TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, February 20, 2026 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
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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. 23CV01125, Bank of America, N.A. v. Hightower

Plaintiff Bank of America, N.A., ("Plaintiff") filed the complaint in this action against defendant Christopher Scott Hightower ("Defendant"), with a cause of action for common counts. This matter is on calendar for Plaintiff's motion pursuant to pursuant to Cal. Code Civ. Proc. ("CCP") § 664.6 and the settlement agreement filed January 22, 2024 (the "Agreement") to enter judgment in the case in the amount of $3,184.00, as Defendant has defaulted on the agreement. There is no opposition to the motion.

The Motion is **GRANTED.**

CCP § 664.6(a) provides: "If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement." CCP § 664.6(b) provides that a written agreement is enforceable if signed by a party, that party's attorney, or an insurer's authorized agent. *See also Provost v. Regents of University of California* (2011) 201

Cal.App.4th 1289, 1295. Like proving a contract, in order to have an enforceable agreement under CCP § 664.6, the moving party must show that there was mutual consent to common terms. *Bowers v. Raymond J. Lucia Companies, Inc.* (2012) 206 Cal.App.4th 724, 732-733. A motion to enforce a settlement agreement under CCP § 664.6 must show there is an agreement signed by all the parties to the agreement, not just the parties against whom the agreement is sought to be enforced. *Sully-Miller Contracting Co. v. Gledson/Cashman Construction, Inc.* (2002) 103 Cal.App.4th 30, 37.

Plaintiff moves the Court for a judgment pursuant to the Agreement. Plaintiffs ask for $2,605.50 in principle, and $578.50 in costs. The Agreement states that Defendant owes $7,435.98, plus costs of the suit, estimated therein at $518.50. Agreement, ¶ 2. The Agreement states that Defendant is to receive credit for any and all payments made. Defendant was to make monthly payments under the terms of the Agreement in various amounts (Agreement ¶ 4) starting on January 15, 2024. Plaintiff avers that Defendant made his last payment on the credit account on May 15, 2025. Defendant paid a total of $4,830.48. See Counsel's declaration ¶ 7. Plaintiff served and filed a memorandum of costs stating their costs were $578.50, which is above the amount articulated in the Agreement, but the agreement provides for Defendant to pay any costs associated with the instant motion, amounting to $60. See Agreement, ¶ 4. The Agreement states that upon default of the terms of the agreement, the full balance will become due. See Agreement ¶ 4. Therefore, the amounts of $2,605.50 in principle, and $578.50 in costs are appropriate.

Therefore, the Motion is **GRANTED. Judgment will be entered in the amount of $3,184.00.**

Plaintiff 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). Thereafter, the Court will enter the proposed judgment.

2. <u>25CV01536, Gerst v. General Motors, LLC</u>

Plaintiffs Michelle Gerst ("Plaintiff") filed the complaint (the "Complaint") against defendants General Motors, LLC ("Defendant")) and Does 1-10 for claims arising out of alleged violations of the Song-Beverly Consumer Warranty Act, Civ. Code § 1790 et seq. (the "Act") and fraudulent inducement – concealment.

This matter is on calendar for Manufacturer's demurrer to the fifth cause of action for fraudulent inducement within the Complaint pursuant to Cal. Code Civ. Proc. ("CCP") §§ 430.10(e) for failure to state facts sufficient to constitute a cause of action. As to the fifth cause of action, the Demurrer is **SUSTAINED with leave to amend.**

I. <u>Governing Law</u>

A. Standards on the Demurrer

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. CCP § 430.30(a). In the

event a demurrer is sustained, leave to amend should be granted where the complaint's defect can be cured by amendment. *The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852. A demurrer tests whether the complaint sufficiently states a valid cause of action. *Hahn v. Merda* (2007) 147 Cal.App.4th 740, 747. Complaints are read as a whole, in context and are liberally construed. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; see also, *Stevens v. Superior Court* (1999) 75 Cal.App.4th 594, 601. In reviewing the sufficiency of a complaint, courts accept as true all material facts properly pleaded, but not contentions, deductions, or conclusions of fact or law, or the construction of instruments pleaded, or facts impossible in law. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591; *Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 43; see also, *South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 732. Matters which may be judicially noticed are also considered. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591. 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. 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. Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6. "The distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree." *Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 473.

"On a demurrer a court's function is limited to testing the legal sufficiency of the complaint. [Citation.] 'A demurrer is simply not the appropriate procedure for determining the truth of disputed facts.' [Citation.] The hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of having the court take judicial notice of documents whose truthfulness or proper interpretation are disputable. [Citation.]"). *Bounds v. Sup. Ct.* (2014) 229 Cal.App.4th 468, 477-478. "(A) court cannot by means of judicial notice convert a demurrer into an incomplete evidentiary hearing in which the demurring party can present documentary evidence and the opposing party is bound by what that evidence appears to show." *Fremont Indem. Co. v. Fremont Gen. Corp*. (2007) 148 Cal.App.4th 97, 115.

B. Fraud in the Inducement

"The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage." *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638; see also Civ. Code §§ 1571-1574. Fraud may be accomplished though suppression of a fact by one who is bound to disclose it. Civ. Code § 1710 (3). "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. "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.* (2024) 17 Cal.5th 1, 40; *Collins v. eMachines, Inc.* (2011) 202 Cal.App.4th 249, 255; *Heliotis v. Schuman* (1986) 181 Cal.App.3d 646, 651; see also the *LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 336.

"'[I]n California, fraud must be pled specifically; general and conclusory allegations do not suffice. [Citations.] "Thus 'the policy of liberal construction of the pleadings ... will not ordinarily be invoked to sustain a pleading defective in any material respect.'[Citation.] [¶] This particularity requirement necessitates pleading facts which 'show how, when, where, to whom, and by what means the representations were tendered.'" *Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979, 993; *see Daniels v. Select Portfolio Servicing, Inc.* (2016) 246 Cal.App.4th 1150, 1166-1167 [" 'the plaintiff must allege the names of the persons who made the representations, ... to whom they spoke, what they said or wrote, and when the representation was made' "]; *see also Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645. In pleading fraud claims, "(e)very element of the cause of action must be alleged in full, factually and specifically." *Tindell v. Murphy* (2018) 22 Cal.App.5th 1239, 1249. In general, as with showing fraud, oppression, or malice sufficient to support punitive damages, while plaintiffs must plead facts, with respect to intent and the like, a "general allegation of intent is sufficient." *Unruh v. Truck Insurance Exchange* (1972) 7 Cal.3d 616, 632; see *Beckwith v. Dahl* (2012) 205 Cal.App.4th 1039, 1060 (in pleading promissory fraud, a general allegation that the promise was made without intent to perform was sufficient); see also *Stevens v. Superior Court* (1986) 180 Cal.App.3d 605, 608 (pleading that a hospital intentionally withheld that a health practitioner was operating without a medical license was sufficient to meet the pleading requirements for intent). To establish reliance on fraud, reliance upon the truth of the fraudulent misrepresentation does not have to be a predominant factor, but it must be a substantial factor in the plaintiff's subsequent conduct. *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. *Id.* The pleading must be adequately specific to show actual reliance on the omission, and that the damages causally resulted therefrom. *Id*. 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.

II. Demurrer

Manufacturer demurs on multiple theories. First, Plaintiff has failed to plead adequate facts to meet the specificity required for fraud claims. Second, Manufacturer argues that Plaintiff has

failed to plead facts supporting a duty to disclose. Finally, Manufacturer argues that the economic loss rule applies. Plaintiff has filed no opposition.

The Court first addresses those matters where Manufacturer's claims are unpersuasive. Manufacturer makes no effort to address *Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828 ("*Dhital*"). First, the Court notes that review had been granted by the California Supreme Court, but the review was dismissed following the ruling in *Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1. *Dhital v. Nissan North America* (Cal. 2024) 327 Cal.Rptr.3d 898. The Court in *Rattagan* in fact expressly stated that it was not addressing the issues in *Dhital*. *Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1, 41, fn. 12. Given this, *Dhital* is no longer just persuasive, but binding. *Rattagan* still provides overriding authority to the degree they conflict, but *Dhital* analyzes a host of questions which are at issue in the instant demurrer. As is noted throughout, Manufacturer produces no binding authority which fully conforms to the instant issues.

In *Dhital*, the consumer plaintiff had pled claims for fraudulent inducement, alleging that defendant car manufacturer had withheld, actively suppressed, and made affirmative representations which led the lack of disclosure to be misleading. *Dhital, supra,* 84 Cal.App.5th at 833-834. The trial court granted defendant's demurrer and motion to strike without leave to amend as to plaintiff's cause of action for fraudulent inducement and request for punitive damages. *Dhital, supra,* 84 Cal.App.5th at 832. The trial court based this in large part on the contention that plaintiff's claims were precluded by the economic loss rule. *Ibid*. Plaintiff appealed. *Ibid*. Nissan argued that the matter should be affirmed, based on the economic loss rule, or in the alternative that affirmance should occur because the complaint was insufficiently pled. The First District Court of Appeal reversed, finding that the economic loss rule did not apply to fraud claims, and that the complaint was sufficiently pled to state a cause of action for fraud. "Plaintiffs alleged the CVT transmissions installed in numerous Nissan vehicles (including the one plaintiffs purchased) were defective; Nissan knew of the defects and the hazards they posed; Nissan had exclusive knowledge of the defects but intentionally concealed and failed to disclose that information; Nissan intended to deceive plaintiffs by concealing known transmission problems; plaintiffs would not have purchased the car if they had known of the defects; and plaintiffs suffered damages in the form of money paid to purchase the car." *Id*. at 844. The Court of Appeal found that agency allegations regarding the dealer were sufficient to survive demurrer in creating the relationship between defendant and plaintiff for fraudulent inducement. *Ibid*. The *Dhital* court also found that the plaintiffs had adequately stated what should have been disclosed, as they had pled defendant "was aware of the defects as a result of premarket testing and consumer complaints that were made both to NHTSA and to Nissan and its dealers." *Id.* at 844. The Supreme Court has declined to review that conclusion, and it sits as published appellate authority binding on this Court.

A. Economic Loss Rule

First, as to the economic loss rule, the Court need look no further than *Rattagan*. While Manufacturer would attempt to drag the Court to other, less relevant parts of that analysis, it misapprehends the focus of the *Rattagan* court's question. Our Supreme Court, in attempting to answer the certified question from the Ninth Circuit, restructured the question as "Can a plaintiff

assert an independent claim of fraudulent concealment in the **performance** of a contract?" *Id*. at 38 (emphasis added). The court made *abundantly* clear that such issues of fraudulent *inducement* into a contract and the economic loss rule are long settled.

> As we observed in *Lazar*, "fraudulent inducement of contract — as the very phrase suggests — is not a context where the 'traditional separation of tort and contract law' [citations] obtains. To the contrary, this area of the law traditionally has involved both contract and tort principles and procedures. For example, it has long been the rule that where a contract is secured by fraudulent representations, the injured party may elect to affirm the contract and sue for the fraud."

Rattagan v. Uber Technologies, Inc. (2024) 17 Cal.5th 1, 41, quoting *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.

The principle is that if the tortious conduct precedes and undermines the formation of the contract, Manufacturer cannot then use that contract as a shield from the tortious damages. Manufacturer's contentions regarding the economic loss rule are unfounded as a result. *Dhital* mandates this result under similar analysis as applied to vehicle purchase claims under the Act.

B. Duty and Reliance

As an initial hurdle, Manufacturer avers that *Santana v. FCA US, LLC* (2020) 56 Cal.App.5th 334, 345 precludes the possibility that Plaintiff can adequately plead the necessary relationship for fraudulent concealment. The Court notes two issues with this position. First, *Santana* was post-trial and therefore relates to evidentiary standards and not pleading standards at demurrer, such as the case at bar. Second, the Court has already noted that more recent authority comes to contrary conclusions. Manufacturer argues that as a manufacturer, they have made no direct sale to Plaintiff, and therefore there can be no duty to disclose defects from Manufacturer to Plaintiff. Manufacturer particularly cites *Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, 312. Manufacturer fails to distinguish or even acknowledge *Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828, 844, which both bears strong similarity and was expressly *not* assessed (or overturned) in *Rattagan*. *Dhital* offers analysis on point. To quote that court:

> In its short argument on this point in its appellate brief, Nissan argues plaintiffs did not adequately plead the existence of a buyer-seller relationship between the parties, because plaintiffs bought the car from a Nissan dealership (not from Nissan itself). At the pleading stage (and in the absence of a more developed argument by Nissan on this point), we conclude plaintiffs' allegations are sufficient. Plaintiffs alleged that they bought the car from a Nissan dealership, that Nissan backed the car with an express warranty, and that Nissan's authorized dealerships are its agents for purposes of the sale of Nissan vehicles to consumers. In light of these allegations, we decline to hold plaintiffs' claim is barred on the ground there was no relationship requiring Nissan to disclose known defects.

Dhital v. Nissan North America, Inc. (2022) 84 Cal.App.5th 828, 844.

As to whether a Manufacturer owes duties arising out of express warranties, *Dhital* offers salient analysis on this subject. While a transaction that gives rise to a duty to disclose "must necessarily arise from direct dealings between the plaintiff and the defendant; *it cannot arise between the defendant and the public at large*" (*Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, 312), this does not speak to the particular relationship between an auto manufacturer and an auto dealer as is present in both this case and *Dhital*. Plaintiff alleges with particularly that the vehicle was purchased from a dealer who was Manufacturer's "authorized retail dealership. FAC ¶ 8. Nor does it account for the express warranty between Plaintiff and Manufacturer. This is distinguishable from the arguments in *Bigler-Engler* that the duty to disclose arose to the "public at large", and the defendants of note were an individual medical practitioner and a medical manufacturer. Manufacturer places far too much emphasis on the word "direct", which is at best an improvident statement by the court of appeal not accounting for the panoply of possible factual patterns. Also of note, *Bigler-Engler* represented a judgment after jury trial, where the Court of Appeal had clear factual findings, whereas here the pleadings control, and are entitled to liberal construction.

Here, as with *Dhital*, Plaintiff has alleged that the Vehicle was issued with an express warranty by Manufacturer to Plaintiff, creating a direct contractual relationship between them. See FAC ¶¶ 7, 10. Such arguments were sufficient at demurrer in *Dhital*, and they are sufficient here at the pleading stage. *Dhital, supra,* 84 Cal.App.5th at 844. Manufacturer's arguments that there is no contractual relationship is unpersuasive based on this analysis. The Court notes that modern caselaw supports sufficient transactional relationship between a manufacturer and eventual purchasing consumer, regardless of intermediaries. See, e.g., *Bader v. Johnson & Johnson* (2022) 86 Cal.App.5th 1094, 1131. Manufacturer offers no persuasive argument contrary to this legal principle.

Manufacturer argues that Plaintiff fails to plead reliance, facts to support a duty to disclose, or adequate specificity. To reliance, Plaintiff clearly pleads sufficient facts. Plaintiff avers that she reviewed the marketing materials before purchasing the vehicle. FAC ¶ 11. She relied on those representations in making the purchase. Facially, the reasonability of this reliance is adequate, because the Act *requires* Manufacturer to tender the Vehicle to Plaintiff in merchantable condition. At the pleading stage, this appears sufficient for Plaintiff to state this element.

C. Pleading With Specificity

Nonetheless, the Demurrer finds purchase in the failure to provide adequate specificity of Plaintiff's harm. Manufacturer's contention that the FAC fails to allege the withheld facts is not persuasive. See FAC ¶¶ 72-74. However, Manufacturer persuasively asserts that the FAC fails to state that the withheld information regarding a defect is not alleged to be the defect present in the Vehicle. Plaintiff has not particularly offered any allegation of *what* defect is in the vehicle. Plaintiff alleges "drivability concerns". FAC ¶ 13. While Plaintiff makes some allegations of what was repaired, there is no allegation offered with any specificity as to what was wrong with the Vehicle. Plaintiff's burden in making allegations of fraudulent concealment is to allege the fraudulently concealed issue, and *resulting damage.* Plaintiff makes allegations of what the

common problems are with the 1.3 Liter engine, but does not allege that such issues presented in the subject vehicle. Fraudulent concealment claims do not appear supported where the fraudulently concealed facts are not related to defects present in the Vehicle. Plaintiff must allege damages with more specificity.

The demurrer is sustained with leave to amend.

IV. Conclusion

Based on the foregoing, the Demurrer is **SUSTAINED with leave to amend**.

Manufacturer's 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).

3-4. 25CV04328, Fritz v. FCA US LLC

Plaintiffs Kevin J Fritz and Madeline Fritz ("Plaintiffs") filed the complaint (the "Complaint") in this action against defendants FCA US, LLC ("Manufacturer"), Hilltop Chrysler Jeep Dodge Ram ("Repair Facility", together with Manufacturer, "Defendants") and Does 1-10. The Complaint contains causes of action ("COA") against Manufacturer for violations of the Song-Beverly Consumer Warranty Act, Civ. Code § 1790 et seq. (the "Act") (First through Fourth COA), fraudulent inducement – concealment (Fifth COA), and against Repair Facility for negligent repair (Sixth COA).

This matter is on calendar for Manufacturer's demurrer to the sixth cause of action for fraudulent inducement within the Complaint pursuant to Cal. Code Civ. Proc. ("CCP") §§ 430.10(e) for failure to state facts sufficient to constitute a cause of action, and Manufacturer's motion to strike punitive damages.

Plaintiff was served with the moving papers. However, there is no Proof of Service filed thereafter reflecting that Plaintiff was served with any notice of the hearing date assigned by the court clerk. Manufacturer filed and served the motion on October 3, 2025, though their proof of service was not filed until January 8, 2025. The Court Clerk assigned the hearing date on October 10, 2025. There is no proof of service in the file reflecting service thereafter. Notice of the motion must be served at least 16 court days prior to the hearing. CCP § 1005. "Notices must be in writing, and the notice of a motion, other than for a new trial, **must state when**, and the grounds upon which it will be made, and the papers, if any, upon which it is to be based." CCP § 1010 (emphasis added). Proof of service must be filed no later than five court days before the hearing. Cal Rule of Court Rule 3.1300. There is no proof of service reflecting the service of the motion with the hearing date.

The matters are therefore DROPPED from the Court's calendar for failure to serve.

5. SCV-266225, Schmid v. Two Rock Fire Dept

Plaintiffs Frear Stephen Schmid and Astrid Schmid (together "Plaintiffs"), filed the presently operative complaint (the "Complaint") along with associated cases against defendants County of Sonoma (the "County", joined through consolidated case SCV-266731), Two Rock Volunteer Fire Department ("TRVFD", named as defendant in both SCV-266225 and SCV-270339), (TRVFD and County hereinafter referred to together as "Defendants"). This matter is on calendar for Plaintiffs' request to consolidate this case with *Schmid v. Thompsongas, LLC*, Case No. SCV-270322, also before this Department, and *Schmid v. Air Exchange, Inc.*, Case No. SCV-270568, currently before the CEQA department in Department 17, pursuant to Cal. Code Civ. Proc. ("CCP") §1048, for all purposes. The other actions are filed by Plaintiffs against Defendants and additional parties relating to the same property at issue in this case, but allegedly arising out of conduct subsequent to the filing of the original complaint in SCV-266225.

The motion is DENIED.

I. The Motion

The basis for the Motion is Plaintiffs' contention that this action and their subsequent actions are sufficiently interrelated that it is both in the interests of judicial efficiency and consistency of judgments that the matters must be consolidated. Each of the actions relates to Plaintiffs' contentions regarding the property neighboring their own, which is owned by TRVFD (now Gold Ridge Fire District). Plaintiffs contend in each of these cases that TRFD violated their property rights as an adjoining property owner or engaged in violations of statutes and regulations related to their use of the property. The County, TRVFD, and Thompsongas, LLC (a party in SCV-270322) have all filed oppositions.

II. Governing Law

An order of complete consolidation results in separate actions becoming a single action, the pleadings in the various actions being considered as an overall set of pleadings, and a single verdict and judgment issuing for all parties on all issues. *Kropp v. Sterling Sav. & Loan Ass'n* (1970) 9 Cal.App.3d 1033, 1046-47. Consolidation for all purposes is proper where the parties are the same and the causes of action could have been joined. *See, e.g. Sanchez v. Sup. Ct.* (1988) 203 Cal.App.3d 1391, 1396 (distinguishing complete consolidation and partial consolidation); *Hamilton v. Asbestos Corp. Ltd.* (2000) 22 Cal.4th 1127, 1147-48. In contrast, matters may be ordered only consolidated for pre-trial matters or trial. Where consolidation only for trial, "the pleadings, verdicts, findings and judgments are kept separate; the actions are simply tried together for the sake of convenience and judicial economy." *Sanchez v. Superior Court* (1988) 203 Cal.App.3d 1391, 1396.

Factors ordinarily considered by the court in deciding whether to order consolidation are the timeliness of the motion (*i.e.* whether granting consolidation would delay trial or whether discovery in one or more cases has proceeded without all parties present), complexity (*i.e.* whether joining the actions involved would make trial too confusing or complex), and prejudice (*i.e.* whether consolidation would adversely affect the rights of any party). *See* Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (Rutter Group 2020) ¶ 12:362. Decisions

regarding consolidation sit within the court's sound discretion. *Fellner v. Steinbaum* (1955) 132 Cal.App.2d 509, 511.

Motions to consolidate have various procedural requirements, including being filed in each case sought to be consolidated. Rule of Court, Rule 3.350(a). The lead case in a consolidation is typically required to be the lower numbered case. Rule of Court, Rule 3.350(b).

III. Analysis

Plaintiffs seek to consolidate the instant case with SCV-270322 and SCV-270568. SCV-266225 and SCV-270322 are assigned to this department for all purposes. SCV-270568 is currently assigned to the CEQA department due to the presence of Plaintiffs' purported CEQA claims. Plaintiffs seek that these matters be assigned to the CEQA department for all purposes.

This is further supported by the problem that Plaintiffs' arguments are self-defeating. Plaintiffs contend that there is a risk of inconsistent judgments, but in their own reply contend that the multiplicity of lawsuits were necessary to address "distinct and discrete causes of action" (Reply, pg. 2:9-13). The facts are clearly related, but Plaintiffs provide no articulation why the claims are not more efficiently addressed in the piecemeal manner in which Plaintiffs have filed them. Given the disparate procedural postures of these cases, no consolidation is appropriate.

The instant case, SCV-266225, has completed the first phase of a two-phase trial, with the Court's statement of decision for the first phase delivered on April 18, 2024. The parties stipulated to a stay of this case pending an appeal which was filed by Plaintiffs in SCV-270322, but that stay has since dissolved and this matter is postured to complete trial. Plaintiffs' motion is far from timely. SCV-266225 has been litigated for over five years (with a fourteen-month stay extending that period). It is between phases in a multiphase trial. Any further delay of trial in this matter would be antithetical to principles of judicial economy.

In SCV-270322, the pleadings are unsettled, and the matter is currently on appeal on sustaining of a demurrer without leave to amend. Depending on the disposition of that appeal, the matter could not receive remittitur to this Court for *years*. The effect of further delay does not appear either in the interests of justice or an efficient use of judicial resources. This is to say nothing of the discrepancy between a case sitting at unsettled pleadings, and SCV-266225 being poised for a finder of fact to render a final decision.

SCV-270568 represents its own problems. The parties in that case have recently been before the Court litigating the applicability of discovery to that action due to Plaintiffs' CEQA claims. Plaintiff also contends that the Court should draw factual inference from the stipulated injunctive judgment reached with defendant Air Exchange, Inc. in that case. This is not an accurate reflection of collateral estoppel principles, and is not of evidentiary value. *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341 (judgments must be final and <u>on the merits</u> to apply for collateral estoppel). That case is pre-trial, but is limited to the administrative record on CEQA claims. This also would unnecessarily add to the complexity of the case, blending CEQA and non-CEQA claims, with differing evidentiary issues.

Plaintiffs, having filed all these matters, had agency over whether these proceeded as separate litigation, or should have been combined from the start. Plaintiffs elected toward the former, and have strenuously argued throughout that the claims were separate and distinct due to subsequent conduct. The posture of these cases *cannot* be interpreted as justly combined at this late hour.

Therefore, the motion to consolidate cases is **DENIED.**

The County 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).

6. SCV-269230, Fidelity National Title Company v. Darling

Plaintiff Fidelity National Title Company ("Fidelity" or "Plaintiff") initiated this action on August 6, 2021 filing the interpleader action for disbursement of escrow funds against defendants Heidi Darling ("Darling"), Debbie Darlene Shimon ("Shimon"), William McCarty, Jr. ("McCarty, Jr." or "Cross-Complainant") and Does 1-10, related to McCarty, Jr.'s objection to the sale of the property located at 6881 Day Road, Windsor, California (the "Property"). McCarty, Jr. has in turn filed the currently operative first amended cross-complaint (the "FAXC") against Fidelity, Anthony Haberthur ("Haberthur"), Shimon, Sherri Cooper Johnston ("Johnston"), Darling (all together "Cross-Defendants") Richard Carnation (now dismissed), and Does 1-20 alleging causes of action arising out of the sale of the Property.

This matter is on calendar for Fidelity's Motion for Discharge of Stakeholder under CCP § 386.6. The parties are ORDERED TO APPEAR. Fidelity is to give notice to Shimon to appear at the hearing.

I. Governing Law

A. Discharge of Stakeholder

Code of Civil Procedure section 386 states in relevant part as follows:

> "Any person, firm, corporation, association or other entity against whom double or multiple claims are made, or may be made, by two or more persons which are such that they may give rise to double or multiple liability, may bring an action against the claimants to compel them to interplead and litigate their several claims.
>
> When the person, firm, corporation, association or other entity against whom such claims are made, or may be made, is a defendant in an action brought upon one or more of such claims, it may either file a verified cross-complaint in interpleader, admitting that it has no interest in the money or property claimed, or in only a portion thereof, and alleging that all or such portion is demanded by parties to such action, and apply to the court upon notice to such parties for an order to deliver such money or property or such portion thereof to such person as the court shall direct; or may bring a

> separate action against the claimants to compel them to interplead and litigate their several claims. The action of interpleader may be maintained although the claims have not a common origin, are not identical but are adverse to and independent of one another, or the claims are unliquidated and no liability on the part of the party bringing the action or filing the cross-complaint has arisen. The applicant or interpleading party may deny liability in whole or in part to any or all of the claimants. The applicant or interpleading party may join as a defendant in such action any other party against whom claims are made by one or more of the claimants or such other party may interplead by cross-complaint; provided, however, that such claims arise out of the same transaction or occurrence."

(Code Civ. Proc. §386(b).)

Additionally "[w]here the only relief sought against one of the defendants is the payment of a stated amount of money alleged to be wrongfully withheld, such defendant may, upon affidavit that he is a mere stakeholder with no interest in the amount or any portion thereof and that conflicting demands have been made upon him for the amount by parties to the action, upon notice to such parties, apply to the court for an order discharging him from liability and dismissing him from the action on his depositing with the clerk of the court the amount in dispute and the court may, in its discretion, make such order." Code Civ. Proc. §386.5. The propriety of a motion under section 386.5 turns on whether the stakeholder is truly a disinterested party, whose discharge still leaves parties in litigation with substantial rights to be resolved with respect to the property in question." *Lincoln Nat. Life Ins. Co. v. Mitchell* (1974) 41 Cal.App.3d 16, 19–20, citing, 4 Am.Jur.2d, 93, pp. 607-608. "The right to the remedy by interpleader is founded, however, not on the consideration that a [person] may be subjected to double liability, but on the fact that he is threatened with double vexation in respect to one liability." *City of Morgan Hill v. Brown* (1999) 71 Cal.App.4th 1114, 1122; quoting *Pfister v. Wade* (1880) 56 Cal. 43, 47. The true test of suitability for a motion is the stakeholder's disavowal of interest in the property at issue, coupled with the perceived ability of the court to resolve the entire controversy as to entitlement to that property without the need for the stakeholder to be a party to the suit." *S. California Gas Co. v. Flannery* (2014) 232 Cal.App.4th 477, 486–487, citing, *Pacific Loan Management Corp. v. Superior Court* (1987) 196 Cal.App.3d 1485, 1489–1490. If the proof is sufficient that the moving party has no interest in the property at issue, or it is admitted by failure to object or by stipulation, the court makes an Interlocutory order and directs the stakeholder to deposit the amount or deliver the property to the Court, and requires the claimants to litigate their claims among themselves. *Lincoln Nat. Life Ins. Co., supra.* 41 Cal.App.3d at 19–20.

II. Analysis

Fidelity seeks discharge, as they have prevailed on their motion for summary judgment, and they argue there are no further affirmative claims against them. Fidelity previously brought the same motion, which was denied in part due to McCarty Jr.'s pending appeal.

No opposition to the motion was filed. Fidelity avers that the other parties have no intent of opposing the motion. Fidelity's motion for summary judgment was granted on July 7, 2025.

Fidelity has disclaimed any interest in the interpled funds. While there is no Judgment as to the Cross-Complaint, no party raises dispute that the interpleaded funds are sufficient to discharge Fidelity in light of the summary judgment ruling. There appears to be sufficient basis to grant Fidelity's motion.

However, the Court notes no proof of service indicating that Shimon, who remains a party to the case and has appeared via her December 10, 2025 First Amended Answer, was served with this motion. In an abundance of caution the Court orders Fidelity to inform Shimon of their intent to appear at the hearing, and to ensure that she has received the motion papers.

The Court tentatively is inclined to grant the motion but must address due process issues before granting the motion. The parties are ORDERED TO APPEAR.

V. Conclusion

Based on the foregoing, Fidelity's motion for discharge is tentatively **GRANTED**. The parties are to appear to ensure that Shimon has notice of the motion.

Fidelity shall submit a written order for that motion to the court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b). Thereafter, Fidelity shall provide notice of the orders per CCP § 1019.5.

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