TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, March 18, 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.

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1. 24CV05496, Occhipinti v. Ford Motor Company

I. Introduction

Plaintiff William John Occhipinti ("Plaintiff") filed the complaint (the "Complaint") in this action against defendants Ford Motor Company ("Ford" or "Manufacturer"), Hansel Ford Lincoln ("Hansel", together with Manufacturer, "Defendants") and Does 1-10. The SAC contains causes of action for violations of the Song-Beverly Consumer Warranty Act, Civ. Code § 1790 et seq. (the "Act") and fraudulent inducement – concealment. Specifically the Complaint alleges that (1) Defendant Ford violated Civil Code ("CC") §1793.2(d); (2) Defendant Ford violated CC §1793.2(b); (3) Defendant Ford violated §1793.2(A)(3); (4) Defendant Ford Breach the Implied Warranty of Merchantability; (5) Defendant Ford fraudulently induced or concealed information; and (6) Defendant Hansel engaged in negligent repair on his vehicle.

This matter is on calendar for Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication, pursuant to pursuant to Cal. Code Civ. Proc. ("CCP") §437c. For the reasons outlined herein, the Court now **GRANTS** Defendants' Motion for Summary Judgment as to Plaintiff's Complaint.

II. Factual Chronology

Defendants present the following facts which are undisputed and applicable to Song-Beverly claims in Plaintiff's Complaint. On March 21, 2024, Plaintiff William Occhipinti purchased a used 2021 Ford Explorer from an independent company licensed to sell and service Ford vehicles, Hansel Ford Lincoln, in Santa Rosa, California. (Defendants Separate Statement of Undisputed Facts "DSSUF" No. 1). On August 28, 2024, Plaintiff presented the Explorer to Hansel with the complaint that the transmission was delayed when shifted into reverse. (DSSUF No. 2). During this visit a Hansel technician found a potentially relevant Technical Service Bulletin ("TSB") but it did not resolve the issue. (DSSUF No. 3). The technician then performed additional inspections and diagnostics and found scoring on clutches, worn seals, and overhauled the transmission. (DSSUF No. 3). The August 28, 2024, repairs were completed on September 6, 2024. (DSSUF No. 4).

Plaintiff presented his Explorer again to Hansel on September 12, 2024, with the complaint that since the last repair the 'check engine' light had been on. (DSSUF No. 6). During this repair the Hansel technician discovered an issue with the oil pressure sensor and replaced it. (DSSUF No. 7). Before, Ford had an opportunity to complete this repair, Plaintiff filed the present Complaint on September 18, 2024. (DSSUF No. 8). The September 12th repairs were completed by September 30, 2024. (DSSUF No. 9). Plaintiff has not presented his Explorer for any further repairs since the Complaint was filed. (DSSUF No. 9).

As to the merchantability claims, the following additional 'undisputed' facts are presented. Plaintiff presented for repairs after the applicable timeframe under CC §1795.5. Also, Plaintiff did not pay for the August 28, 2024, repair. (DSSUF No. 23). Therefore, Plaintiff has no evidence of damages caused by a breach of the implied warranty of merchantability. (DSSUF No. 24).

As to the fraudulent inducement-concealment claim, the following additional 'undisputed' facts are presented. Plaintiff is not in possession of any evidence that any particular component of the Ford Explorer was defective, nor can Plaintiff present any documents that Defendant Ford concealed any material facts. (DSSUF Nos. 35, 36). Plaintiff also has no evidence of any defective component, design defect, or manufacturing defect affecting the Ford Explorer. (DSSUF Nos. 37-39). Plaintiff also has no evidence that anyone at Defendant Ford had knowledge of any alleged defect affecting the Ford Explorer prior Plaintiff's date of purchase. (DSSUF Nos. 40-41). Nor can Plaintiff identify any individual from Defendant Ford with whom he had direct dealings with or was involved with in the purchase transaction with Plaintiff for the Ford Explorer. (DSSUF Nos. 42-44).

III. Procedural Chronology

Defendants filed their motion for summary judgment, or in the alternative, summary adjudication on October 2, 2025. The Court originally assigned a hearing date of January 28, 2026. Defendants timely served their motion to Plaintiff. On January 12, 2026, the parties then moved jointly to request the Court to continue the MSJ hearing date and the trial date to accommodate

additional discovery. In making the requests, Plaintiff claimed, in part, that the MSJ continuance was needed to allow Plaintiff to take the deposition of Defendant Ford's PMQ. Parties also requested additional time to complete expert discovery. The Court granted these requests and reset the MSJ hearing date for March 17, 2026, and the trial date to August 14, 2026.
On February 20, 2026, Plaintiff once again moved ex parte to request the Court to continue the MSJ. In denying this request the Court then noted:

> "The Court previously granted an a [*sic*] request extending the MSJ hearing and trial dates due to the parties' inability to complete discovery related to the MSJ. This continuance order was made on 01/12/26. The outstanding discovery (PMQ deposition) which is again highlighted in this application was initially noticed on 11/27/24. However, neither party provides good cause as to why this deposition has not proceeded, even after the 1st continuance was granted. For those reasons the application is DENIED."
> (02/20/26 Ex Parte Order).

Pursuant to CCP §437c(b)(2), Plaintiff was to file his opposition by no later than February 25, 2026. Instead of filing a timely opposition, Plaintiff moved twice to continue the MSJ hearing date. Plaintiff finally filed his opposition on March 9, 2026. Once the late opposition was filed, neither Plaintiff nor their counsel acknowledged its lateness or provided any explanation for the late filing.

Plaintiff and his counsel have had notice of this dispositive motion since its filing back on October 2, 2025. For the past five months Plaintiff has expressed the need to take the deposition of Defendant Ford's PMQ for the purpose of preparing an opposition. In fact, Plaintiff was aware of this need prior to the filing of the dispositive motion because it served a deposition notice for Defendant Ford's PMQ back on November 27, 2024. Although the anticipated testimony may have been of benefit to Plaintiff in establishing elements on some claims, there are others like negligent repair, which do not appear beholden on this discovery. The Court remains perplexed by Plaintiff decision to file no timely opposition or even compel the deposition almost 1 ½ years after it was noticed. Plaintiff decisions here are without justification certainly do not bode well for any claims of excusable neglect, mistake, or surprise. Plaintiff's late filing also precluded Defendants from filing any substantive Reply.

For all these reasons the Court now exercises its discretion and will refuse to consider Plaintiff's late file opposition and accompanying documents. (CRC 3.1300(d)).

IV. Governing Law

A. Burdens on Summary Judgment

Summary adjudication "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CCP § 437c(c). All evidence and inferences reasonably drawn therefrom must be viewed in the light most favorable to the party opposing summary adjudication. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.

"A plaintiff moving for summary judgment "bears the burden of persuasion that 'each element of' the 'cause of action' in question has been 'proved,' and hence that 'there is no defense' thereto." *Thompson v. Ioane* (2017) 11 Cal.App.5th 1180, 1195; citing *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.

If a plaintiff meets its initial burden moving for summary judgment, the burden shifts to the defendant to provide sufficient evidence to raise a triable issue of fact as to the defense asserted. CCP § 437c(p)(1). An issue of fact exists if "the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." *Aguilar*, 25 Cal.4th at 845.

A moving party does not meet its initial burden if some "reasonable inference" can be drawn from the moving party's own evidence which creates a triable issue of material fact. *See, e.g. Conn v. National Can Corp*. (1981) 124 Cal.App.3d 630, 637; *Binder v. Aetna Life Ins. Co*. (1999) 75 Cal.App.4th 832, 840. All the papers submitted must be considered in determining whether or not there is a triable issue of any material fact. CCP § 437c(c).

B. Civil Code §1793.2(a)(3)

"Every manufacturer of consumer goods sold in this state and for which the manufacturer has made an express warranty shall: (3) Make available to authorized service and repair facilities sufficient service literature and replacement parts to effect repairs during the express warranty period."

C. Civil Code §1793.2(b)

"Where those service and repair facilities are maintained in this state and service or repair of the goods is necessary because they do not conform with the applicable express warranties, service and repair shall be commenced within a reasonable time by the manufacturer or its representative in this state. 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*. Delay caused by conditions beyond the control of the manufacturer or its representatives shall serve to extend this 30-day requirement. Where delay arises, conforming goods shall be tendered as soon as possible following termination of the condition giving rise to the delay."

D. Civil Code §1793.2 (d)

"Every manufacturer of consumer goods sold in this state and for which the manufacturer has made an express warranty shall: (d) (1) Except as provided in paragraph (2), if the manufacturer or its representative in this *state does not service or repair the goods to conform to the applicable express warranties after a reasonable number of attempts*, the manufacturer shall either replace the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer, less that amount directly attributable to use by the buyer prior to the discovery of the nonconformity. However, if the manufacturer or its representative in this state does not service or repair a travel trailer or a portion of a motor home designed, used, or maintained for human habitation, to conform to the applicable express warranties after a reasonable number of

attempts, the buyer shall be free to elect reimbursement in lieu of replacement, and in no event shall the buyer be required by the manufacturer to accept a replacement travel trailer or motor home." (Emphasis added).

"Section 1793.2(d) requires the manufacturer to afford the specified remedies of restitution or replacement if that manufacturer is unable to repair the vehicle 'after a reasonable number of attempts.' 'Attempts' is plural. The statute does not require the manufacturer to make restitution or replace a vehicle if it has had only one opportunity to repair that vehicle." (*Silvio v. Ford Motor Co.* (2003) 109 Cal.App.4th 1205, 1208 [135 Cal.Rptr.2d 846].) Each occasion that an opportunity for repairs is provided counts as an attempt, even if no repairs are actually undertaken. (*Oregel v. American Isuzu Motors, Inc.,* (2001) 90 Cal.App.4th 1094, 1103 [all six occasions on which plaintiff presented vehicle to dealer to find and repair source of oil leak counted as repair attempts, even if only on one occasion were parts replaced].) Finally, for purposes of calculating the number or repair attempts, no distinction is made between the manufacturer and its authorized repair facility. They are treated as a single entity and their repair efforts are aggregated. (*Ibrahim v. Ford Motor Co.* (1989) 214 Cal.App.3d 878, 889, 263 Cal.Rptr. 64 [instructional error occurred where trial court suggested the manufacturer was entitled to at least one opportunity to fix problem itself, notwithstanding the dealership's many previous efforts to do so].)

E. 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 failure to disclose a fact can constitute actionable fraud or deceit in 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; *Heliotis v. Schuman* (1986) 181 Cal.App.3d 646, 651; see also the *LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 336.

F. Negligent Repair

To establish a claim of negligent repair, a plaintiff must provide evidence that a defendant was negligent, that plaintiff was harmed, and that defendant's negligence was a substantial factor in causing the harm. The negligent repair claim within the context of the Song-Beverly Act may be barred by the economic loss rule. In general, there is no recovery in tort for negligently inflicted 'purely economic losses,' meaning financial harm unaccompanied by physical or property damage." (*Sheen v. Wells Fargo Bank, N.A*. (2022) 12 C5th 905, 922). The economic loss rule bars tort claims that merely restate contractual obligations. (*Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 C4th 979, 988).

V. Motion for Summary Judgment

Defendants argue that Plaintiff has no evidence to support any of the 6 causes of actions included in his Complaint, and as a result, they are entitled to summary judgment as a matter of law. Defendants raise four arguments which essentially form the thrust of the motion. First, Defendants argue that Plaintiff failed to provide Defendant Ford with a reasonable number of attempts to repair any complaint related to the Ford Explorer. Absent multiple repair attempts, plaintiff cannot establish that Defendant Ford breached any statutory obligation under CC §1793.2 (a)(b) & (d). Second, Defendants argue that because Plaintiff purchased a used vehicle the duration of the implied warranty is no longer than 90 days from the date of purchase. (CC §1795.5(c)). Any issue related to the Explorer arose after the warranty period. Third, Plaintiff cannot establish its 5th Cause of Action for fraudulent inducement because it has no evidence that Defendant Ford was a party to the sale transaction. For this argument, Defendants rely on *Ford Motor Warranty Cases*, (2025) 17 Cal.5th 1122. Because Ford was not part of the sale transaction, Ford did not owe Plaintiff a duty at the time of sale. *Rattagan v. Uber Technologies, Inc.*, (2024) 17 Cal.5th 1, 40-41. Finally, Defendants argue that Defendant Hansel is entitled to summary judgment on the sole cause of action asserted against it for negligent repair (6th) because Plaintiff has no evidence of any damages resulting from any alleged negligent repair.

Parties moving for summary judgment carry the burden of production of evidence. A party who asks a court to act in the party's favor also bears the burden of persuasion (Ev.C. § 500). Thus, "from commencement to conclusion, the party moving for summary judgment bears the burden of *persuasion* that there is no triable issue of material fact and that he is *entitled to judgment as a matter of law.*" (*Aguilar v. Atlantic Richfield Co.* (2001) 25 C4th 826, 850, 107 CR2d 841, 861 (emphasis added)). The moving party also bears the initial burden of production to make a *prima facie* showing that there are no triable issues of material fact. (Id.). If the moving party carries this burden, it causes a shift, and the opposing party is then subject to its own burden of *production* to make a prima facie showing that a triable issue of material fact exists, (Id.).

The "tried and true" way for defendants to meet their burden of proof on summary judgment is to present affirmative evidence (declarations, etc.) *negating*, *as a matter of law*, an essential element of plaintiff's claim. (*Guz v. Bechtel Nat'l, Inc.* (2000) 24 C4th 317, 334).

A. Song Beverly Claims (1st – 3rd Causes of Action)

Defendants argue that Plaintiff's Song Beverly claims fail because Defendant Ford was provided with only one opportunity to repair the Ford Explorer prior to Plaintiff's filing of this lawsuit.

Defendants rely on California caselaw which states that the Song-Beverly Act "does not require the manufacturer to make restitution or replace a vehicle if it has had only one opportunity to repair that vehicle." (*Silvio*, *supra*, 109 Cal.App.4th at 1208). In *Silvio*, plaintiffs gave respondents (Ford Motor Co. and Board Ford) one opportunity to repair their allegedly defective Ford Explorer. Respondents moved for nonsuit on the ground that "reasonable number of attempts," being in the plural, required that they be given at least 2 opportunities to repair. (Id at 1207). The trial court agreed and granted the motion. The Court of Appeal then agreed with the trial court's statutory interpretation of the term "attempts". (Id). The same factual scenario holds true in the present matter. Here, Plaintiff presented his vehicle to Defendant Ford for repair of a transmission problem on August 28, 2024. Defendant Ford performed the necessary repair work and returned the Ford Explorer back to Plaintiff on September 6, 2024. Plaintiff then brought the Explorer back to Defendants with a different complaint, a persistent "check engine" light, on September 12, 2024. As Defendants were in the process of assessing and repairing this new and different issue, Plaintiff filed his Complaint on September 18, 2024. The vehicle was not returned to Plaintiff until September 30, 2024.

Defendant's chronology creates the rebuttable presumption that Defendant Ford was provided with only one full attempt to repair the Ford Explorer's transmission system which it completed by September 6, 2024. Even if this complaint involved various discrete issues, there is no evidence or indication that these issues persisted onto, or were related to, the "check engine" light complaint of September 12, 2024. For all intents and purposes, Defendant Ford's repair of the Ford Explorer on September 6, 2024, resolved all the issues which Plaintiff identified. When Plaintiff returned on September 12th with a new complaint, and then filed his Complaint 6 days later, this conduct ran afoul of CC §1793.2 (d) because Plaintiff foreclosed Defendants' ability to attempt a cure. Stated alternatively, Defendants were provided with only one attempt to fix any problem related to the Ford Explorer. After the September 12th issue was also resolved, Plaintiff never brought the Ford Explorer back for any further complaints or repairs. It is Plaintiff's burden to provide evidence establishing Defendants' inability to repair the vehicle 'after a reasonable number of attempts.' (CC §1793.2(d)). The 'one and done' approached by Plaintiff in this instance simply does not negate this claim. As a matter of law, the singular opportunity to cure does not qualify as "attempts" as this term has been interpreted. (CC §1793.2 (d); *Silvio*, *supra*, 109 Cal.App.4th at 1208).

Defendants also argue that their repair work occurred within the allow 30-day timeframe of CC §1793.2(b). Here, Defendant repair of the transmission issues was resolved within 9 days of initial presentation, per the work order. There is no other evidence contradicting this timeline. Therefore, that portion of the Song-Beverly claims predicated on CC §1793.2(b) also fail.

Finally, Plaintiffs have presented no evidence to establish their CC §1793.2(a)(3) claim that Defendant provided no service literature or had no available authorized service and repairs facilities to effectuate the repairs during the express warranty. To the contrary, Defendant has provided undisputed evidence that Plaintiff presented the Ford Explorer for the transmission issues to Defendant Hensel's repair facility. The repairs were performed within 9 days. A second repair claim was also handled by Hansel and the vehicle then returned to Plaintiff within 18 days.

Defendants have shifted their evidentiary burden on the 1st, 2nd, and 3rd Causes of Action predicated on the Song -Beverly Act by establishing, through undisputed evidence, that Plaintiff does not possess the necessary evidence to support any of the essential elements of these claims. Plaintiff, through its lack of timely opposition, fails to rebut this evidentiary presumption. Consequently, the Court GRANTS summary adjudication in favor of Defendants as to the 1st, 2nd and 3rd Causes of Action.

B. Breach of Warranty of Merchantability

"An implied warranty of merchantability guarantees that 'consumer goods[:]' (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; and (4) conform to the promises or affirmations of fact made on the container or label." *McGee v. Mercedes-Benz USA, LLC*, No. 19CV513-MMA (WVG), 2020 WL 1530921, at *5 (S.D. Cal. Mar. 30, 2020) (citing Cal. Civ. Code § 1791.1 (a)). The duration of the implied warranty of merchantability for used goods is no more than thirty days. CC § 1795.5.

Here, it is undisputed that Plaintiff purchased the vehicle on March 21, 2024. (DSSUF No. 1.) The implied warranty, therefore, expired three months later on June 21, 2024. (CC §1795.5 (c)). Plaintiff did not present the Ford Explorer to Defendants for any issues regarding its use until August 28, 2024, nearly 2 months after the statutory period expired. There is also no evidence of tolling of the warranty period or damages. Therefore, the Court GRANTS summary adjudication in favor of Defendants as to the 4th Cause of Action.

C. Fraudulent Inducement

Ford also asserts that there is no evidence to support the fraud claim. First, Ford argues there can be no duty because there is no direct relationship between the parties. Second, Ford argues that Plaintiff has failed to establish a suppressed fact which constitutes actionable fraud.

Plaintiff alleges he was defrauded in the purchase of the vehicle. However, Ford was not a direct party to the sale, nor did it have direct dealings with Plaintiff, (DSSUF Nos. 43-44). Moreover, Ford argues that it did not conceal from Plaintiff a defect in "10-speed" transmissions, (Compl. ¶ 59). Plaintiff has produced no evidence to support that allegation. (DSSUF Nos. 35- 39.) There is also no evidence that any particular component was defective as presented, much less evidence that Ford knew of that defect but concealed it at the time of sale. (DSSUFs 35-41.). Although the Court provided Plaintiff with an opportunity to proceed with this claim during the Demurrer phase, the failure to produce evidence establishing the Complaint allegations is now fatal to this claim. Therefore, the Court GRANTS summary adjudication in favor of Defendants as to the 5th Cause of Action.

D. Negligent Repair

Plaintiff in this instance took the vehicle to an authorized repair facility on August 28, 2024, with a complaint regarding the vehicle transmission. After repairs were performed the vehicle was returned on August 28, 2024. (DSSUF Nos. 2-4). Plaintiff never returned the Explorer to Defendants for any more repairs. (DSSUF No. 9). All repairs are inextricably tied to Plaintiff's

warranty claims. The negligent repair claim within the context of the Song-Beverly Act may be barred by the economic loss rule. In general, there is no recovery in tort for negligently inflicted 'purely economic losses,' meaning financial harm unaccompanied by physical or property damage." (*Sheen v. Wells Fargo Bank, N.A*. (2022) 12 C5th 905, 922). The economic loss rule bars tort claims that merely restate contractual obligations. (*Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 C4th 979, 988).

Under the economic loss rule, a plaintiff cannot recover economic damages resulting from negligence without a physical injury to a person or property. Accordingly, in actions arising from the sale or purchase of a defective product, plaintiffs seeking economic losses must generally be able to demonstrate that either physical damage to property, other than the defective product itself, or personal injury accompanied such losses; if they cannot, then they would be precluded from any tort recovery in negligence. ((*In re Ford Motor Co. DPS6 Powershift Transmission Products Liability Litigation*, 483 F. Supp. 3d 838 (C.D. Cal. 2020) (applying California law); *Hsieh v. FCA US LLC*, 440 F. Supp. 3d 1157 (S.D. Cal. 2020) (applying California law)). The crux of Plaintiff's claim is that Hansel failed to repair his vehicle to conform to warranty. Here, the undisputed evidence established that all of Plaintiff's repair request related to issues with the Explorer. There is no evidence that Plaintiff suffered any physical injury to herself or property, other than potential damages related to the Explorer. However, there is also no evidence that Plaintiff suffered any monetary damages. Absent these missing facts, and undisputed facts presented in defense of the claim, Defendant has shifted its evidentiary burden and is now entitled to judgement on this claim as a matter of law. Consequently, the Court GRANTS summary adjudication in favor of Defendant Hansel as to the 6th Cause of Action.

I. Conclusion

Defendant has presented facts negating all Plaintiff's cause of action asserted in his Complaint. Defendants have effectively shifted their burden. Plaintiff failed to file a timely opposition. Therefore, Defendants' Motion for Summary Judgement is GRANTED.

Defendants' 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). Thereafter the Court will sign the proposed judgment.

2. 25CV02085, Crigler v. McCutchan

Plaintiff Henry Cringler ("Plaintiff") filed the currently operative first amended complaint (the "FAC") against defendants Edward B. McCutchan doing business as Sunderland McCutchan ("Defendant") and Does 1-50.

This matter is on calendar for Defendant's demurrer to each cause of action pursuant to Cal. Code Civ. Proc. ("CCP") §§ 430.10(e) for failure to state facts sufficient to constitute a cause of action. The Demurrer is **SUSTAINED with leave to amend. The motion to strike is DENIED.**

I. Evidentiary and Procedural Issues

Defendant makes three requests for judicial notice, the first of which is a request for judicial notice of his prior request for judicial notice and documents attached thereto. Defendant fails to show the propriety of such "requests within a request". It clouds the record and does not meet the standard required for judicial notice under the rules of court. See Cal. Rule of Court 3.1113(l).

Judicial notice of official acts and court records is statutorily appropriate. See Cal. Evid. Code § 452(c) and (d) (judicial notice of official acts). Yet since judicial notice is a substitute for proof, it "is always confined to those matters which are relevant to the issue at hand." *Gbur v. Cohen* (1979) 93 Cal.App.3d 296, 301. Factual findings found within a prior judicial opinion are not an appropriate subject of judicial notice. *Kilroy v. State* (2004) 119 Cal.App.4th 140, 148. Courts may take judicial notice of the existence and legal effect of legally operative documents. *Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 754. 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. The scope of the judicial notice taken is limited to the action of the executive agency. *Herrera* at 1375. It is not appropriate for the Court to take notice of additional information which is included in the documentation or contentions as to the truth of the contents. *Id.*

Defendant also requests judicial notice of a good faith settlement within the prior action (RFJN ¶ 2), and the dismissal of another action in which Defendant is in the same role and is mentioned in the FAC (RFJN ¶ 3). Both matters do not appear proper for consideration. While they are court records capable of judicial notice, neither has appropriate relevance at demurrer. The good faith settlement is offered to attempt to show that Defendant did earn his opined contingency. This is a misplaced attempt to argue the facts, and the existence of a good faith settlement is not "evidence" that Plaintiff received any actual funds from the settlement. Similarly, while Defendant opines that the request for judicial notice is dispositive as to Plaintiff's allegations attached to SCV-263456, whether the contract between the parties was found void appears to be an allegation that is unaffected by the disposition of SCV-263456. The dismissal of that action is accordingly irrelevant and therefore improper for this Court to notice.

Therefore, all three of Defendant's request for judicial notice are DENIED.

II. Governing Law

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. Motions 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, "falsity," must be demonstrated by reference to the pleading itself of judicially noticeable matters, not extraneous facts. *See* CCP § 437. A motion to strike is also properly directed to unauthorized claims for damages, meaning damages which are not allowable as a matter of law. *See, e.g. Commodore Home Systems, Inc. v. Sup. Ct.* (1982) 32 Cal.3d 211, 214 (motion to strike lies against request for punitive damages when the claim sued upon would not support an award of punitive damages as a matter of law). Punitive damages may be stricken where the facts alleged do not rise to the level of "malice, fraud or oppression" required to support a punitive damages award. *See, e.g. Turman v. Turning Point of Central Calif., Inc.* (2010) 191 Cal.App.4th 53, 63.

Irrelevant matters subject to being struck are "(a)n allegation that is not essential to the statement of a claim or defense", "(a)n allegation that is neither pertinent to nor supported by an otherwise sufficient claim or defense", and "(a) demand for judgment requesting relief not supported by the allegations of the complaint or cross-complaint" CCP, § 431.10 (b-c); CCP § 436.

"While under section 436, a court at any time may, in its discretion, strike portions of a complaint that are irrelevant, improper, or not drawn in conformity with the law, matter that is essential to a cause of action should not be struck and it is error to do so." *Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1281. However, "(i)rrelevant matter, though pleaded, is still irrelevant." *Fisher v. Nash Bldg. Co.* (1952) 113 Cal.App.2d 397, 403.

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. Where the demurrer based on statute of limitations is argued from judicially noticed documents, the truth of dates within those documents is inadmissible hearsay, and is not appropriate for judicial notice. *Richtek USA, Inc. v. uPI Semiconductor Corp.* (2015) 242 Cal.App.4th 651, 660-661. To sustain demurrer on such judicially noticed material is error. *Id*.

"Generally speaking, a cause of action accrues at 'the time when the cause of action is complete with all of its elements.' (*Citation*.) An important exception to the general rule of accrual is the "discovery rule," which postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action." *Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806–807 (internal citations omitted). "In order to rely on the discovery rule for delayed accrual of a cause of action, '[a] plaintiff whose complaint shows on its face that his claim would be barred without the benefit of the discovery rule must specifically plead facts to show (1) the time and manner of discovery *and* (2) the inability to have made earlier discovery despite reasonable diligence.' (*Citation*.) In assessing the sufficiency of the allegations of delayed discovery, the court places the burden on the plaintiff to 'show diligence'; 'conclusory allegations will not withstand demurrer.'" *Id*. at 808.

D. Unjust Enrichment

"(T)here is no cause of action in California for unjust enrichment." *Melchior v. New Line Productions, Inc.* (2003) 106 Cal.App.4th 779, 793. "The phrase 'Unjust Enrichment' does not describe a theory of recovery, but an effect: the result of a failure to make restitution under circumstances where it is equitable to do so." *Lauriedale Associates, Ltd. v. Wilson* (1992) 7 Cal.App.4th 1439, 1448. "Unjust enrichment is synonymous with restitution." *Durell v. Sharp Healthcare* (2010) 183 Cal.App.4th 1350, 1370.

"The theory of unjust enrichment requires one who acquires a benefit which may not justly be retained, to return either the thing or its equivalent to the aggrieved party so as not to be unjustly enriched." *Otworth v. Southern Pac. Transportation Co.* (1985) 166 Cal.App.3d 452, 460. "The fact that one person benefits another is not, by itself, sufficient to require restitution. The person receiving the benefit is required to make restitution only if the circumstances are such that, as between the two individuals, it is *unjust* for the person to retain it." *First Nationwide Savings v.*

Perry (1992) 11 Cal.App.4th 1657, 1663. It is not sufficient that the benefit was conferred to the defendant, the conveyance must have been unjust because the benefit was conferred by mistake, fraud, coercion or request. *Nibbi Brothers, Inc. v. Home Federal Sav. & Loan Assn.* (1988) 205 Cal.App.3d 1415, 1422.

"(A) benefit is conferred not only when one adds to the property of another, but also when one saves the other from expense or loss." *Ghirardo v. Antonioli* (1996) 14 Cal.4th 39, 51. "Typically, the defendant's benefit and the plaintiff's loss are the same, and restitution requires the defendant to restore plaintiff to his or her original position." *County of San Bernardino v. Walsh* (2007) 158 Cal.App.4th 533, 542. "[I]t is not essential that money be paid directly to the recipient by the party seeking restitution." *Shersher v. Superior Court* (2007) 154 Cal.App.4th 1491, 1500. "The emphasis is on the wrongdoer's enrichment, not the victim's loss." *American Master Lease LLC v. Idanta Partners, Ltd.* (2014) 225 Cal.App.4th 1451, 1482. Where a party has participated in their own wrongdoing, they cannot then claim that the incidental beneficiary of their wrongdoing was unjustly enriched. *Stein v. Simpson* (1951) 37 Cal.2d 79, 86; cf. *De Garmo v. Goldman* (1942) 19 Cal.2d 755, 761 (a party coming to the court requesting equity must come with clean hands).

E. Conversion

The elements of conversion are: 1) plaintiff's ownership or right to possession of the property; 2) defendant's conversion through a wrongful act; and 3) damages. *Welco Electronics, Inc. v. Mora* (2014) 223 Cal.App.4th 202, 208. "Money may be the subject of conversion if the claim involves a specific, identifiable sum; it is not necessary that each coin or bill be earmarked." *Id*. Conversion can also include the misappropriation of intangible property, such as net operating losses, so long as they reflect a definite amount and rights of possession and exclusive use are sufficiently definite and certain. *Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 125. Credit accounts are also appropriate for conversion actions as long as plaintiffs can show they had a property right in its credit card account, evidenced by proving their interest is specific, showing they had control over its credit card account, and they had an exclusive claim to the balance in the account. *Welco, supra* at 212. "A plaintiff must specifically identify the amount of money converted, not that a specific, identifiable amount of money has been entrusted to the defendant." *Id.* at 216.

F. Financial Elder Abuse

Financial elder abuse is defined by Welfare and Institutions Code ("W&I") § 15610.30 as where a party "(t)akes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both", or assists in such actions. See W&I § 15610.30 (a)(1-2). "A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult." W&I § 15610.30 (b). "(A) person or entity takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless

of whether the property is held directly or by a representative of an elder or dependent adult." W&I § 15610.30 (c). Entering fraudulent escrow instructions that encumbered a property, and thereby interfered with an elder adult's ability to transfer that property, was sufficient to constitute a "taking" under the financial elder abuse statute. *Bounds v. Superior Court* (2014) 229 Cal.App.4th 468, 483. An attorney can be held liable for financial elder abuse where they take an undisclosed finder's fee derived from an elder client's property, and where they assist other parties in taking from an elder client in violation of W&I § 15610.30. *Wood v. Jamison* (2008) 167 Cal.App.4th 156, 165.

G. Confirmation or Correction of Arbitration Awards

Parties may petition to correct arbitration awards. CCP § 1285. However, where an arbitrator determines that portions of an arbitration award are binding when the parties only agreed to nonbinding arbitration, that is an error in the award that must be corrected by the court. *Glaser, Weil, Fink, Jacobs & Shapiro, LLP v. Goff* (2011) 194 Cal.App.4th 423, 431.

III. Demurrer

A. Statute of Limitations

In part, Plaintiff avers that the arbitration failed to grant him the appropriate amount of damages and simultaneously argues that Defendant should not be allowed to raise the statute of limitations defense because it was not litigated in the arbitration. This matter is *not* a petition under CCP § 1285 to confirm or correct the arbitration award. It could not be, as the arbitration was nonbinding, and accordingly any order here confirming it as a binding decision would be improper. *Glaser, Weil, Fink, Jacobs & Shapiro, LLP v. Goff* (2011) 194 Cal.App.4th 423, 431. The arbitration decision appears immaterial to the merits of any contention within this case as a result. Plaintiff provides no citation to authority showing the contrary. If the statute of limitations is at issue due to Plaintiff's pleading, it is properly raised.

Defendant avers that this entire matter is precluded under the statute of limitations. The FAC pleads that Defendant was paid $31,135.84 by Plaintiff during the representation in the prior action. FAC ¶ 14. Of that amount, all but $4,516.21 was paid after April 2, 2014. FAC ¶ 20. On November 28, 2022, Defendant filed a declaration in another case where he admitted that the defendant in the prior action was insolvent.

The amount paid before a certain date appears irrelevant for the purposes of demurrer. The question posed to the Court is whether the causes of action are viable, and viability to any portion of the damages as related to a cause of action means the demurrer should be overruled. Nor does Plaintiff's inconsistent numerical pleading appear to have any appreciable effect on the question of whether he expresses no basis for recovery *at all*.

Plaintiff attaches the arbitration to the FAC, and accordingly the statements therein are part of the pleading. Plaintiff does not plead facts stating that the arbitration decision misstates the facts. The arbitration decision notes that the Plaintiff expresses no permutation of facts wherein his claims never started accruing. Plaintiff in fact contends that the arbitration decision is incorrect

because it failed to compensate him for those amounts accrued after April 2, 2014. The FAC repeats these claims. FAC ¶ 18, 2-0. The arbitration decision also mentions the 2017 bankruptcy as the inhibiting factor on Plaintiff's ability to collect the judgment in the underling action.

Moreover, this appears irrelevant. Neither party addresses the case that appears dispositive on the issue.

> In light of these observations, we conclude that section 340.6(a)'s time bar applies to claims whose merits necessarily depend on proof that an attorney violated a professional obligation in the course of providing professional services. In this context, a "professional obligation" is an obligation that an attorney has by virtue of being an attorney, such as fiduciary obligations, the obligation to perform competently, the obligation to perform the services contemplated in a legal services contract into which an attorney has entered, and the obligations embodied in the Rules of Professional Conduct.

Lee v. Hanley (2015) 61 Cal.4th 1225, 1236–1237.

Here, Plaintiff's FAC clearly relies on Defendant's professional obligations. Plaintiff's primary argument for how the arbitration panel erred is that it failed to award him for amounts paid resulting from the Defendant's failure to submit adequate pleadings. FAC ¶ 18, 20. Plaintiff's entire theory of recovery is that Defendant failed to prosecute the prior case with sufficient skill to result in recovery from Zuckerman. These are allegations which go to the performance and competence of legal services.

Moreover, legal malpractice claims accrue at the time that the malpractice is discovered by the client, whereafter clients have one year to file an action, *or* at the time of the wrongful act or omission, which must be acted upon within four years, *whichever occurs first*. CCP § 340.6 (a). The claims against Defendant, given their designation under CCP § 340.6, began to accrue under the allegations of the FAC on April 2, 2014. There are various bases for tolling such claims, but Plaintiff pleads no facts to support application of tolling to the instant action.

Plaintiff's citation to *Soni v. SimpleLayers, Inc.* (2019) 42 Cal.App.5th 1071, 1092 is inapposite. That case deals with the application of Bus. & Prof. Code, § 6206, which *tolls* statutes of limitations for the duration of the arbitration. It does not stand for the proposition that participation in arbitration tolls claims indefinitely or can revive stale claims.

The Court notes that while statute of limitations is difficult to cure through amendment, CCP § 340.6 contains several bases to toll said statute of limitations. The Court will not assume that the complaint is not capable of being cured absent some indication to the contrary.

Based on the averment of statute of limitations precluding Plaintiff's claims, as to all causes of action, Defendant's demurrer is SUSTAINED with leave to amend.

B. Unjust Enrichment

In substance, unjust enrichment claims are generic claims of equity. Plaintiff attempts to pivot these claims to something akin to quasi-contract theory, averring that Defendant failed to live up to the expectations under which Plaintiff believes that these fees could only be earned if Defendant collected some funds in prosecution of the underlying action. For this purpose, he opines that funds were collected (a matter not properly before the Court at demurrer), and that that they were not earned.

What is equitable appears to be entirely an issue of fact, but Plaintiff's claims in this cause of action are a confusing compilation of averring that the prior contract is void, and that Defendant was required by the specific terms of the contract to make recovery to be paid. Alternatively stated, Plaintiff cannot claim in one breath the contract is void and then in other allege that Defendant failed to perform per the contract. Given that the Court has already sustained the demurrer as to this cause of action, it need not resolve issues of whether Plaintiff's fractured pleading states principles of equitable restitution.

C. Conversion

As Defendant rightfully points out, lack of consent is a necessary element of conversion actions. *Farrington v. A. Teichert & Son* (1943) 59 Cal.App.2d 468, 473; see also California Civil Jury Instructions No. 2100. Given that Plaintiff concedes that he willingly paid the funds to Defendant, his claim for conversion fails.

D. Financial Elder Abuse

Defendant argues that the financial elder abuse cause of action fails for the factual reasons he uses to attack other causes of action, mainly that the statute of limitations has passed, and he obtained a judgment against the defendant in the prior action. The Court has already addressed the first, and the second appears to be an immaterial evidentiary contention at demurrer.

IV. Motion to Strike

Defendant moves to strike several portions of the FAC which he contends are irrelevant or counterfactual. Plaintiff objects, in part because Defendant has failed to follow procedural rules in filing his motion to strike. Plaintiff's objection has merit, as the motion has technical defects.

Cal Rule of Court 3.1322 requires that the "notice of motion" must contain the reference to the matters sought to be struck. The notice of motion contains *no* reference to the paragraphs to be struck. Defendant's filing of a "Designation of items sought to be stricken" does not appear to cure this defect. This appears to be used by Defendant to point out various portions of the FAC he believes should be struck and argue his reasons thereon. This is neither in the form that the Court would expect the elucidation of matters to be struck or argument thereon. If Defendant wished to obtain more space for briefing, and obtain additional space for briefing, he was able to file a motion to strike separate from his demurrer. Given the procedural deficiencies, Defendant's motion to strike is DENIED without prejudice to a procedurally perfected motion brought .

V. Conclusion

Based on the foregoing, the Demurrer is **SUSTAINED with leave to amend as to all causes of action**.

The motion to strike is **DENIED**.

Defendant 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. 25CV03262, U.S. Bank National Association v. Haver

Plaintiff U.S. Bank National Association ("Plaintiff") filed the complaint in this action against defendant Sharna Haver ("Defendant") for damages based on breach of contract (the "Complaint"). This is on calendar for Plaintiff's motion for summary judgment or in the alternative summary adjudication in their favor on the grounds that each element of the causes of action have been proven by Plaintiff. Defendant has not filed an opposition to the motion. The motion is GRANTED.

I. Facts

Defendant applied for a line of credit from Plaintiff. Plaintiff's Separate Statement of Undisputed Facts (PSS), ¶ 1. The Cardmember Agreement set forth the terms of the line of credit, and that use of the credit card constituted acceptance of that agreement. PSS, ¶ 2. Defendant used the line of credit and incurred charges and debts thereon, totaling $17,819.45. PSS, ¶ 3. Plaintiff performed their conditions of the contract by paying vendors and extending the credit to Defendant. PSS, ¶ 3. Defendant failed to repay borrowed funds, interest, and has not made a payment since July 8, 2024. PSS, ¶ 7. Defendant has not disputed any of the underlying charges with Plaintiff internally. PSS, ¶ 5. Defendant's failure to make payments constituted default under the agreement, and as a result the entire amount has become due. PSS, ¶ 6. As a result of the above, Defendant's failure to repay Plaintiff results in an obligation of $17,819.45. PSS, ¶ 8. Plaintiff filed the Complaint May 8, 2025.

Plaintiff filed a memorandum of costs on October 29, 2025, listing their costs as $870 in filing and motion fees and $72.61 in service costs, coming to a total of $942.61.

II. Burdens on Summary Judgment

A. Generally

Summary adjudication "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CCP § 437c(c). All evidence and inferences drawn reasonably drawn therefrom must be viewed in the light most favorable to the party opposing summary adjudication. *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.

"A plaintiff moving for summary judgment "bears the burden of persuasion that 'each element of' the 'cause of action' in question has been 'proved,' and hence that 'there is no defense' thereto." *Thompson v. Ioane* (2017) 11 Cal.App.5th 1180, 1195; citing *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.

If a plaintiff meets its initial burden moving for summary judgment, the burden shifts to the defendant to provide sufficient evidence to raise a triable issue of fact as to the defense asserted. CCP § 437c(p)(1). An issue of fact exists if "the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." *Aguilar*, 25 Cal.4th at 845.

A moving party does not meet its initial burden if some "reasonable inference" can be drawn from the moving party's own evidence which creates a triable issue of material fact. *See, e.g. Conn v. National Can Corp*. (1981) 124 Cal.App.3d 630, 637; *Binder v. Aetna Life Ins. Co*. (1999) 75 Cal.App.4th 832, 840. All the papers submitted must be considered in determining whether or not there is a triable issue of any material fact. CCP § 437c(c).

B. Breach of Contract

Breach of written contract has a four-year statute of limitations. Civ. Code § 337(a). A cause of action for breach of contract requires a Plaintiff to prove: 1) the existence of a contract; 2) plaintiff's performance or excuse for non-performance; 3) defendant's breach; and 4) the resulting damages. *Reichert v. General Ins. Co. of America* (1968) 68 Cal.2d 822, 830.

III. Plaintiffs Shift Their Burden

Plaintiff has presented facts proving each element of their cause of action for breach of contract. Plaintiff also presents evidence showing the amount of damages, $17,819.45, and costs, $942.61. Therefore, Plaintiff has shifted their burden. There is no opposition. Plaintiff's motion for summary judgment is GRANTED in the amount of $18,762.06.

Plaintiff'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). Thereafter the Court will sign the proposed judgment.

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