifying augmentation of the unadorned lodestar in order to approximate the fair market rate for such services." (*Id.,* citing *Ketchum v. Moses* (2001) 24 Cal.4th 1122, at 1132.)

Plaintiff requests a fee enhancement of 1.5 which amounts to $10,656.25. This request is based upon the contingency nature of the case and the inherent risk that Plaintiff may not prevail, and her attorneys would not get paid. The Court determines that a 1.1 multiplier is reasonable in this case. The parties settled the case before trial, and this multiplier adequately compensates Plaintiff for the risk involved.

4. Costs and Expenses

Civil Code section 1794(d) allows for recovery of costs and expenses reasonably incurred in the litigation. Plaintiff reasonably incurred $6,255.49 litigating this case. (Kirnos decl., Exhibit B.)

5. Conclusion and Order

Plaintiff's motion is GRANTED. Plaintiff is awarded $23,443.75 in attorney fees and $6,255.49 costs and expenses, for a total of $29,699.24.

Plaintiff's counsel is directed to submit a written order to the court consistent with this ruling and in compliance with Cal. Rules of Court, Rule 3.1312.