TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, October 8, 2025 3:00 p.m.
Courtroom 17 – Hon. Jane Gaskell
3035 Cleveland Avenue, Santa Rosa

PLEASE NOTE: In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform.

CourtCall is not permitted for this calendar.

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

TO JOIN D17 ZOOM ONLINE:
Meeting ID: 161 126 4123
Passcode: 062178
https://sonomacourt-org.zoomgov.com/j/1611264123

TO JOIN ZOOM BY PHONE:
By Phone (same meeting ID and password as listed for each calendar):
+1 669 254 5252

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** Judge Gaskell's Judicial Assistant by telephone at **(707) 521-~~6723~~ 6725**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom**, by ***4:00 p.m. the court day immediately preceding the day of the hearing.***

1. 24CV04528, Swami v. Harris

Defendants Oracle Consulting, Inc. and David Harris (together "Defendants") moves to set aside the default and default judgment entered against them per Code of Civil Procedure ("C.C.P.") sections 473(b) and 583.130. The motion is **GRANTED**, and Defendants shall file and serve their proposed Answer attached in support of this motion within 10 days of this Court's order.

FACTS & PROCEDURE

Plaintiffs Brahma Brewery, Inc. and Brahma Swami ("Plaintiffs") allege breach of contract against Defendants and request declaratory relief that Defendants' mechanics' lien is invalid and injunctive relief prohibiting enforcement of the allegedly invalid mechanics' lien. (Complaint, ¶¶ 57-77.)

On November 12, 2024, the Court granted Plaintiffs' *ex-parte* application to serve a summons and complaint upon the Secretary of State as to Defendant Oracle Consulting, Inc. and to serve Defendant Harris by publication. (See Ex Parte Order dated November 12, 2024.) Plaintiffs served the Complaint and Summons by personal service on the Secretary of State on behalf of Oracle Consulting, Inc. under Code of Civil Procedure section 416.10 on November 19, 2024. (See Proof of Service of Summons, dated November 20, 2024.) Defendant Harris was served by publication in the Sonoma County Press Democrat

from December 9, 2024, through December 28, 2024. (See Proof of Service of Summons, dated December 9, 2024.)

Defendants did not file or serve any answers, so Plaintiffs requested entry of default against them, which the Clerk entered. (See Request for Entry of Default, dated January 9, 2025; See Request for Entry of Default, dated April 21, 2025.) Plaintiffs' previous counsel was aware that Defendants became represented by counsel but did not inform counsel that Plaintiffs were going to request defaults to be entered against Defendants. (Set Aside Memorandum of Points and Authorities ["MPA"], 1:19-27.)

Defendants now move to set aside the default stating that the defaults were taken against them through deceit by Defendants and their previous counsel, Jeffrey Needelman. (Notice of Motion, 1:25-27.) Plaintiffs filed their opposition in response to the motion through their previous counsel, but the Court notes that the Court granted counsel Needelman's motion to be relieved as counsel for Plaintiffs on July 9, 2025, so Plaintiffs are currently self-represented.

ANALYSIS

A court may relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect, but an application for this relief shall be accompanied by "a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken." (C.C.P. § 473(b).) The affidavit does not need to disclose the reasons for the mistake, inadvertence, surprise, or neglect. (*Martin Potts & Assocs., Inc. v. Corsair, LLC* (2016) 244 Cal.App.4th 432, 435–36.) The moving party has the burden of showing that the mistake, inadvertence, surprise, or neglect was one that "a reasonably prudent person under the same or similar circumstances might have made." (*Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 258.)

Defendants argue that Plaintiffs and their previous counsel violated their statutory legal duties by requesting entry of default against Defendants without giving reasonable warning to their counsel. Defendants cite *Lasalle v. Vogel* (2019) 36 Cal.App.5th 127, in which case the Court of Appeal held that "an attorney has an ethical obligation to warn opposing counsel that the attorney is about to take an adversary's default." (MPA, 5:12-19.)

In the Opposition, Plaintiffs request that the Court deny the motion to set aside default because Defendants' counsel was hired by Defendants prior to the deadline for their response to the Complaint, so the cause of the default was not counsel's lack of knowledge, but rather his failure to calendar the response deadline. (Opposition, 2:2-18.)

Application

The Court finds that, while Defendants' counsel may have been aware of the Complaint prior to the defaults being entered against Defendants, it was due to their counsel's mistake, inadvertence, and neglect in failing to calendar the deadline to respond that Defendants failed to file a timely response and had defaults entered against them subsequently. The Court will grant the motion to set aside default due to the mistake of their counsel, and Defendants shall file their proposed responsive pleading attached to their supplemental declaration filed on August 21, 2025.

CONCLUSION

The motion is **GRANTED**. Defendants shall file and serve their proposed responsive pleading within 10 days of service of this Court's order. They also shall submit a written order on its motion to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

2. 24CV05603, Sugarman v. Reynaud

Defendant C.J. Fischer, LLC's unopposed discovery motions are **GRANTED in part** as follows:

1. Per Code of Civil Procedure ("C.C.P.") 2031.310, Plaintiff Randy Sugarman shall provide further responses to Defendant's First Set of Requests for Production of Documents ("RFPDs"), Nos. 5-10, 16-17, 22-25, 27-28, 31-33, 39-43, 44-45, 48-49, 50, and 53.

2. Per C.C.P. section 2033.290, Plaintiff shall provide further responses to Defendant's First Set of Requests for Admissions ("RFAs"), Nos. 2, 5-6, 11-16, 21-22, 24-25, 28-31, and 32-34.

3. Per C.C.P. section 2030.300, Plaintiff shall provide further responses to Defendant's First Set of General Form Interrogatories ("FROGs"), Nos. 2.6, 7.1-7.2, 9.1-9.2, 12.1, 12.4, 12.7, and 17.1.

The Court **DENIES** Defendant's motions as to the requests for the Court to order Plaintiff to remove or withdraw his objections. Sanctions are awarded against Plaintiff for the reduced amount of **$8,806.53** in total for the three motions.

Plaintiff's further responses ordered above shall be provided, along with any responsive documents, within 30 days of service of notice of this Court's order. Any documents withheld on account of a claimed privilege shall be identified in a privilege log.

PROCEDURAL HISTORY

Plaintiff's Amended Complaint asserts the Third, Fourth, and Fifth Causes of Action against Defendant for the alleged voidable and fraudulent transfer of options, trade fixtures, deposits, and a motorhome to Defendant. (Amended Complaint, ¶¶ 51-79.)

On March 25, 2025, Defendant propounded their first set of discovery on Plaintiff. (Christensen Decl., ¶ 5, Exhibits A, C, and E.) On May 1, 2025, Plaintiff served responses to the first set of discovery. (*Id*. at ¶ 5, Exhibits B, D, and F.)

Finding some of the responses to be deficient and objections without merit, Defendant's counsel met and conferred by e-mail, correspondence, and phone with Plaintiff's counsel on all of the discovery responses at issue and to request responsive documents that were not produced. (*Id*. at ¶¶ 6-8.) On May 19, 2025, Plaintiff produced documents responsive to the RFPDs. (*Id*. at ¶ 9, Exhibit G.) Defendant's counsel further met and conferred on deficient responses and documents not received, but the parties did not come to a resolution. (*Id*. at ¶¶ 11-12.)

Defendant filed three separate motions to compel further responses to certain discovery requests. Though the moving papers were served on June 18, 2024, by e-mail to Plaintiff's counsel, Plaintiff did not file any oppositions. Defendant did file one Reply to Non-Opposition requesting the Court to grant all three motions.

REQUEST FOR JUDICIAL NOTICE

Defendant requests judicial notice of the Memorandum of Points and Authorities in Support of Motion of Plaintiff Cindy Fischer for Order of Contempt and the Findings and Order of Contempt in Sonoma County Superior Court Case No. SCV-270409.

The requests are **GRANTED** pursuant to Evidence Code sections 452(d) and 453.

ANALYSIS

Defendant's Motion to Compel Further Responses to Set One of RFPDs

A party to whom a document demand is directed must respond to each item in the demand with an agreement to comply, a representation of inability to comply, or an objection. (C.C.P. §2031.210(a).) If a responding party is not able to comply with a particular request, or part thereof, that party "shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand." (C.C.P. § 2031.230.) The response shall also specify "whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party" and also must set forth the "name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item." (*Ibid*.) Otherwise, if a responding party is objecting to a demand only, then the responding party must identify the demanded document, tangible thing, land, or electronically stored information to which an objection is being made, set forth the grounds for objection, and if privileged, provide a privilege log for the demanded items that are privileged. (CCP § 2031.240.)

Defendant requests that the Court compel Plaintiff to:

1. Provide complete and non-evasive responses to Nos. 44-45, 48-49, and 53;

2. Substantively respond to Nos. 5-10, 16-17, 22-25, 27-28, 31-33, 39-43, and 50;

3. Withdraw objections to and produce all documents responsive to Nos. 5-13, 16-18, 22-28, 30, 32, 35-36, 38-41, 43-47, 50, and 52-53, as applicable; and

4. Produce a privilege log, if applicable.

(Motion to Compel Further Responses to RFPDs ["RFPD Motion"], 1:3-8.) Defendant argues that the responses were evasive, incomplete, and stated boilerplate and inapplicable objections. (*Id*. at 5:1-16.) Furthermore, not all responsive documents were produced, and though privileges and confidentiality were claimed, no privilege log was produced to Defendant. (*Ibid*.)

Plaintiff did not file any opposition.

Defendant's Motion to Compel Further Responses to RFAs

A party requesting admissions may move for an order compelling a further response if that party deems that either or both of the following apply: (1) an answer is evasive or incomplete; or (2) an objection is without merit or too general. (C.C.P. § 2033.290(a).) Parties must submit a meet and confer declaration under C.C.P. section 2016.040 when bringing a motion to compel further responses to a request for admissions. (C.C.P. § 2033.290(b)(1).) Monetary sanctions shall be imposed against a party who unsuccessfully makes or opposes a motion to compel further responses, unless the court finds that the

party acted with substantial justification or that other circumstances would make the imposition of the sanction unjust. (C.C.P. § 2033.290(d).)

Defendant requests that the Court compel Plaintiff to:

1. Provide complete and non-evasive responses to Nos. 2, 5-6, 11-15, 21-22, 24-25, and 30-31;

2. Substantively respond to Nos. 16, 28-29, and 32-34; and

3. Remove general objections to all requests and withdraw objections to Nos. 10, 16-17, 20-21, 25, 28-29, and 32-24.

(Motion to Compel Further Responses to RFAs ["RFA Motion"], 3:3-8.) Defendant argues that the responses to the requests identified above were incomplete or evasive because they did not answer (admit or deny) what was stated in the requests. (*Id*. at pp. 2-9.)

Plaintiff did not file any opposition.

Defendant's Motion to Compel Further Responses to Sets One of FROGs

A propounding party may move to compel a further response to an interrogatory if: "(1) An answer to a particular interrogatory is evasive or incomplete. (2) An exercise of the option to produce documents under Section 2030.230 is unwarranted or the required specification of those documents is inadequate. (3) An objection to an interrogatory is without merit or too general." (C.C.P. § 2030.300(a).) The motion to compel must be accompanied by a meet and confer declaration per section 2016.040, which requires that, "a meet and confer declaration in support of a motion shall state facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion." (C.C.P. §§ 2016.040, 2030.300(b)(1).) While the propounding party has the burden of filing a motion to compel further responses to when responses provided were deemed deficient, the responding party has the burden of justifying any objections stated and failure to respond. The court shall impose a monetary sanction against any party who unsuccessfully makes or opposes a motion to compel a further response to interrogatories, unless the court finds that the sanctionable party acted with substantial justification or that other circumstances make it unjust to impose sanctions. (C.C.P. § 2030.300(d).)

Defendant requests that the Court compel Plaintiff to:

1. Provide complete and non-evasive responses to Nos. 2.6, 7.1-7.2, 9.1-9.2, 12.1, 12.4, 12.7, and 17.1;

2. Remove general objections to all interrogatories and withdraw objections to Nos. 2.2-2.5 and 2.11.

(Motion to Compel Further Responses to FROGs ["FROGs Motion"], 3:3-8.) Defendant argues that the responses to the interrogatories identified above were evasive and non-compliant and the objections were boilerplate and meritless. (*Id*. at pp. 3-8.)

Plaintiff did not file any opposition.

Application

On review of the moving papers, the Court will grant the unopposed motion compelling Plaintiff's further responses to the following discovery requests:

1. RFPDs Nos. 5-10, 16-17, 22-25, 27-28, 31-33, 39-43, 44-45, 48-49, 50, and 53.

2. RFAs Nos. 2, 5-6, 11-16, 21-22, 24-25, 28-31, and 32-34.

3. FROGs Nos. 2.6, 7.1-7.2, 9.1-9.2, 12.1, 12.4, 12.7, and 17.1.

The Court finds that Plaintiff's objection-only responses to the above discovery requests were evasive and did not address what was requested. Plaintiff also did not oppose any of the discovery motions to justify the objection-only responses or failure to produce responsive documents.

Sanctions

For the three unopposed motions, Defendant requests sanctions of $15,762.37, which includes:

1. $1,512.50 for 5.5 hours of counsel's work at a rate of $275.00 per hour meeting and conferring with Plaintiff's counsel to avoid filing the discovery motions;

2. $2,942.50 for 10.7 hours of counsel's work at a rate of $275.00 per hour drafting the RFPD moving papers;

3. $1,000.00 requested in sanctions for Plaintiff's failure to produce all responsive documents pursuant to C.C.P. section 2023.050;

4. $1,595.00 for 5.8 hours of counsel's work at a rate of $275.00 per hour drafting the RFA moving papers;

5. $1,815.00 for 6.6 hours of counsel's work at a rate of $275.00 per hour drafting the FROG moving papers;

6. $660.00 for 2.4 hours of counsel's work at a rate of $275.00 per hour to draft his declaration in support of the three motions;

7. $2,475.00 of anticipated 9.0 hours of counsel's work at a rate of $275.00 per hour reviewing and preparing three oppositions;

8. $3,300.00 of anticipated 12.0 hours of counsel's work at a rate of $275.00 per hour preparing three reply briefs;

9. $259.86 for filing fees for the three motions;

10. $65.01 for anticipated costs of filing three replies; and

11. $137.50 of anticipated 0.5 hours of counsel's work at a rate of $275.00 per hour appearing at the hearing on the three motions.

The Court finds the requested sanctions to be excessive in both amount and preparation time when Plaintiff filed no opposition, Defendant filed one brief reply to non-opposition regarding all three motions, and a hearing on the unopposed motions will not be necessary. The Court will also not award the additional $1,000.00 sanctions under C.C.P. section 2023.050. The Court will award fees for preparing the three separate motions and supporting declaration, the efforts spent meeting and conferring, the filing

costs for the three motions, and the filing cost for one reply. The Court will award total sanctions for the reduced amount of **$8,806.53**.

CONCLUSION

Based on the foregoing, Defendant's unopposed discovery motions are **GRANTED in part** as follows:

1. Plaintiff shall provide further responses to RFPDs Nos. 5-10, 16-17, 22-25, 27-28, 31-33, 39-43, 44-45, 48-49, 50, and 53.

2. Plaintiff shall provide further responses to RFAs Nos. 2, 5-6, 11-16, 21-22, 24-25, 28-31, and 32-34.

3. Plaintiff shall provide further responses to FROGs Nos. 2.6, 7.1-7.2, 9.1-9.2, 12.1, 12.4, 12.7, and 17.1.

The Court **DENIES** Defendant's motions as to the requests for the Court to order Plaintiff to remove or withdraw his objections. Plaintiff's further responses shall be served, along with any responsive documents, within 30 days of service of notice of this Court's order. Sanctions are awarded against Plaintiff for the reduced amount of **$8,806.53** for the three motions. Defendant shall submit a written order to the Court consistent with this tentative ruling regarding the three discovery motions and in compliance with Rule of Court 3.1312(a) and (b).

3. 24CV05801, Hampton v. FCA US, LLC

Defendants FCA US, LLC, and Hilltop Chrysler Jeep Dodge Ram's demurrer to the Fifth and Sixth Causes of Action in Plaintiff Hampton's Complaint is **OVERRULED** as to the Fifth Cause of Action and **SUSTAINED with leave to amend** as to the Sixth Cause of Action. The First Amended Complaint shall be filed within 10 days of service of notice of the entry of order on the demurrer.

I. PROCEDURAL HISTORY

Plaintiff purchased a 2020 Ram 1500 (the "Vehicle") from Defendant Hilltop Chrysler Jeep Dodge Ram and entered into a warranty contract with Defendant FCA US, LLC, the manufacturer and distributor of the Vehicle. (Complaint, ¶ 10.) Plaintiff alleges that the Vehicle was defective and had nonconformities of which Defendants were aware prior to selling Plaintiff the Vehicle. (*Id*. at ¶¶ 15-38.) The Complaint alleges six claims pursuant to the Song-Beverly Consumer Warranty Act, including a Fifth Cause of Action for Fraudulent Inducement-Concealment and a Sixth Cause of Action for Negligent Repair. (*Id*. at ¶¶ 39-71.)

Defendants' counsel met and conferred with Plaintiff's counsel on April 2, 2025, but the parties did not reach a resolution as to these issues. (Shirani Decl., ¶ 2.)

Defendants now demur to the Fifth and Sixth Cause of Action in the Complaint. Plaintiff filed an Opposition, to which Defendants filed a Reply.

II. DEMURRER

Legal Standard

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. (C.C.P. § 430.30(a).) At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. (*Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.) Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872.) Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.)

Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. (*The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.)

Defendant's Demurrer

Fifth Cause of Action for Fraudulent Concealment

To state a claim for fraud and deceit based on concealment, a plaintiff must allege: (1) the defendant concealed or suppressed a material fact; (2) the defendant was under a duty to disclose the fact to the plaintiff; (3) the defendant intentionally concealed or suppressed the fact with the intent to defraud the plaintiff; (4) the plaintiff was 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 sustained damage. (*Marketing West, Inc. v. Sanyo Fisher (USA) Corp.* (1992) 6 Cal.App.4th 603, 612–613.)

Failure to disclose a fact can constitute actionable fraud or deceit in the following four circumstances: "(1) when the defendant is the plaintiff's fiduciary; (2) when the defendant has exclusive knowledge of material facts not known or reasonably accessible to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations that are misleading because some other material fact has not been disclosed." (*Collins v. eMachines, Inc.* (2011) 202 Cal.App.4th 249, 255.)

Fraud must be pled with specificity in California and general or conclusory allegations do not suffice. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) As to fraud, "the policy of liberal construction of the pleadings . . . will not ordinarily be invoked to sustain a pleading defective in any material respect," and a plaintiff must plead facts which show "how, when, where, to whom, and by what means the representations were tendered." (*Ibid*.) Intent is a fact and sufficient as an allegation that defendant intended to deceive plaintiff. (5 Witkin, Cal. Proc. (6th ed. 2025) Pleadings, § 725.)

To establish reliance on fraud, reliance upon the truth of the fraudulent misrepresentation does not have to be a predominant factor in the plaintiff's subsequent conduct, but it must be a substantial factor. (*OCM Principal Opportunities Fund, L.P. v. CIBC World Markets Corp.* (2007) 157 Cal.App.4th 835, 864.) Plaintiffs in fraud-by-concealment claims must show that if the information had not been omitted, plaintiff would have been aware of it and therefore would have behaved differently. (*Ibid*.) The pleading must be adequately specific to show actual reliance on the omission, and that the damages causally resulted therefrom. (*Ibid*.) California law "requires a plaintiff to allege specific facts not only showing he or she actually and justifiably relied on the defendant's misrepresentations, but also how the actions he or she took in reliance on the defendant's misrepresentations caused the alleged damages." (*Rossberg v. Bank of America, N.A.* (2013) 219 Cal.App.4th 1481, 1499.)

Defendant demurs to Plaintiff's Fifth Cause of Action for Fraudulent Inducement-Concealment for failure to constitute a cause of action because: (1) Defendant does not owe Plaintiff a duty of disclosure as a matter of law; (2) the claim is barred by the Economic Loss Doctrine; and (3) because Plaintiff fails to meet the heightened pleading standard for a fraud cause of action. (Demurrer, 2:6-9.)

a. Duty of Disclosure

Defendants argue that Plaintiff failed to allege facts to support that there was any duty to disclose material facts to Plaintiff because there was no fiduciary relationship or transaction with direct dealing between Defendants and Plaintiff as is needed for a Fraudulent Concealment claim. (Memorandum of Points and Authorities ["MPA"], 7:8-18.)

Plaintiff cites *Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828, to argue that the Complaint's allegations are sufficient at the pleading stage because it is enough to allege that Plaintiff bought a car from a manufacturer's dealership with an express warranty and that the manufacturer's authorized dealerships are its agents for purposes of the sale of their vehicles to that plaintiff. (Opposition, 6:8-28, 7:1-24.) Plaintiff alleged that the engine defect and the safety risks of that defect were material facts allegedly known to Defendants, which Defendants had a duty to disclose to Plaintiff. (*Id*. at pp. 7-9.)

In the Reply, Defendant reaffirms arguments for there being no direct, transactional relationship between Plaintiff and Defendant FCA US, LLC. (Reply, pp. 5-7.)

b. Economic Loss Doctrine

Defendants argue that the Economic Loss Doctrine, which restricts recovery of tort damages to non-economic loss, precludes Plaintiff's claim for fraudulent inducement-concealment insofar as Plaintiff is seeking compensation for economic damages due to frustrated expectations in a commercial transaction. (MPA, pp. 7-10.) Plaintiff here does not allege property damage or physical injury and seeks purely economic damages. (*Ibid*.)

Plaintiff argues that the California Law allows the fraud claim and it is not blocked by the Economic Loss Rule. Plaintiff cites *Rattagan v. Uber Technologies, Inc.* (2024) 15 Cal.5th 1, in which case Plaintiff says the Ninth Circuit reframed the question of whether fraudulent concealment claims are exempt from the Economic Loss Rule, to whether a party can assert a tort claim for fraudulent concealment arising from or related to the performance of a contract. (Opposition, 9:21-27.) Plaintiff again cites *Dhital* to argue that the Court of Appeal held that the Economic Loss Rule does not bar claims for fraudulent inducement, including through fraudulent concealment. (*Id*. at 10:24-26; *Dhital*, supra, at p. 843.)

In the Reply, Defendants emphasize that because Plaintiff is unable to allege physical damage or personal injury independent of the contract damages that are beyond the risk of harm contemplated by the parties, the fraud claim fails. (Reply, 4:18-27.)

c. Heightened Standard for Fraud

Defendants argue that the Complaint does not plead specific facts against Defendants but rather relies on conclusory and vague statements to support the fraud claim. (MPA, 11:1-23.)

Plaintiff argues that in cases where a party claims fraud through non-disclosure, it is not practical to allege facts that show how, when, and by what means the disclosure did not happen, per *Alfaro v. Community Housing Improvement System Planning Assn.* (2009) 171 Cal.App.4th 1356. (Opposition, 4:14-25.)

Plaintiff claims he sufficiently alleged the elements of fraud in the Complaint under this standard. (*Id*. at 4:25-28, 5:1-19.)

In the Reply, Defendants argue that *Dhital* is only persuasive authority, but that in *Rattagan v. Uber Technologies Inc.* (2024) 17 Cal.5th 1, the Supreme Court held that "Plaintiff can only allege a fraudulent concealment claim based on conduct occurring within the course of a contractual relationship, if the elements of a 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. (Reply, 1:12-20.) Here, because Plaintiff cannot allege elements of fraudulent concealment independent of the parties' contractual rights, no tortious conduct can be alleged. (*Id*. at 1:20-23.)

Sixth Cause of Action for Negligent Repair

Defendants demur to the Sixth Cause of Action for Negligent Repair for failure to state facts that constitute a cause of action because: (1) the claim is also barred by the Economic Loss Doctrine; and (2) Plaintiff failed to plead the essential element of damages. (Demurrer, 2:12-14.) Plaintiff claims that Defendant Hilltop owed a duty to Plaintiff to use ordinary care and skill in storage, preparation, and repair of the Vehicle, but breached that duty and that breach was a proximate cause of Plaintiff's damages. (MPA, ¶¶ 67-71.) Defendants claim that under Plaintiff's Negligent Repair cause of action, Plaintiff failed to plead sufficient facts to show that Defendant Hilltop's conduct cause any actual damages. (MPA, 12:25-28, 13:1-5.)

Plaintiff argues that the Complaint alleges all essential elements of Negligent Repair and whether Plaintiff paid any out-of-pocket costs for the repair work has no bearing on it. (Opposition, 13:18-28.) Plaintiff states that it is sufficient to allege that Defendant Hilltop breached a duty of care that caused damages giving rise to the Negligent Repair claim. (*Ibid*.)

Defendants' Reply points to Plaintiff's failure to allege any proof of harm or damages suffered as a result of Defendants' breach of duty and argues that the Negligent Repair claim fails for that reason.

Application

The Court finds that that the Court of Appeal opinion under *Dhital* is mandatory not persuasive authority and therefore the Court must follow *Dhital's* precedent. Plaintiff's allegations are sufficient to show a transactional relationship between Defendants giving rise to a duty of disclosure and sufficient to allege fraud at the pleading stage.

On the Sixth Cause of Action, the Court finds that, while Plaintiff alleges that Defendant Hilltop's breach of duty was the proximate cause of damages claimed in this action, Plaintiff failed to state which damages resulted from Defendant Hilltop's breach of duty.

III. CONCLUSION

Defendants' demurrer is **OVERRULED** as to the Fifth Cause of Action and **SUSTAINED with leave to amend** as to the Sixth Cause of Action. The First Amended Complaint shall be filed within 10 days of service of notice of entry of this Court's order on the motions. The moving party shall submit a written order on its motion to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

4. 24CV06242, Capital One N.A. v. Mann

Plaintiff Capital One, N.A., moves unopposed to deem as admitted the truth of all facts specified in Plaintiff's Request for Admissions, Set One, propounded on Defendant Mann by mail on January 8, 2025.

A party who "fails to serve a timely response" to requests for admissions waives any objection to those requests. (C.C.P. § 2033.280(a).) After a lack of response, the requesting party can move for an order "that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted." (C.C.P. § 2033.280(b).) To date, Defendant has neither served any response nor responded to any of Plaintiff's counsel's meet and confer correspondences. (Parks Decl., ¶ 4, Exhibit 2.) Plaintiff filed this motion and timely served the moving papers and amended notice of motion on Defendant Mann via mail. (Proof of Service dated January 8, 2025; Amended Notice of Motion, Proof of Service dated July 18, 2025.)

Based on the foregoing, Plaintiff's unopposed motion is **GRANTED**. Unless oral argument is requested, the Court shall sign the Plaintiff's proposed order lodged on July 18, 2025.

5. 25CV01483, Coturri v. U.S. Bank N.A.

Defendants Select Portfolio Servicing, Inc. and U.S. Bank N.A., successor trustee to Bank of America, N.A, Successor to LaSalle Bank N.A. for the WaMu Mortgage Pass-Through Certificates, Series 2005-AR3 (the "Trust")(together "Defendants") demur to Plaintiff Anthony H. Coturri's Complaint. The demurrer is **SUSTAINED with leave to amend**. The First Amended Complaint shall be filed and served within 20 days of notice of entry of this Court's order on the Demurrer. The parties' requests for judicial notice are **GRANTED**.

I. PROCEDURAL HISTORY

Plaintiff Coturri's action concerns real property he owns located at 6725 Enterprise Road, Glen Ellen, California 95442 (the "Property"). The Complaint alleges causes of action for: (1) Wrongful Foreclosure; (2) Quiet Title; (3) Declaratory Relief; and (4) Violation of Business and Professions Code section 17200. (Complaint, ¶¶ 26-58.) Plaintiff alleges that on December 17, 2004, he borrowed $700,000.00 from Washington Mutual Bank FA secured by a deed of trust recorded against the Property on January 3, 2005. (*Id*. at ¶ 3.) Washington Mutual Bank FA transferred the promissory note underlying the deed of trust on the Property to a security entity named WaMu Mortgage Pass-Through Certificates, Series 2005-AR3 on August 15, 2005. (*Id*. at ¶ 4.) Thereafter, on February 17, 2006, LaSalle Bank was named as the successor trustee. (*Id*. at ¶ 5.) After a long series of substitutions and transfers, Defendant Quality Loan Service Corporation was substituted in as the successor trustee for the deed of trust on March 22, 2016. (*Id*. at ¶ 16, Exhibit H.) At one point, Plaintiff alleges that Bank of America was the successor trustee because LaSalle Bank was purchased and merged into Bank of America on October 17, 2008, and Plaintiff alleges that the interest on the Property never transferred to any other entity after that. (*Id*. at ¶¶ 16-25, 28.)

Defendants demur to the entire Complaint for failure to state facts sufficient to constitute a cause of action, pursuant to C.C.P. sections 430.10(e) and 430.10(g). (Demurrer, 3:6-17.) The demurrer states that it is based on the Demurrer and Memorandum of Points and Authorities, Declaration of Hernandez, and Request for Judicial Notice. (*Id*. at 2:5-7.) However, the Court does not see the Declaration of Hernandez in its record or pending as an electronic filing. The Court does see that a "Declaration of Demurring or Moving Party Regarding Meet and Confer" was filed and signed by Counsel Hernandez.

Plaintiff filed an Opposition to the Demurrer and Defendants filed a Reply.

II. REQUEST FOR JUDICIAL NOTICE

Judicial notice of State and Federal laws, regulations, legislative enactments, official acts and court records is statutorily appropriate. (Evid. Code §§ 451, 452.) The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under C.C.P. § 452. (C.C.P. § 453.) Per Evidence Code section 452(h), the Court may take judicial notice of "facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy." Courts may take notice of public records, but not take notice of the truth of their contents. (*Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375.)

Subject to the above restrictions, the Court **GRANTS** Defendants' request judicial notice of the following items in support of the Demurrer and Reply:

1. Order Number 2008-36 of the Office of Thrift Supervision, executed on September 25, 2008, appointing the Federal Deposit Insurance Corporation (FDIC) as receiver for Washington Mutual Bank, Henderson, Nevada contained in the records of the Office of Thrift Supervision, Department of the Treasury;

2. Substitution of Trustee recorded in the Official Records of Sonoma County on April 9, 2014, as Instrument No. 2014023675;

3. Notice of Trustee's Sale recorded in the Official Records of Sonoma County on November 12, 2024, as Instrument No. 2024055951;

4. *Schedule D: Creditors Holding Secured Claims*, filed on February 2, 2017, in United States Bankruptcy Court, Northern District of California, Case No. 16-10871 as Document No. 47 ("Bankruptcy Action"); and

5. Stipulation for Reinstating the Stay and Adequate Protection, filed on March 10, 2017, as Document No. 64 in the Bankruptcy Action.

Subject to the above restrictions, the Court also **GRANTS** Plaintiff's requests judicial notice of the following items:

1. That deed of trust recorded on January 3, 2005, with the Sonoma County Recorder bearing document number 2005-000376 in the official records of Sonoma County;

2. Purchase and Assumption Agreement dated September 25, 2008, whereby the FDIC transferred substantially all of Washington Mutual's assets and liabilities to JPMorgan Chase Bank, N.A.;

3. FDIC report dated December 28, 2024, concerning the Washington Mutual receivership;

4. The fact that on October 17, 2008, La Salle Bank ceased to exist as a result of a purchase and merger into Bank of America NA as reflected in the records of the Comptroller of the Currency;

5. The fact that assignment recorded on July 13, 2013, with the Sonoma County Recorder bearing document number 2013-075688 in which Chase acting as the attorney-in-fact for the FDIC assigned the Deed of Trust to the WaMu Mortgage Pass-Through Certificates, Series 2005-AR3.;

6. The recorded substitution of trustee dated December 10, 2013, bearing Sonoma County Recorder's index number 2013-115774 in which Chase substituted California Reconveyance Company as the new trustee for the Deed of Trust;

7. Notice of default recorded by California Reconveyance Company on December 10, 2013, bearing Sonoma County Recorder's index number 2013-115775;

8. Notice of trustee sale recorded by ALAW on April 22, 2014, bearing Sonoma County Recorder's index number 2014-026806;

9. Substitution of trustee recorded by the WaMu Entity substituting Quality Loan Service Corporation as the successor trustee for the Deed of Trust recorded on March 22, 2016, bearing Sonoma County Recorder's index number 2016-025474;

10. Notice of trustee sale recorded by Quality Loan Service Corporation on March 25, 2016, bearing Sonoma County Recorder's index number 2016-026541;

11. Notice of trustee sale recorded by Quality Loan Service Corporation on September 13, 2016, bearing Sonoma County Recorder's index number 2016-80243;

12. Notice of trustee sale recorded by Quality Loan Service Corporation on July 25, 2018, bearing Sonoma County Recorder's index number 2018-052895;

13. Recission of notice trustee sale recorded by Quality Loan Service Corporation on December 7, 2018, bearing Sonoma County Recorder's index number 2018-083656;

14. Notice of default recorded by Quality Loan Service Corporation on July 22, 2022, bearing Sonoma County Recorder's index number 2022-049703;

15. Notice of default recorded by Quality Loan Service Corporation on October 20, 2022, bearing Sonoma County Recorder's index number 2022-067091;

16. Notice of trustee sale recorded by Quality Loan Service Corporation on December 20, 2022, bearing Sonoma County Recorder's index number 2022-079818; and

17. Notice of trustee sale recorded by Quality Loan Service Corporation on September 26, 2023, bearing Sonoma County Recorder's index number 2023-044566.

III. ANALYSIS

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. (C.C.P. § 430.30(a).) Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. (*The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852; *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

First Cause of Action for Wrongful Foreclosure

As argued in the Demurrer, "a wrongful foreclosure cause of action must allege that: (1) the trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust; (2) the party attacking the sale (usually but not always the trustor or

mortgagor) was prejudiced or harmed; and (3) in cases where the trustor or mortgagor challenges the sale, the trustor or mortgagor tendered the amount of the secured indebtedness or was excused from tendering." (Demurrer, 6:14-20; *Sciarratta v. U.S. Bank Nat'l Ass'n* (2016) 247 Cal.App.4th 552, 561-2.) Defendants argue that the Wrongful Foreclosure claim fails because Defendants had authority to initiate the foreclosure through the substituted trustee because the Trust was assigned the entire beneficial interest in the Property and Defendant Quality Loan Service Corporation became successor trustee. (Demurrer, 7:10-24.) Defendants also argue that the Complaint fails to explain how Bank of America purportedly became the successor trustee and fails to attach any proof of this recorded assignment. (Demurrer, 7:15-24.)

Plaintiff argues in the Opposition that he alleged that the Deed of Trust was transferred to LaSalle Bank and from there to Bank of America in a merger prior to the FDIC taking over Washington Mutual in a recorded chain of title which Defendants did not dispute. (Opposition, 6:2-9.) Plaintiff states that sufficient facts were alleged to support this cause of action because Defendants lacked authority to foreclose as that authority was held and continued to be held by LaSalle Bank/Bank of America. (*Id*. at 6:28, 7:1-9.)

In the Reply, Defendants argue that the deed of trust was never "assigned" to LaSalle Bank, which later merged with Bank of America, but rather assigned to U.S. Bank NA. (Reply, 4:7-15.) The long chain of names, i.e., "U.S. Bank NA, successor trustee to Bank of America, NA, successor to LaSalle Bank NA, as trustee," does not indicate that LaSalle Bank or Bank of America were ever beneficiaries to the deed of trust, but rather that these were at some point the trustee of the securitized pool of mortgages that held the beneficial interest in the deed of trust and their sole role was to act as trustee for the WaMu trust that held the beneficial interest in the deed of trust. (*Id*. at 4:16-28.)

The Court finds that the Complaint has not sufficiently alleged all elements of a wrongful foreclosure cause of action because the Complaint failed to allege that Defendants caused an illegal, fraudulent, or willfully oppressive sale of real property where the parties' judicially noticed items indicate that the Trust was assigned the entire beneficial interest in the Property. The demurrer is **SUSTAINED with leave to amend** as to the First Cause of Action.

Second Cause of Action for Quiet Title

Under C.C.P. section 760.020, a plaintiff may commence an action to establish the plaintiff's title against adverse claims to real or personal property or any interest therein. Plaintiff must show that Plaintiff has title and ownership of the property by clear and convincing evidence. (C.C.P. § 761.020(b); Evidence Code § 662.) Defendants argue that Plaintiff's allegations in the Complaint are not sufficient to establish a valid quiet title claim against Defendant Select Portfolio because it has no direct interest in the property as the servicer of the secured mortgage loan, and because the claim lacks an independent factual basis as a valid claim and relies on Plaintiff's other claims that Defendants wrongfully claim interest to the Property. (Demurrer, 8:23-28, 9:1-14.)

Plaintiff argues that because there was a prior transfer to another bank which voided the foreclosure sale, Plaintiff alleged sufficient facts to support the Quiet Title claim. (Opposition, 8:22-27, 9:1-6.)

As explained above, the Reply attempts to clear up confusion regarding the chain of title to explain why Defendants had the authority to foreclose. (Reply, 4:7-28.)
The Court does not find that the facts alleged sufficiently state a cause of action for Quiet Title against Defendants as the parties' judicially noticed items do not indicate that the Trust was assigned to LaSalle Bank/Bank of America and remained in those entities' ownership. The demurrer is **SUSTAINED with leave to amend** as to the Second Cause of Action.

Third Cause of Action for Declaratory Relief

As explained in the Demurrer, declaratory relief may be claimed where a complaint sets forth facts showing the existence of an actual controversy relating to the legal rights and duties of the respective parties under a written instrument. (Demurrer, 9:17-20; *Ludgate Ins. Co. v. Lockheed Martin Corp.* (2002) 82 Cal.App.4th 592, 605.) Here, Defendants argue that Plaintiff's claim for declaratory relief fails because there is no actual controversy where Plaintiff failed to sufficiently allege the invalidity of the deed of trust or the promissory note in the Complaint. (Demurrer, 10:3-8.)

Plaintiff again argues that Defendants lacked the authority to foreclose because the authority was held and continued to be held by LaSalle Bank/Bank of America, Plaintiff alleged sufficient facts to support the Declaratory Relief claim. (Opposition, 9:25-28, 10:1-6.)

As explained under the First Cause of Action, the Reply attempts to clear up confusion regarding the chain of title to explain why Defendants had the authority to foreclose. (Reply, 4:7-28.)

For the same reasons stated above regarding the First and Second Causes of Action, the Court finds that Plaintiff has not sufficiently alleged the existence of an actual controversy in the Complaint to claim declaratory relief. The demurrer is **SUSTAINED with leave to amend** as to this request.

Fourth Cause of Action for Violation of Business & Professions Code section 17200

Defendants argue that the unfair business practices claim under the UCL fails because it is premised upon the claim that Defendants never received any assignment of the deed of trust from Bank of America and therefore they lacked standing to assign the deed of trust, make a substitution of trustee, or record a notice of default or notice of trustee sale, and that claim is itself insufficiently pleaded. (Demurrer, 10:10-25.)

For the same reasons stated in the above three causes of action, Plaintiff claims that enough facts were alleged to support the Fourth Cause of Action because Defendants lacked authority to foreclosure on property because LaSalle Bank/Bank of America had that authority. (Opposition, 10:18-24.)

As explained above regarding the First Cause of Action, the Reply attempts to clear up confusion regarding the chain of title to explain why Defendants had the authority to foreclose. (Reply, 4:7-28.)

For the same reasons stated above, the Court does not find that Plaintiff sufficiently alleged facts in the Complaint that support a claim under the UCL against Defendants because Plaintiff did not allege the acts constituting unfair business practices by the Defendants. The demurrer is **SUSTAINED with leave to amend** as to the Fourth Cause of Action.

IV. CONCLUSION

Based on the foregoing, the Demurrer is **SUSTAINED with leave to amend** as to each cause of action. Defendants shall submit a written order consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b). Plaintiff shall file and serve the First Amended Complaint within 20 days of receiving notice of this Court's order on the demurrer.

6. 25CV02735, Silverman v. CSAA Insurance Services, Inc

Defendant CSAA Insurance Services, Inc.'s ("CSAA") motion to compel arbitration pursuant to Code of Civil Procedure section 1281.2 is **GRANTED**. On September 24, 2025, Plaintiff submitted a non-

opposition to Defendant's motion and agreed to submit his individual wage and hour claims in this action to arbitration to resolve them through alternative dispute resolution. Plaintiff further requested that the Court dismiss Plaintiff's class claims and stay the action pending the arbitration. Per the non-opposition, the Court dismisses Plaintiff's class claims and orders that his individual claims be submitted to arbitration per CSAA's motion. The action is stayed until the conclusion of the pending arbitration. As proposed in the non-opposition, the parties shall submit a Joint Stipulation and Proposed Order for the Court's review and signature regarding the agreement to arbitrate Plaintiff's individual claims.

7. SCV-271254, Ramirez v. Gaither, III

Defendant/Cross-Complainant City of Rohnert Park's (the "City") unopposed motion for leave to file First Amended Answer is **GRANTED**.

I. PROCEDURAL HISTORY

The incident that gave rise to this action was a traffic collision that resulted in the fatality of a pedestrian, a Sonoma State University student, who was crossing East Cotati Ave. and was struck and killed on or about noon on July 5, 2021. (Motion, 1:3-6.) Decedent's parents filed a claim against the City for dangerous condition of public property. (*Id*. at 1:5-6.) The City filed an answer to the Second Amended Complaint on January 16, 2024. The City now requests leave to file the proposed First Amended Answer per C.C.P. sections 473(a) to add an affirmative defense associated with Traffic Signal Immunity under Government Code section 830.8. (Motion, Exhibit 1, Proposed First Amended Answer.) The motion is unopposed, but trial has been set for February 20, 2026.

II. ANALYSIS

Motions for leave to amend pleadings are directed to the sound discretion of the court, which may, in furtherance of justice, and on such terms as may be proper, allow a party to amend any pleading. (C.C.P. § 473.) Additionally, any judge, at any time before or after commencement of trial, in the furtherance of justice, and upon such terms as may be proper, may allow the amendment of any pleading or pretrial conference order. (C.C.P. § 576.) Judicial policy favoring resolution of all disputed matters between the parties in the same lawsuit is strong; therefore, the court's discretion is usually exercised liberally to permit amendment of pleadings and absent a statute of limitations problem, denial is rarely justified. (*Nestle v Santa Monica* (1972) 6 Cal.3d 920, 939; *Morgan v Sup. Ct.* (1959) 172 Cal.App.2d 527, 530.) C.C.P. section 473 and California Rules of Court ("C.R.C."), rule 3.1324 require that the moving party accompany the motion for leave to amend with a copy of the amended pleading to be filed if leave is granted.

Here, the City filed the proposed First Amended Answer with their motion and seek leave to amend arguing that it is necessary to add the new affirmative defense because it is relevant to the incident that occurred and has potential to be the deciding issue in the matter. (Motion, 2:8-12.) As no party has opposed the motion and the Court's discretion to allow leave to amend is usually liberally exercised, the Court will grant the motion.

III. CONCLUSION

Based on the foregoing, the City's motion is **GRANTED**. Unless oral argument is requested, the Court will sign the proposed order lodged with the Court on June 20, 2025.