TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, December 17, 2025 3:00 pm
Courtroom 19 –Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa

The tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument, **YOU MUST NOTIFY** the Judge's Judicial Assistant by telephone at **(707) 521-6602**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via Zoom**, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

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

TO JOIN ZOOM ONLINE:

Department 19 Hearings
MeetingID: 160-421-7577
Password: 410765
https://sonomacourt-org.zoomgov.com/j/1604217577

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PLEASE NOTE: The Court's Official Court Reporters are "not available" within the meaning of California Rules of Court, Rule 2.956, for court reporting of civil cases.

1. 24CV02767, County of Sonoma, Sonoma Animal Services v. Parsons

In this animal seizure action, the County of Sonoma (the "County" or "Petitioner") has filed a petition under CCP § 597 (the "Petition") against respondents Gilman Parsons and Barbara Parsons ("Respondents"), as owners of 161 seized animals.

Defendants' Counsel, James Arrasmith, seeks to be relieved on the basis of an irreparable breakdown in the attorney client relationship, as they aver that Defendants have asked to terminate representation, but refused to sign a substitution. Notice of the hearing date was served, and no opposition is on file. Accordingly, Defendants' Counsel's motion is **GRANTED**.

2. 24CV06317, NFO, Inc. v. Spring Hill Jersey Cheese, Inc.

Plaintiff NFO, Inc. ("NFO") filed the complaint in this action against defendants Spring Hill Jersey Cheese ("Spring Hill"), Larry K. Peter ("Peter", together with Spring Hill, "Defendants") and Does 1-50.

This matter is on calendar for the motion by NFO to add Paul Olsen, as trustee of NFO Members Dairy Custodial Account, an Iowa Trust ("Olsen", together with NFO, "Plaintiffs") as an additional Plaintiff.

This matter was set for hearing, and there is no proof of service of the hearing date. However, the parties have submitted a stipulation attached as Exhibit C to the Declaration of Elizabeth Fritzinger, which is signed by Defendants' counsel. Accordingly, Defendants clearly have notice of the relief requested, and do not oppose it. Indeed, in adding the name of a party, it is not part of the amendment statute that specifies the requirement of notice. See CCP § 473(a)(1) ("adding or striking" the name of a party is not the part of the statute which allows amendment "after notice to the adverse party"). Accordingly, analysis to the merits appears appropriate.

The Motion is **GRANTED**.

I. Governing Authorities

The California Code of Civil Procedure provides that a court "may in the furtherance of justice, and on any terms as may be proper" allow a party to amend any pleading to correct a mistake. CCP § 473(a)(1). Likewise, the court may "in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars". CCP § 473(a)(1). The general rule is "liberal allowance of amendments." *Nestle v. Santa Monica* (1972) 6 Cal.3d 920, 939; see *Lincoln Property Co., Inc. v. Travelers Indemnity Co.* (2006) 137 Cal.App.4th 905, 916. The "policy of great liberality" applies to amendments "at any stage of the proceedings, up to and including trial." *Magpali v. Farmers Group* (1996) 48 Cal.App.4th 471, 487. "Absent a showing of prejudice to the adverse party, the rule of great liberality in allowing amendment of pleadings will prevail." *Board of Trustees v. Superior Court* (2007) 149 Cal. App.4th 1154, 1163.

Moving for permissive joinder allows additional parties to join an action as plaintiffs if "[t]hey assert any right to relief jointly, severally, or in the alternative, in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action." CCP §378(a)(1). A person is also entitled to join an action as a plaintiff if they have "a claim, right, or interest adverse to the defendant in the property or controversy which is the subject of the action." CCP § 378(a)(2). "It is not necessary that each plaintiff be interested as to every cause of action or as to all relief prayed for. Judgment may be given for one or more of the plaintiffs according to their respective right to relief." CCP §378(b). Permissive joinder standards must "be liberally construed so as to prevent the diseconomy of a 'multiplicity' of cases." *Petersen v. Bank of America Corp*., (2014) 232 Cal. App. 4th 238, 249. To that end, the "same transaction" or "series of transactions" component is satisfied if there is any factual relationship between the claims joined. *Ibid*.

CCP section 389(a), governing compulsory joinder of parties, states that a party qualifies as "necessary" or "indispensable" if, in the party's absence, complete relief cannot be accorded, or a judgment might prejudice him or expose a party to the litigation to additional liability or inconsistent judgments. As stated in *Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, at 808-809, one "is an indispensable party... when the judgment to be rendered necessarily must affect

his rights." If a non-joined party's interest is adequately represented by a party to the action, he is not indispensable. *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 161.

II. Analysis

Plaintiff is moving to amend the Complaint to add Olsen as a plaintiff. Defendants have stipulated to the addition of Olsen, as they contend that he was a party to the contract and his previous omission rendered the Complaint defective. Joinder, and the accompanying amendment, appears proper.

Plaintiffs' motion to add Olsen as a party and to amend the Complaint is **GRANTED**.

Plaintiffs shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b). Plaintiffs will submit the amended complaint with the order.

3-4. 25CV01385, Rowinsky v. General Motors LLC

Plaintiff Nancy Rowinsky ("Plaintiff") filed the complaint (the "Complaint") in this action against defendants General Motors, LLC ("Defendant" or "Manufacturer"), and Does 1-10. The Complaint contains causes of action for violations of the Song-Beverly Consumer Warranty Act, Civ. Code § 1790 et seq. (the "Act").

This matter is on calendar for Defendant's motion to strike punitive damages and their motion for judgment on the pleadings to the Complaint pursuant to Cal. Code Civ. Proc. ("CCP") §§ 430.10(e) for failure to state facts sufficient to constitute a cause of action. The motion for judgment on the pleadings is **DENIED.** The motion to strike is **DENIED**.

I. Governing Law

A. Judgment on the Pleadings

A motion for judgment on the pleadings may only be made on the grounds specified in the statute. CCP § 438(c)(1). "A motion for judgment on the pleadings is analogous to a general demurrer." *So v. Shin* (2013) 212 Cal.App.4th 652, 662. If the moving party is a defendant, the motion may be made on the grounds that the complaint does not state facts sufficient to constitute a cause or causes of action against the defendant. CCP § 438(c)(1)(B). A motion for judgment on the pleadings may be targeted to the entire complaint, or to any of the causes of action therein. CCP § 438 (c)(2)(A). "The fundamental question for the reviewing court is whether any cause of action is framed by the facts alleged in the complaint." *Surina v. Lucey* (1985) 168 Cal.App.3d 539, 541; cited by *Guild Mortgage Co. v. Heller* (1987) 193 Cal.App.3d 1505, 1508 ("Our primary task is to determine whether the facts alleged provide the basis for a cause of action against defendants under any theory."). As with a demurrer, the challenged pleading must be "liberally construed, with a view to substantial justice between the parties" and the court should give the pleading "a reasonable interpretation, reading it as a whole

and its parts in their context." Code Civ. Proc. §452; see also, *Perez v. Golden Empire Transit Dist*. (2012) 209 Cal.App.4th 1228, 1238 (where allegations are subject to different reasonable interpretations, court must draw "inferences favorable to the plaintiff, not the defendant.").

The grounds for a motion for judgment on the pleadings must appear on the face of the challenged pleading or be based on facts which the court may judicially notice, and not upon other extrinsic evidence. CCP § 438 (d). Where the motion is based on matters the court may judicially notice (under Evidence Code §§ 452, 453), such matters must be specified in the notice of motion or supporting points and authorities. CCP § 438(d); compare *Saltarelli & Steponovich v. Douglas* (1995) 40 Cal. App. 4th 1, 5.

"A motion for judgment on the pleadings is properly granted when the 'complaint does not state facts sufficient to constitute a cause of action against that defendant.' (Citation.) The grounds for the motion must appear on the face of the challenged pleading or from matters that may be judicially noticed. (Citation.) The trial court must accept as true all material facts properly pleaded, but does not consider conclusions of law or fact, opinions, speculation, or allegations contrary to law or facts that are judicially noticed." *Stevenson Real Estate Services, Inc. v. CB Richard Ellis Real Estate Services, Inc.* (2006) 138 Cal.App.4th 1215, 1219–1220; see also *Serrano v. Priest* (1971) 5 Cal.3d 584, 591. Generally, the pleadings "must allege the ultimate facts necessary to the statement of an actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts." *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1390; *FPI Develop., Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384. 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.

If the motion for judgment on the pleadings is granted, it may be granted with or without leave to amend. (CCP § 438(h)(1).) In ruling on the motion, the trial court should, ordinarily, permit the party whose pleadings are attacked to amend if it so desires. *Hardy v. Admiral Oil Co*. (1961) 56 Cal.2d 836, 841–842. Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. However, "(i)f there is no liability as a matter of law, leave to amend should not be granted." *Schonfeldt v. State of California* (1998) 61 Cal.App.4th 1462, 1465.

B. Motion to Strike

A motion to strike lies where a pleading contains "irrelevant, false, or improper matter[s]" or is "not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." CCP § 436(b). However, any basis must be demonstrated by reference to the pleading itself or of judicially noticeable matters, not extraneous facts. *See* CCP § 437. Motions to strike shall be filed within the time to respond to a pleading. Code of Civil Procedure §§ 435(b)(1); Cal. Rule of Court Rule 3.1322 (b).

C. Statute of Limitations

Demurrers shall not be sustained based on statute of limitations unless the complaint shows clearly and affirmatively that the action is so barred. *Geneva Towers Ltd. Partnership v. City of San Francisco* (2003) 29 Cal.4th 769, 780. "It is not enough that a complaint shows that the action may be barred." *Id*. If the failure of the cause of action due to the statute of limitations is apparent on the face of the complaint, the demurrer must be sustained. *SLPR, L.L.C. v. San Diego Unified Port District* (2020) 49 Cal.App.5th 284, 321.

"Generally speaking, four elements must be present in order to apply the doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he [or she] must intend that his [or her] conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he [or she] must rely upon the conduct to his [or her] injury." *Doe v. Marten* (2020) 49 Cal.App.5th 1022, 1028 (internal quotations omitted). "Tolling during a period of repairs generally rests upon the same legal basis as does an estoppel to assert the statute of limitations, i.e., reliance by the plaintiff on the words or actions of the defendant that repairs will be made." *Cardinal Health 301, Inc. v. Tyco Electronics Corp.* (2008) 169 Cal.App.4th 116, 133–134.

D. Breach of Express Warranty

The Act "is a remedial statute designed to protect consumers who have purchased products covered by an express warranty." *Robertson v. Fleetwood Travel Trailers of California, Inc.* (2006) 144 Cal.App.4th 785, 798. "Express warranty" is defined under the Act as any "written statement arising out of a sale to the consumer of a consumer good pursuant to which the manufacturer ... undertakes to preserve or maintain the utility or performance of the consumer good ...." Civ. Code § 1791.2, (a)(1). "If the manufacturer or its representative in this state is unable to service or repair a new motor vehicle, as that term is defined in paragraph (2) of subdivision (e) of Section 1793.22, to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the new motor vehicle … or promptly make restitution to the buyer ... However, the buyer shall be free to elect restitution in lieu of replacement, and in no event shall the buyer be required by the manufacturer to accept a replacement vehicle." Civ. Code, § 1793.2 (d)(2).

The elements of a claim for breach of express warranty for failure to replace a new motor vehicle are: 1) plaintiff bought or leased a "new motor vehicle"; 2) defendant provided a written warranty; 3) the vehicle had a defect which was covered by the warranty and substantially impaired its use or value; 4) plaintiff undertook action which triggered defendants' repair obligations; 5) defendants failed to repair the defect within a reasonable number of attempts; and 6) defendant did not promptly replace or buy back the vehicle. See Judicial Council Of California Civil Jury Instruction ("CACI") 3201.

A claim for breach of express warranty may result in civil penalties if the plaintiff can show the breach was willful. Civ. Code, § 1794 (c). Offers made for repurchase under the Song-Beverly act are to include nearly all purchase expenses of the consumer, including taxes and fees paid. Civ. Code, § 1793.2 (d)(2)(B). Offers made for replacement under the Song-Beverly act are to include nearly all purchase expenses of the vehicle, which is to be substantially similar to the replaced vehicle, and "in no event shall the buyer be required by the manufacturer to accept a

replacement vehicle." Civ. Code, § 1793.2 (d)(2)(B). When a consumer remits a product to the manufacturer or their representative for repair, "Unless the buyer agrees in writing to the contrary, the goods shall be serviced or repaired so as to conform to the applicable warranties within 30 days." Civ. Code, § 1793.2 (b).

Actions under the Song-Beverly Act for restitution or replacement of the vehicle are subject to several requirements for when the action must be brought. CCP §§ 871.20 and 871.21. Accordingly, the action shall not be brought later than six years after the date of original delivery of the vehicle. CCP § 871.21(b). The six-year period is tolled for any period where the vehicle is out of service by reason of repair for any nonconformity. *Id*. at subd. (c)(2).

E. Breach of Implied Warranty

Implied warranties apply to every sale of consumer goods at retail. See Civ. Code § 1792. Generally, "(a)s defined in the Song–Beverly Consumer Warranty Act, an implied warranty of merchantability guarantees that 'consumer goods meet each of the following: [¶] (1) Pass without objection in the trade under the contract description. [¶] (2) Are fit for the ordinary purposes for which such goods are used. [¶] (3) Are adequately contained, packaged, and labeled. [¶] (4) Conform to the promises or affirmations of fact made on the container or label.' (Civ. Code, § 1791.1, subd. (a).)" *Isip v. Mercedes-Benz USA, LLC* (2007) 155 Cal.App.4th 19, 26 (internal quotations omitted.)

The cause of action for breach of implied warranty of merchantability as to a used automobile may be "established by pleading and proving (1) the plaintiff bought a used automobile from the defendant, (2) at the time of purchase, the defendant was in the business of selling automobiles to retail buyers, (3) the defendant made express warranties with respect to the used automobile, and (4) the automobile was not fit for ordinary purposes for which the goods are used" along with showing causation and harm. *Gutierrez v. Carmax Auto Superstores California* (2018) 19 Cal.App.5th 1234, 1246; See also, CACI 3211.

"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." Civ. Code, § 1791.1 (c). Similarly, "(t)he duration of the implied warranty of merchantability and where present the implied warranty of fitness with respect to used consumer goods sold in this state, where the sale is accompanied by an express warranty, 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 warranties have a duration of less than 30 days nor more than three months following the sale of used consumer goods to a retail buyer." Civ. Code § 1795.5.

II. Judgment on the Pleadings

Defendant argues that the Complaint pleads facts which make apparent that the action under the Act is untimely, and therefore they are entitled to judgment on the pleadings.

First, in addressing CCP § 871.21, it is worth noting that there is no published authority interpreting or analyzing this statute. However, the only reasonable construal of such statutes of repose is akin to statutes of limitations. Analysis of Defendant's argument proceeds accordingly.

Defendant misapprehends the rules applicable to liberal construal of pleadings. First, simply and unambiguously, the Complaint repeatedly utilizes allegations that the events therein occurred "on or about" various dates. Particularly as to the date of delivery of the vehicle, the Complaint contains no date of delivery. "(D)ate of delivery" being the relevant time period, the Complaint cannot be read to presume this fact without it being expressly stated. Even if the Court were to presume the date of purchase as pled was the date of delivery, the Complaint makes clear that said purchase occurred "(o)n or about" the April 30, 2018[1]. Complaint ¶ 6. As a matter of law, this is sufficient to overcome a demurrer predicated on the statute of limitations. *Childs v. State of California* (1983) 144 Cal.App.3d 155, 160. There is no reason judgment on the pleadings would not be subject to the same analysis.

The demurrer to the Complaint for pleading facts showing the cause of action is precluded by the statute of limitations is **DENIED.**

IV. Motion to Strike

Defendant moves to strike punitive damages from the civil case cover sheet. At a glance, the time to move to strike is the time to respond. The Complaint was served March 13, 2025, and Defendant's motion to strike was filed on August 13, 2025, far longer than the time to respond. Indeed, Defendant answered on June 18, 2025. The motion to strike is untimely. While the Court maintains discretion to allow motions to strike outside this time, Defendant has not shown that such allowance would be appropriate here. The legal effect of the civil case cover sheet appears unbinding, and the propriety of striking items from such administrative papers is not addressed by the Defendant's motion. Plaintiff's Complaint does not pray for punitive damages, and accordingly there is no true legal issue of the propriety of such damages properly before the Court.

The motion to strike is **DENIED**.

V. Conclusion

Based on the foregoing, the motion for judgment on the pleadings is **DENIED**.

The motion to strike is **DENIED**.

Plaintiffs' counsel shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

[1] Defendant's motion misstates the date as September 28, 2018.

5. SCV-267562, Wagner v. Messana

Plaintiff Deborah Wagner ("Plaintiff"), in her capacity as trustee of the Separate Share Trust for Charles Joseph Messana ("Charles") filed the complaint in this action ("Complaint") against Russell C. Messana ("Messana") and Amber Merkel ("Merkel" succeeding in interest deceased Chris Merkel [d. 2021], together with Messana, "Individual Defendants"), along with nominal defendant TJRV & Boat Storage, LLC ("TJRV LLC"), TJRV (together "Defendants") with Does 5-20 with causes arising out of controversies over the real property at 4266 Santa Rosa Avenue, Santa Rosa ("the Property") which is subject to a partition judgment ("the Judgment") in *Wagner v. Messana, et al*., SCV-260727 ("the Partition Action"). Plaintiff subsequently amended to name "TJ Recreational Vehicle & Boat Storage", "TJ RV & Boat Storage", "TJ Recreational Vehicle Storage" and "TJ RV Storage" as Does 1-4 respectively ("Doe Defendants") as nominal defendants. Plaintiff contends that the Court cannot rule on the demurrer because there is currently an appeal pending.

"(T)he perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order." CCP. § 916 (a). "(W)hether a matter is embraced in or affected by the appeal, and thus outside the jurisdiction of the trial court, turns not on whether the matter was handled by the clerk or the judge, but on whether it would have any bearing on the effectiveness of the appeal." *Curtin Maritime Corp. v. Pacific Dredge & Construction, LLC* (2022) 76 Cal.App.5th 651, 665. "(A) proceeding affects the effectiveness of the appeal if the very purpose of the appeal is to avoid the need for that proceeding. In that situation, the proceeding itself is inherently inconsistent with a possible outcome on appeal and must therefore be stayed under section 916, subdivision (a)." *Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 190.

The previously ruled on summary judgment granted to Defendants on March 20, 2025, is pending before the First District Court of Appeal as to the whole complaint. Doe Defendants argue that the matter is not stayed pending this appeal because they are not parties to the appeal. However, the realistic repercussion of demurrer is the probability that leave to amend will be granted. Accounting for this consideration, the applicability of the stay becomes clear. The Court cannot without violating the stay under CCP § 916, allow Plaintiff to amend the complaint, as the summary judgment order was necessarily constrained by consideration of what Plaintiff alleged. Accordingly, the demurrer embraces or is affected by the appeal. The automatic appellate stay applies, and the Court is without jurisdiction to proceed.

This portion of the action being stayed pending this appeal (CCP § 916), the demurrer currently on calendar is **continued to June 3, 2025, at 3:00 pm in Department 19**. Assuming remittitur has issued at least 9 court days prior to that date, any briefing will be in accordance with the timeline within CCP § 1005.

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