TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, March 4, 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. 24CV02480, Schirtzinger v. Steele

Plaintiffs Robert F. Schirtzinger ("Schirtzinger") and Sarah C.E. Thompson ("Thompson," together with Schirtzinger, "Plaintiffs"), has filed the currently operative second amended complaint (the "SAC") against defendants Kaiser Permanente Medical Group, Inc. ("Kaiser"), The Permanente Medical Group ("TPMG"), Allied Universal Security Services Universal Protection Service, LLP ("Allied"), Nicholas Schirtzinger ("Nicholas"), Thomas Steele ("Steele"), Sandy Karren ("Karren", together with all other defendants, "Defendants"), and Does 1-25 with five causes of action.

Kaiser has filed a motion to disqualify Petitioner's counsel, Violet Elizabeth Grayson ("Grayson"), under rule of professional conduct 3.7.

The motion is **GRANTED** for the reasons set forth below.

I. Facts and Procedure

Plaintiffs filed the instant action on April 22, 2024, with a complaint (the "Complaint") alleging six causes of action related to Schirtzinger's unwilling detainment in Kaiser's facility from April 13, 2024, through the date of filing. Plaintiffs filed the First Amended Complaint ("FAC") following Schritzinger's discharge on April 24, 2024, alleging six causes of action with changes in theory related to the same facts. Both the Complaint and the FAC contained a significant numbers of allegations written from Grayson's firsthand perspective, including many to which Grayson is the only apparent witness for Plaintiffs. Other allegations are written averring that Defendants "threatened Grayson with arrest", a harm only attributed to Grayson, who is not a named party. FAC ¶ 55. Both the Complaint and the FAC demand a jury trial. On August 11, 2025, Allied filed a demurrer to the FAC. The demurrer was sustained in part with leave to amend by the Court, and in the ruling, the Court *sua sponte* raised concerns regarding the attorney-advocate rule under Rule of Professional Conduct ("RPC") 3.7. The Court did so because it was concerned about the ability to maintain order during Plaintiffs' requested jury trial. Plaintiffs filed the SAC on December 29, 2025. Allegations regarding Grayson's involvement were less frequent, but still numerous and prominent to all claims, including the same allegations that Grayson was threatened with arrest. See SAC ¶16-¶32, ¶34-¶37, ¶40, ¶43, ¶52, ¶53, ¶55.

The same day the SAC was filed, Kaiser filed the instant motion, averring that Grayson was precluded from representation under RPC 3.7, and that she should be disqualified from continuing to represent Plaintiffs. Plaintiffs filed a motion for leave to amend the SAC and file the third amended complaint (the "Proposed TAC") on January 6, 2026. Plaintiffs have filed an opposition to the instant motion, attaching "waivers" averring informed written consent to continue representation in spite of the conflict.

II. Evidentiary and Procedural Issues

Kaiser avers that the waiver provided by Plaintiffs does not adequately address the issues associated with Rule of Professional Conduct 3.7 and its implications. It is unclear whether Kaiser seeks a combination of magic words or argues that the omission of any 'necessary' language. The waivers provided appear to address the substantial issues related to trial and the possibility that Grayson's dual role will "redound to (their) detriment". (Robert F. Schirtzinger's Waiver, ¶ 5). However, whether Grayson's informing her client is insufficient appears to be an issue between Plaintiffs and Grayson.

The Court takes permissive judicial notice of the other filings within this case under Evidence Code § 452.

III. Governing Authorities

The court's power to disqualify counsel is based in the court's inherent power under CCP section 128(a)(5) to control the affairs and people before it in order to ensure justice. *Collins v. State of California* (2004) 121 Cal.App.4th 1112, 1123; *People ex rel. Dept. of Corporations v. SpeeDee Oil Change Systems* (1999) 20 Cal.4th 1135, 1145. "Exercise of that power requires a cautious balancing of competing interests. The court must weigh the combined effect of a party's right to counsel of choice, an attorney's interest in representing a client, the financial burden on a client

of replacing disqualified counsel and any tactical abuse underlying a disqualification proceeding against the fundamental principle that the fair resolution of disputes within our adversary system requires vigorous representation of parties by independent counsel unencumbered by conflicts of interest." *William H. Raley Co. v. Superior Court* (1983) 149 Cal.App.3d 1042, 1048. "Disqualification is only justified where the misconduct will have a 'continuing effect' on judicial proceedings." *Baugh v. Garl* (2006) 137 Cal.App.4th 737, 744; *Sheller v. Sup.Ct*. (2008) 158 Cal.App.4th 1697, 1711.

A party may only seek to disqualify an opponent's counsel if the party has standing to do so. *Great Lakes Const., Inc v. Burman* (2010) 186 Cal.App.4th 1347; *Blue Water Sunset, LLC v. Markowitz* (2011) 192 Cal.App.4th 477, 485; *Strasbourger Pearson Tulcin Wolff Inc. v. Wiz Technology, Inc*. (1999) 69 Cal.App.4th 1399, 1404; *Dino v. Pelayo* (2006) 145 Cal.App.4th 347, 352. "(W)hile federal courts generally limit standing to bring disqualification motions to clients or former clients (Citation), in California where the ethical breach is 'manifest and glaring' and so 'infects the litigation in which disqualification is sought that it impacts the moving party's interest in a just and lawful determination of [his or] her claims' [citation], a nonclient might meet the standing requirements to bring a motion to disqualify based upon a third party conflict of interest or other ethical violation." *Kennedy v. Eldridge* (2011) 201 Cal.App.4th 1197, 1204. "Accordingly, … where an attorney's continued representation threatens an opposing litigant with cognizable injury or would undermine the integrity of the judicial process, the trial court may grant a motion for disqualification, regardless of whether a motion is brought by a present or former client of recused counsel." *Id*. at 1205.

Rule of Professional Conduct 3.7 ("Rule 3.7"), formerly Rule 5-210, which governs situations where an attorney as an advocate in a proceeding may also be a witness in that proceeding, states, in full,

"(a) A lawyer shall not act as an advocate in a trial in which the lawyer is likely to be a witness unless:

> (1) the lawyer's testimony relates to an uncontested issue or matter;
>
> (2) the lawyer's testimony relates to the nature and value of legal services rendered in the case; or
>
> (3) the lawyer has obtained informed written consent from the client. If the lawyer represents the People or a governmental entity, the consent shall be obtained from the head of the office or a designee of the head of the office by which the lawyer is employed.
>
> (b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm* is likely to be called as a witness unless precluded from doing so by rule 1.7 or rule 1.9."

A party may seek to disqualify another party's attorney under this rule. See, e.g., *In re Marriage of Murchison* (App. 2 Dist. 2016) 245 Cal.App.4th 847; *Lyle v. Superior Court* (1981) 122

Cal.App.3d 470. "In exercising its discretion to disqualify counsel under the advocate-witness rule, a court must consider: (1) 'whether counsel's testimony is, in fact, genuinely needed'; (2) 'the possibility [opposing] counsel is using the motion to disqualify for purely tactical reasons'; and (3) 'the combined effects of the strong interest parties have in representation by counsel of their choice, and in avoiding the duplicate expense and time-consuming effort involved in replacing counsel already familiar with the case.'" *Doe v. Yim* (2020) 55 Cal.App.5th 573, 583–584; quoting *Smith, Smith & Kring v. Superior Court* (1997) 60 Cal.App.4th 573, 580-581.

The court has discretion to grant such a motion even despite the client's written consent. See, e.g., *Lyle v. Superior Court* (1981) 122 Cal.App.3d 470. This preclusion is not limited to jury trials, even under the prior version of the rule. *Kennedy v. Eldridge* (2011) 201 Cal.App.4th 1197, 1210 "Most of the difficulties inherent in an attorney's taking on the role of both advocate and witness are present regardless of whether the attorney's testimony will be given in front of a jury or a judge." *Ibid.* "When trial counsel foresees the possibility his continued representation of a client may fall within the prohibition …, he should resolve any doubt in favor of preserving the integrity of his testimony and against his continued participation as trial counsel." *Comden v. Superior Court* (1978) 20 Cal.3d 906, 915. "An attorney who attempts to be both advocate and witness impairs his credibility as witness and diminishes his effectiveness as advocate." *Id*. at 912.

IV. Analysis

There are three bases on which a counsel may testify in a case where they represent a party. Prof. Conduct, Rule 3.7. The potential testimony attributable to Grayson in the SAC clearly is not going to be subject to either of the first two exceptions enumerated within Rule 3.7. Plaintiffs have also submitted a declaration waiving any conflict to possibility of testimony. Despite a client's consent or waiver, the jurisprudence requires the Court to assess multiple factors in concluding whether disqualification is still appropriate, despite the significant weight attributable to such consent. *Doe v. Yim* (2020) 55 Cal.App.5th 573, 583–584.

A. Whether Counsel's Testimony is Genuinely Needed

Necessity is essentially uncontested between the parties. Kaiser strongly contends that Grayson has placed herself at the center of this case. Objectively, Plaintiffs' complaints are written in significant part from the perspective of Grayson. See SAC ¶16-¶32, ¶34-¶37, ¶40, ¶43, ¶52, ¶53, ¶55. Plaintiffs do not attempt to rebut this but instead attempt to argue that the necessity of Grayson's testimony is Defendants' fault. However, there is nothing in Rule 3.7 establishing that a finding of 'fault' is a required element to excuse the application of the rule. Grayson's testimony appears both necessary and certain.

B. Whether the Motion Appears Tactical

Plaintiffs' opposition contains various assertions of the tactical nature of the requested relief, averring that the motion has necessitated various continuances of discovery and law and motion matters so the Court could address this motion first. This is not significantly persuasive. Plaintiffs merely conclude some form of tactical advantage, but the motion has been brought

while the case is not yet at issue. Discovery has begun, but depositions have not yet occurred, having been delayed by this motion. As is noted above, Plaintiffs seek to again unsettle the pleadings by amending the SAC. Kaiser's contention that there is little to nothing to be gained by the motion except avoiding the probable issues associated with counsel's dual role is persuasive.

Plaintiffs' averment that Grayson was only a witness due to "Defendants' own tortious conduct in her presence" does not persuasively frame the chronology of the case. At the time that Grayson became a witness, she was not the attorney who filed the case. It is only through the conduct she allegedly witnessed that there was a case to file. Grayson placed herself as the attorney in a case where her own material testimony was necessary. It is the filing of the case and the allegations of the Complaint that have placed Grayson's testimony at issue. The Court is not persuaded that the motion is tactical.

C. Fact Finder Confusion

Avoiding fact finder confusion is another important purpose of the advocate-witness rule that may be considered. *Doe v. Yim* (2020) 55 Cal.App.5th 573, 584–585. This is a consideration still applicable even in the context of a bench trial. *Kennedy v. Eldridge* (2011) 201 Cal.App.4th 1197, 1210.

Kaiser avers that the various complaints place Grayson at the center of this case, and that her testimony will almost certainly be confusing to a finder of fact, regardless of whether the matter is held by jury trial or bench trial.

In opposition, Plaintiffs aver that there is no possibility of confusion to a finder of fact. Plaintiffs contend in their January 2, 2025, declarations that they are willing to waive their right to jury trial to maintain Grayson as their counsel of choice. However, this is not reflected in the SAC (which was filed after the Court raised concerns), nor even in the Proposed TAC, which still demands jury trial. The motion for leave to amend to file the Proposed TAC was filed January 6, 2026, *four days after Plaintiffs completed their declarations of waiver.* Whether this is a reflection of an intentional decision or unintentional oversight, it is regardless inconsistent with an understanding of the nature of the conflict and the probable confusion attributable to a jury as a finder of fact. Irrespective of this pleading inconsistency, Grayson is so intrinsically intertwined with the factual chronology involving all claims that any trier of fact, whether it be a Court or a jury, would have a trying time untangling when Grayson is stating argument as opposed to reciting testimony.

To the degree that the matter could be resolved by bench trail, this does not fully obviate the issue. The conflict, according to the jurisprudence, is more inherent to the nature of the roles. It is not merely targeted to the confusion of the finder of fact, but also to the creation of "multiple, awkward and conflicting duties." *Kennedy v. Eldridge* (2011) 201 Cal.App.4th 1197, 1211. This is because there is inherent conflict between the roles of witness and advocate, "one of which requires the lawyer to be partisan and the other of which requires him to be factual." *Id*. at 1210. The attempt to do both "impairs his credibility as witness and diminishes his effectiveness as advocate." *Comden v. Superior Court* (1978) 20 Cal.3d 906, 912. This is why client-informed consent is the first and most important step. However, even before a bench trial, the confusion

probable from Grayson's dual roles is palpable and undoubtedly persistent throughout the course of this litigation. Grayson remains a prevalent aspect of the fact-based pleading, apparently even more so than Plaintiff Schirtzinger.

Plaintiffs' reliance on *Geringer v. Blue Rider Finance* (2023) 94 Cal.App.5th 813, 825 is only partially correct. Plaintiffs point out that both *Geringer* and *Lyle* involve the reversal of a trial court after granting a motion to disqualify. However, importantly, *Geringer* dealt with a bench trial, not a jury trial. *Geringer v. Blue Rider Finance* (2023) 94 Cal.App.5th 813, 825. In *Lyle*, the counsel testifying was *not* trial counsel. *Lyle v. Superior Court* (1981) 122 Cal.App.3d 470, 474[1]. In that manner, these cases offer almost no salient analysis of the weight of the potential jury trial in this case. In the event this matter proceeded to jury trial, the probability of the confusion of a finder of fact is palpable. Even in the event of a bench trial, the language of the complaints in this matter draw concern that Grayson is "too close" to the facts and, based on the allegations, has significant (understandable) emotional involvement.

In the event of a jury trial, there is enormous risk of injury to the judicial process in this case due to confusion of the finder of fact. In the event there is bench trial, there is still concern raised by Grayson's dual role, and her proximity and involvement in the underlying allegations. Forcing a bench trial for Plaintiffs' benefit also raises issues of prejudice as analyzed below.

D. Prejudice to Client and to the Opposing Party

Kaiser contends that the case is still in its early stages, and that Plaintiffs would not experience prejudice from disqualification at this early stage. In response, Plaintiffs opine two types of prejudice. First, they aver that a party's choice of counsel is entitled to significant deference. While this is true, this is precisely why the Court must undergo such exhaustive analysis on the issue to determine the propriety of overriding Plaintiffs' knowing consent. It does not itself create a level of prejudice which justifies denial of the motion.

Second, Plaintiffs aver the significant time that Grayson has already committed to the case. Plaintiffs contend that disqualification would result in duplicative efforts as a new counsel comes up to speed. This is not persuasive. Duplicative efforts are inherent to disqualification motions, as the new attorney will *always* have to get up to speed. Plaintiffs' descriptions of the time expended do not offer particularly concrete descriptions of the time expended thus far. Grayson does opine that the Proposed TAC was the result of reviewing Schritzinger's hospital records, comprised of over 1,500 pages. This is somewhat of concern, but this prejudice is of Plaintiffs' own making. Grayson, as a licensed attorney, was obligated to obtain waiver as soon as the issue became apparent. Even so, consent is not dispositive in this instance. The attorney advocate rule is first and foremost an *ethical* rule, applicable to interactions between counsel and the client. It was incumbent for any counsel to recognize and address this concern from the onset of litigation. The Court raised the attorney-witness concern in its tentative ruling on Defendants' Demurrer on December 9, 2025. Grayson's averment is that the review of the hospitalization records occurred while preparing the Proposed TAC, which was not filed with the motion for leave to amend until January 6, 2026. It is not apparent how much of this effort was expended after Plaintiffs were already aware of the possibility of disqualification, though the Court believes this possibility

[1] In fact, the current version of the rule provides express exemption for such issues. See RPC 3.7 (b).

existed officially when the original complaint was filed. Plaintiffs express the expense of duplicative efforts, but do not express facts which would lead the Court to conclude that there is any financial hardship present, unlike their provided authority. *Geringer v. Blue Rider Finance* (2023) 94 Cal.App.5th 813, 818, fn. 2 (defendant was bankrupt, and changing attorneys would have rendered the corporate entity without the ability to replace counsel); *Lyle v. Superior Court* (1981) 122 Cal.App.3d 470, 482 (plaintiff would suffer financial hardship if the motion was granted because her current attorneys were not charging her a fee). Increased costs and financial hardship are not synonymous.

Plaintiffs also opine in a conclusory manner that they will not be capable of finding "equally able and zealous counsel". See Grayson Declaration Ex. B (Schritzinger Decl.) ¶ 4, & Ex. C (Thomas Decl.) ¶ 4. Plaintiffs "doubt" the abilities of counsel who were not "organically involved in the litigation as it evolved", however, this admission re-emphasizes the ethical concerns evident in this motion. The Court will merely note that the *vast* majority of cases are litigated by attorneys uninvolved in the underlying facts. This is an essential element of the lawyer's role in advising a client, "acting as a neutral assessor of [a client's] claims". See *In re Kinney* (2011) 201 Cal.App.4th 951, 959.

Furthermore, this is not an eleventh hour motion brought on the eve of trial to render Plaintiffs scrambling. *Contra, Geringer v. Blue Rider Finance* (2023) 94 Cal.App.5th 813, 820. The recognized glaring ethical issue of Grayson's intrinsic involvement in the facts of the complaints she drafted are being addressed at the earliest possible opportunity. Plaintiffs' prejudice is as minimal as it could have been considering that they were only asked for their consent after the issue was recognized by both the Court and then raised by Kaiser's motion.

In the same vein however, Kaiser does not display any particular prejudice beyond that confusion attributable to the finder of fact. It is Plaintiffs' continued pursuit of jury trial that raises an issue of articulable prejudice. No party raises or addresses the status of jury fees but given that it is Plaintiffs who have pled for jury action only to disclaim it when it cuts against them, Defendants waiver of jury trial appears to be Plaintiffs' burden to argue. The Court will not foreclose Defendants' right to jury trial where Plaintiffs have provided no authority to support such a contention. Plaintiffs' flummery that "Defendants should be more than satisfied with a bench trial" carries no weight.

In this manner, Plaintiffs may feel they are stuck between a rock and hard place. Proceeding to jury trial represents undeniable probability to present confusion for a finder of fact. Bench trial ameliorates some of this concern but brings vitality to issues of prejudice to Defendants by snatching a right which is constitutionally protected. See Cal. Con. Article 1, Section 16. Of these, jury trial appears the most likely, particularly in light of Plaintiffs' continued demand.

E. Immediate Disqualification Appears Necessary

The witness-advocate rule is distinguishable from other forms of disqualification, which typically are targeted at avoiding conflicts created by confidential relationships. The rule applies to "a trial in which the lawyer is likely to be a witness". Rule 3.7. Expansion of such a disqualification to pretrial activities requires specific findings "that an extension of the rule to

specified pretrial activities would effectuate the rule's purpose of avoiding fact finder confusion." *Lopez v. Lopez* (2022) 81 Cal.App.5th 412, 425, citing *Yim*, 55 Cal.App.5th at 577, 583, 585. Kaiser contends that Grayson's dual role has yet to be implicated, but various depositions trail this motion, and that disqualification for pretrial purposes would avoid additional confusion in these pre-trial matters.

Plaintiffs contend no middle ground where disqualification is for trial only. Given Plaintiffs' maximalist position, and their conduct as though not faced with the undeniable issue of disqualification, the Court is concerned that any delay will only serve to create additional prejudice for Plaintiffs. Plaintiffs' inconsistency in position between pleadings and their waivers, and the right of Defendants to have a jury trial if that is their election, is an issue indicating the substantial probability of confusion of a finder of fact. Grayson's deposition has already been scheduled as a fact witness, indicating the probability of confusion and malleable roles permeate pretrial issues.

Grayson, in order to prevent additional prejudice, should be allowed to transition the case appropriately. Grayson is disqualified effective 30 days after of notice of this order.

V. Conclusion

The motion is GRANTED. Grayson is disqualified effective 30 days after of notice of this order.

Kaiser 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).

2. 24CV03615, Truter v. General Motors LLC

Plaintiff Zackary Truter filed the complaint in this action against Defendant General Motors LLC with causes of action arising under the Song-Beverly Consumer Warranty Act. This matter is on calendar for Plaintiff's motion for attorneys' fees and costs pursuant to the parties' settlement agreement and Cal. Civ. Code § 1794.

The Motion is **GRANTED**, in the total amount of $32,522.98.

I. The Basis for Fees

Cal. Civ. Code §1794(d) provides: "If the buyer prevails in an action under this section, the buyer shall be allowed by the court to recover as part of the judgment a sum equal to the aggregate amount of costs and expenses, including attorney's fees based on actual time expended, determined by the court to have been reasonably incurred by the buyer in connection with the commencement and prosecution of such action." This statute "is consistent with California's approach to determining a reasonable attorney fee in various statutory and contractual contexts, which approach 'ordinarily begins with the "lodestar," *i.e.,* the number of hours *reasonably* expended multiplied by the *reasonable* hourly rate.'" *Warren v. Kia Motors Am., Inc.* (2018) 30 Cal.App.5th 24, 36 *quoting PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095 (emphasis by the *Warren* court). The statute also permits use of a multiplier of the

lodestar figure. *Robertson v. Fleetwood Travel Trailers of California, Inc*. (2006) 144 Cal.App.4th 785, 822.

The parties settled the case on June 20, 2025, through a signed Written Settlement Agreement. The agreement entitled Plaintiff to attorney fees from Defendant under Cal. Civ. Code § 1794, in an amount either to be stipulated, or determined by the Court if the parties could not agree. The parties could not agree, so Plaintiff brought the instant motion.

Plaintiff seeks a total of $47,462.98 in fees and costs, consisting of a lodestar of $30,750.00, a multiplier of 1.5 totaling $15,375.00, and costs in the amount of $1,346.57. Plaintiff represents that several attorneys worked on Plaintiff's case and billed the following amounts at the following rates:

1) Sepehr Daghighian, partner, 19+ years experience, 19.1 hours, $625 per hour
2) Michael H. Rosenstein, partner, 30+ years experience, 2.8 hours, $700 per hour
3) Brian T. Shippen-Murray, senior associate, 0.4 hours, $550 per hour
4) Alastair Frederick Hamblin, associate, 26.20 hours, $550 per hour
5) Miguel A. Ortiz, associate, 3.5 hours, $525 per hour

II. The Loadstar

The standard for calculating attorney fee awards under California law,

> [O]rdinarily begins with the 'lodestar,' i.e., the number of hours reasonably expended multiplied by the reasonable hourly rate…The lodestar figure may then be adjusted, based on consideration of factors specific to the case, in order to fix the fee at the fair market value for the legal services provided. [Citation.] Such an approach anchors the trial court's analysis to an objective determination of the value of the attorney's services, ensuring that the amount awarded is not arbitrary.

(*PLCM Group, Inc. u. Drexler* (2000) 22 Cal.4th 1084, 1095.) In calculating the lodestar, "The reasonable hourly rate is that prevailing in the community for similar work." (*Ibid*.) "[T]he trial court has broad authority to determine the amount of a reasonable fee." (*Ibid*.) "The determination of what constitutes reasonable attorney fees is committed to the discretion of the trial court. [Citation.] The experienced trial judge is the best judge of the value of professional services rendered in his or her court. [Citation.]" (*Rey v. Madera Unified School Dist.* (2012) 203 Cal.App.4th 1223, 1240.)

The Court finds that the hourly rates are not reasonable based on the expected rate in Sonoma County for similar work. The "experienced trial judge is the best judge of the value of professional services rendered in his court…" (*Serrano v. Priest* (1977) 20 Cal.3d 25, 49 (internal citation omitted).) A court is entitled to rely on its own practical experience in determining what is a proper rate within the community. (See *Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1009 (*Heritage Pacific Financial*) ["The court may rely on its own knowledge and familiarity with the legal market in setting a reasonable hourly rate"];

accord, *569 East County Boulevard LLC v. Backcountry Against the Dump, Inc.* (2016) 6 Cal.App.5th 426, 437 (*569 East County Boulevard*).)

Plaintiff cites several United States District Court cases to show that numerous courts have relied on the Real Rate Report in approving attorneys' rates. None of these cases involve Sonoma County or the Sonoma County local market. Plaintiff's argument that "CCA's attorneys charge lower rates than most litigators in the Los Angeles metro area" does not assist the Court in determining reasonable hourly rates in the Sonoma County area. The Court finds the hourly rates reflected in the list below to be reasonable considering the locality.

The Court finds the number of hours expended to be reasonable. Defendant argues that the hours should be reduced and offers a breakdown of where such reductions should occur. The Court does not agree. The Court finds that the overall number of hours sought, 52 hours, is reasonable considering the duration of this case and amount of work necessary.

Accordingly, the following totals shall be awarded:

1) Sepehr Daghighian, partner, 19.1 hours, $600 per hour – total: $11,460
2) Michael H. Rosenstein, partner, 2.8 hours, $650 per hour – total: $1,820
3) Brian T. Shippen-Murray, senior associate, 0.4 hours, $550 per hour – total: $220
4) Alastair Frederick Hamblin, associate, 26.20 hours, $500 per hour – total: $13,100
5) Miguel A. Ortiz, associate, 3.5 hours, $500 per hour – total: $1,750

Accordingly, the total lodestar is $28,350.00.

III. The Multiplier

"[A] contingent fee contract, since it involves a gamble on the result, may properly provide for a larger compensation than would otherwise be reasonable." (*Rader v. Thrasher* (1962) 57 Cal.2d 244, 253.) "The 'experienced trial judge is the best judge of the value of professional services rendered in his court…'" (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.) The relevant factors in determining the proper multiplier include,

> (1) the novelty and difficulty of the questions involved, (2) the skill displayed in presenting them, (3) the extent to which the nature of the litigation precluded other employment by the attorneys, (4) the contingent nature of the fee award.

(*Ibid*.)

Plaintiff seeks a multiplier of 1.5. (Plaintiff states "0.5" in his brief, but this would reduce the lodestar by half. Based on the amount sought, the Court assumes Plaintiff meant 1.5.) Defendant argues against a multiplier on the basis that there was "nothing unusual or complex about this particular case."

The Court is not awarding the full 1.5 multiplier requested as the case appears to be routine for Song-Beverly matter, did not require any particularized skill, and there has been no representation that the nature of this litigation precluded Plaintiff's counsel from other employment. However, the contingent nature of the of the case inherently represents some basis for a multiplier. Therefore, the multiplier of 1.1 is appropriate. $28,350.00 in fees with a 1.1 multiplier results in a total fee award of $31,185.00.

IV. Costs

Plaintiff seeks $1,346.57 in actual costs. Defendant argues against the costs on the basis that the evidence provided in support of the costs is insufficient. Plaintiff supports his costs by providing the declaration of his attorney, attached to which are billing statements that reflect the requested costs. This evidence is sufficient to support the cost request. However, the billing statements only reflect $1,337.98 in incurred costs. Therefore, costs are granted in the amount of $1,337.98.

V. Conclusion

Plaintiff's motion for fees and costs is **GRANTED**. Total fees are granted in the amount of $31,185.00. Costs are granted in the amount of $1,337.98. The total cost and fee award is $32,522.98.

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).

3. 25CV02498, Norguard Insurance Company v. Janicrew of Marin, Inc.

Petitioner Tanja Beck ("Plaintiff") filed a complaint (the "Complaint") against Janicrew of Marin, Inc. ("Defendant") and Does 1-100. This matter is on calendar for Plaintiff's motion to strike the Defendant's Answer for being filed in a manner that constitutes the unlicensed practice of law under CCP § 435-437.

I. Legal Standards

A. 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, any basis must be demonstrated by reference to the pleading itself or of judicially noticeable matters, not extraneous facts. *See* CCP § 437.

B. Appearances in Court by Corporations

"No person shall practice law in California unless the person is an active licensee of the State Bar." Bus. & Prof. Code, § 6125. "Under the statute, a person who is not a licensed attorney cannot appear in court for another person." *Estate of Sanchez* (2023) 95 Cal.App.5th 331, 339. "A corporation cannot represent itself in court, either in propria persona or through an officer or

agent who is not an attorney." *Merco Constr. Engineers, Inc. v. Municipal Court* (1978) 21 Cal.3d 724, 729. The remedy for a filing by a corporation appearing without counsel is to strike the pleading with leave to amend, as lack of counsel is a curable defect. *CLD Construction, Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1146.

II. Motion to Strike

Defendant is a corporation. On review of the pleading, it is apparent that Defendant has filed the Answer without the appearance of counsel. The Answer lists Janicrew of Marin, Inc. and is signed by Maria Chumpitaz. However, there is no presumption raised in the Answer indicating that Chumpitaz is an attorney licensed to practice law in California. The appropriate remedy thereon is to strike the Answer.

Therefore, the motion to strike the Petition is **GRANTED with leave to amend**. Defendant has 30 days from notice of this order to file an amended answer through counsel.

III. Conclusion

Based on the foregoing, the motion to strike is **GRANTED with leave to amend**.

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).

4-5. 25CV04454, Rebentisch v. FCA US LLC

Plaintiffs Janelle Rebentisch and Delton R Rebentisch (together "Plaintiffs") filed the complaint (the "Complaint") against defendants FCA US, LLC ("Manufacturer"), Healdsburg Chrysler Dodge Jeep Ram ("Repair Facility", together with Manufacturer, "Defendants") 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"), negligent repair, and fraudulent inducement – concealment.

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 for Manufacturer's motion to strike punitive damages from the Complaint under CCP § 436. As to the sixth cause of action, the Demurrer is **SUSTAINED with leave to amend.** The demurrer to the third cause of action is **OVERRULED. The motion to strike is GRANTED with leave to amend.**

I. 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 Punitive Damage

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.

Civil Code § 3294 authorizes the recovery of punitive damages in noncontract cases "where the defendant has been guilty of oppression, fraud, or malice…" "Malice" means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. "Fraud" means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury. Civ. Code § 3294. A conscious disregard for the safety of others may constitute malice. *G. D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 28 ("*Searle*"). "When nondeliberate injury is charged, allegations that the defendant's conduct was wrongful, willful, wanton, reckless or unlawful do not support a claim for exemplary damages; such allegations do not charge malice." *Id.* at 29. "The central spirit of the exemplary damage statute, the demand for evil motive, is violated by an award founded upon recklessness alone." *Id.* at 32. "Conscious disregard of safety as an appropriate description of the Animus malus which may justify an exemplary damage award when nondeliberate injury is alleged." *Ibid.* "In order to justify an award of punitive damages on this basis, the plaintiff must establish that the defendant was aware of the probable dangerous consequences of his conduct, and that he wilfully and deliberately failed to avoid those consequences." *Taylor v. Superior Court* (1979) 24 Cal.3d 890, 895-896. 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 (superseded by statute on other grounds).

For an employer to be liable for punitive damages for the actions of an employee, it must be shown that "the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice." Civ. Code § 3294(b). "With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation." *Ibid*. An employer's failure to discipline an employee after the employee commits an intentional tort, can be found to be ratification of that tortious conduct. *Iverson v. Atlas Pacific Engineering* (1983) 143 Cal.App.3d 219, 228. Where punitive damages are alleged against an employer under Civ. Code § 3294 (b), the knowledge on the part of the employer stands as their equivalent of oppression, fraud or malice otherwise required under Civ. Code § 3294 (a); no oppression, fraud or malice on the part of the employer need be shown. *Weeks v. Baker & McKenzie* (1998) 63 Cal.App.4th 1128, 1154. Plaintiff must plead facts sufficient to show either knowledge or ratification by an officer, otherwise claims for punitive damages are inadequately pled. *Hart v. National Mortgage & Land Co.* (1987) 189 Cal.App.3d 1420, 1433.

C. 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 to two causes of action: the Third cause of action for failure to provide parts and repair literature to repair facilities, and the Sixth cause of action for fraudulent inducement - concealment. First, Manufacturer claims that Plaintiffs has failed to plead adequate facts to meet the specificity required for fraud claims. Second, Manufacturer argues that Plaintiffs have failed to plead a cause of action due to the economic loss rule. Manufacturer also contends that Plaintiffs have not pled agency. Plaintiffs have filed an opposition.

A. Violation of Civ. Code § 1793.2 (a)(2).

Manufacturer contends the third cause of action is not viable because it has no distinct damages from the preceding causes of action for other Song-Beverly violations. While Manufacturer cites several cases, each is readily distinguishable from the instant Complaint.

Manufacture's reliance on *Paterno v. State of California* (1999) 74 Cal.App.4th 68, 109 and *Palm Springs Villas II Homeowners Assn., Inc. v. Parth* (2016) 248 Cal.App.4th 268, 290, are misplaced. In those cases, plaintiffs had alleged either overlapping torts (*Paterno*) or overlapping contractual violations (*Palm Springs*). The instant case is primarily comprised of *statutory* violations. To that effect, statutes may proscribe various forms of conduct, and Manufacturer is obligated to comply with all applicable statutes.

Manufacturer's last citation is perhaps the least applicable. In *Rodrigues v. Campbell Industries* (1978) 87 Cal.App.3d 494, 498, plaintiff had pled five causes of action, the fifth of which was a conclusory mishmash of the preceding four without any articulable separation. *Id*. "The fifth cause of action combines all the preceding causes, alleging they are joint and concurrent causes of plaintiffs' damages." *Ibid*. Here Plaintiffs have pled a distinct statutory violation. Plaintiffs aver that the Vehicle could not be repaired because Manufacturer failed to keep its repair facilities equipped with appropriate parts for repair and failed to provide the necessary literature to inform those facilities how to repair defects. This is a statutory obligation which may be related to the obligation to repair or repurchase but independently may cause delay or insufficiency of repair. To the degree that the Plaintiffs' remedy overlaps, the remedy for Song-Beverly claims *almost always* overlaps. The remedy as applied to vehicles is typically repurchase, attorney's fees, and possible treble damages for willful failures to repurchase. That Plaintiffs' remedy is the same does not mean that they do not have multiple avenues by which they might obtain that remedy. Defendant has statutory obligations, and those obligations may act as independent theories for Plaintiffs' recovery. Manufacturer provides no applicable authority to the contrary.

As to the third cause of action, the demurrer is OVERRULED.

B. Fraudulent Inducement - Concealment

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*"). Plaintiffs cite it extensively, and it is clearly applicable precedent, though detrimental to Manufacturer's case. *Dhital* is binding. *Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1 still provides overriding authority to the degree they conflict, but *Dhital* analyzes a host of questions which are at issue in the instant demurrer. The Court in *Rattagan* expressly stated that it was not addressing the issues in *Dhital*. *Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1, 41, fn. 12. 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.

1. Economic Loss Rule

Manufacturer avers that the claim for fraudulent inducement fails due to the factors expressed by the *Rattagan* court regarding fraudulent concealment. Manufacturer is correct that the Court need look no further than *Rattagan*, where they err is the required result. 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.

2. Direct Relationship

Manufacturer avers that there is no basis for disclosure, because Plaintiffs have failed to allege agency of the dealerships. This is a red herring, as the existence of a direct relationship between Manufacturer and Plaintiffs eliminates any necessity of agency allegations. *Dhital* offers clear authority on this point.

> 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.

Here, as with *Dhital*, Plaintiffs have alleged that the Vehicle was issued with an express warranty by Manufacturer to Plaintiffs, creating a direct contractual relationship between them. See FAC ¶¶ 7, 8. 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 Plaintiffs fail to show the seller had agency is misleading and off-point. 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.

3. Allegations of Knowledge and Ratification

Manufacturer asserts that the Complaint does not allege adequate facts for Plaintiffs to have laid a foundation of knowledge or ratification on which disclosure would be necessary as a corporate defendant. Manufacturer contends that Plaintiffs must plead particular factual elements to plead knowledge for fraudulent concealment.

Generally, when pleading scienter for fraud, conclusory allegations may be sufficient, because Plaintiffs have no capacity to obtain the specifics of such matters until discovery occurs. If Manufacturer were correct, there would be no viable manner for plaintiffs to ever make fraudulent concealment claims at the outset of cases. Other forms of fraudulent concealment claims are unambiguous in allowing general pleading of knowledge. *Chavez v. Alco Harvesting, LLC* (2024) 102 Cal.App.5th 866, 872. When pleading knowledge for fraudulent concealment, the conclusion that Manufacturer knew and withheld the relevant information appears to be sufficient. *Stevens v. Superior Court* (1986) 180 Cal.App.3d 605, 607.

Manufacturer points the Court to *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550, quoting "[A] pleading made on information and belief is insufficient if it 'fails to allege specific facts upon which the belief is founded.'". This cite it problematic as Manufacturer offers a **fictionalized quotation directly at odds with the holding of the case.** The only part of that quote that appears in the decision is at a different pin cite and is a restatement of the holding of the court of appeal below, stating, "Other information and belief allegations, involving facts that may have been peculiarly within the knowledge of defendants, were improperly pled because they were 'unsupported by any 'statement of the facts upon which the belief is founded.' " *Id*. at 542. Our supreme court was clear that the court of appeal's application of this was erroneous. "Moreover, '[p]laintiff may allege on information and belief any matters that are not within his personal knowledge, if he has information leading him to believe that the allegations are true.'" *Id*,. at 550. The high court immediately follows that statement by noting that "we agree with plaintiffs that the doctrine of less particularity may be especially appropriate in this setting." *Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550. While the high court still found that Plaintiffs had not alleged a requisite fact, even in a conclusory manner, Manufacturer's representations are a blatant misstatement of the case.

For the purposes of determining whether Plaintiffs have sufficiently alleged either Manufacturer's knowledge, or their active concealment, conclusory allegations of scienter must be sufficient. While Manufacturer opines that corporate defendants are entitled to specificity of who made particular misrepresentations to a plaintiff, courts are quick to point out that fraudulent concealment claims do not always contain affirmative misrepresentations, and accordingly they are not required to be particularly pled in that regard unless partial concealment is alleged.

With that addressed, Plaintiffs do make conclusory allegations of partial concealment, averring that they saw various marketing materials, but without averring any particular marketing material. This is not the form of facts which Manufacturer would have superior knowledge, in fact quite the opposite. Plaintiffs' claim of partial concealment fails as a result. Given that Plaintiffs have sufficiently pled active concealment and exclusive knowledge, the effect of failing to plead an alternative theory is minimal. Nonetheless, Plaintiffs' cause of action is not without defect.

4. Pleading With Specificity

Nonetheless, the Demurrer finds purchase in the failure to provide adequate specificity of Plaintiffs' harm. Manufacturer persuasively asserts that the Complaint fails to state that the withheld information regarding a defect is not alleged to be the defect present in the Vehicle. Plaintiffs have not particularly offered any allegation of *what* defect is in the vehicle. Plaintiffs allege defects and nonconformities that cover the entire vehicle, but offers no factual allegation regarding for what issues the Vehicle was tendered for repair. Complaint ¶ 12. This is purely conclusory form pleading which offers no facts on which to inform Manufacturer or the Court of the purported defect. Plaintiffs offer a conclusion without supportive factual pleading. Plaintiffs' burden in making allegations of fraudulent concealment is to allege the fraudulently concealed issue, and *resulting damage.* Plaintiffs make allegations of what the common problems are with the same E-Torque system in the Vehicle, but does not allege facts showing 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. Plaintiffs must allege damages with more specificity.

The demurrer is SUSTAINED with leave to amend as to the sixth cause of action.

IV. Strike Punitive Damages

As the Court has held above, Plaintiffs have not adequately alleged fraud, and accordingly their claims for punitive damages are not supported by "fraud, oppression, or malice". Accordingly, the motion to strike is GRANTED with leave to amend.

V. Conclusion

Based on the foregoing, the Demurrer is **OVERRULED as to the third cause of action and SUSTAINED with leave to amend as to the sixth cause of action**. Manufacturer's motion to strike is **GRANTED 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).

6-7. SCV-245738, Liebling v. Goodrich

This matter is the subject of an enormous record, containing innumerable plaintiffs and defendants. As is relevant here, plaintiffs prevailed in the action and obtained the August 4,

2021, judgment (the "Judgment") against defendant Robert E. Zuckerman ("Zuckerman"). Among the plaintiffs/judgment creditors is Richard Abel ("Abel").

This matter is on calendar for a motion by Abel for an order to show cause re: contempt against Zuckerman for failure to comply with the Court's November 18, 2024, Turnover order. Abel has also filed a motion to hold a third party, Capital One, N.A. ("Capital One"), liable under CCP § 701.020, or in the alternative for the Court to issue an Order to Show Cause re: Contempt as to Capital One's non-compliance with an assignment order.

THE ORDER TO SHOW CAUSE RE: CONTEMPT ISSUES AS SET FORTH BELOW.

The motion for third party liability is CONTINUED to the date below. Capital One is JOINED as a potential judgment debtor.

I. Facts and Procedural History

Abel was among the plaintiffs who obtained the Judgment against Zuckerman ,who has thus far not satisfied the amount owed under it. Abel obtained an order for Assignment on January 25, 2018 (the "Assignment"). Thereafter, he contacted Capital One in an effort to serve the Assignment, and did so on July 21, 2023, again on August 13, 2023, a third time on January 18, 2024, and most recently on December 26, 2024. These notices have produced intermittent seizures of funds.

On November 18, 2024, Abel obtained an order for Turnover in Aid of Execution ("Turnover Order") requiring Zuckerman to turn over substantial amounts of documentary evidence regarding specific alleged business interests. The Turnover Order was personally served on Zuckerman on March 20, 2025. See Abel's Proof of Service, filed 4/7/2025.

Abel contends that Capital One has violated the Assignment by failing to either freeze accounts or remit all funds not otherwise exempt, including a credit rewards account. He also alleges that Zuckerman has not turned over the documents required by the Turnover Order. The matter was previously continued for service of the hearing date on both Capital One and Zuckerman.

II. Governing Law

A. Liability for Judgments Attributable to Third Parties

"If a third person is required by this article to deliver property to the levying officer or to make payments to the levying officer and the third person fails or refuses without good cause to do so, the third person is liable to the judgment creditor for … the amount of the payments required to be made." CCP, § 701.020 (a). Liability for third parties may be adjudicated within the underlying judgment case. *Bergstrom v. Zions Bancorporation, N.A.* (2022) 78 Cal.App.5th 387, 401. Good cause constitutes a defense to third party liability as applied to CCP § 701.020. *Id*. at 400.

B. Legal Authority for Contempt

Contempt includes "[d]isobedience of any lawful judgment, order, or process of the court." Cal. Code Civ. Proc. ("CCP") § 1209(a)(5). When contempt is committed in the court's immediate view and presence, it is termed "direct contempt" and may be treated summarily and no affidavit or order to show cause is required. All that is needed is that an order be made reciting the facts, the person adjudged guilty, and the punishment prescribed. CCP § 1211; *see also In re Hallinan* (1969) 71 Cal.2d 1179, 1180. By contrast, when the contempt is not committed in the immediate presence of the court, it is termed an "indirect contempt," and the procedural requirements are more complex. *See* CCP §§ 1211-1218. "[A]n affidavit must be presented to the court stating the facts constituting the contempt, an order to show cause must be issued, and hearing on the facts must be held by the judge." *Arthur v. Sup.Ct.* (1965) 62 Cal.2d 404, 407-08; *see also* CCP §§ 1211-1212.

The facts that must be established by the "initiating affidavit" include: (1) the rendition of a valid order; (2) actual knowledge of the order; (3) ability to comply; and, (4) willful disobedience of the order. *Anderson v. Sup. Ct.* (1998) 68 Cal.App.4th 1240, 1245; *see also Conn v. Sup. Ct.* (1987) 196 Cal.App.3d 774, 784. Although an affidavit stating all facts constituting guilt of the offense is a jurisdictional prerequisite (*Groves v. Sup. Ct*. (1944) 62 Cal.App.2d 559, 568), a court "may order or permit amendment of such affidavit or statement for any defect or insufficiency at any stage of the proceedings" (CCP § 1211.5(b)) and non-prejudicial defects in form do not provide any basis to set aside a conviction of contempt. CCP § 1211.5(c). However, the affidavit must be supported by factual statements. CCP § 1211.5(a). The initiating affidavit and warrant or OSC must be personally served**.** CCP §§ 1015-1016.

Moreover, because of the penalties imposed, a proceeding to punish an accused for contempt is criminal in nature, and guilt must be established beyond a reasonable doubt. *Bridges v. Sup. Ct.* (1939) 14 Cal.2d 464, 485 (rev'd. on other grounds sub nom. *Bridges v. State of California* (1941) 314 U.S. 252). A party charged with contempt is entitled to the same protections as a criminal defendant, including an advisement of rights and access to counsel if a party is indigent. *In re Kreitman* (1995) 40 Cal.App.4th 750, 753; *County of Santa Clara v. Superior Court* (1992) 2 Cal.App.4th 1686, 1697; *see also* Gov. Code, § 27706. The Court may not find the respondents in contempt in their absence unless the court finds, based on evidence presented, that the absence is voluntary. *Farace v. Sup.Ct*. (1983) 148 Cal.App.3d 915, 918.

A party charged with civil contempt is entitled to a trial. CCP § 1217. The right to a jury trial for civil contempt only applies if the proposed sentence exceeds 180 days. *Mitchell v. Superior Court* (1989) 49 Cal.3d 1230, 1239; *In re Kreitman* (1995) 40 Cal.App.4th 750, 753. "(A)ffirmative allegations contained in an affidavit of the defendant in contempt proceedings for the disobedience of an injunction **cannot be deemed established without a trial** to determine the issues so joined". *Lindsley v. Superior Court of Cal., in and for Humboldt County* (1926) 76 Cal.App. 419, 426 (emphasis added).

> "The affidavits upon which the orders to show cause were issued served as the complaint charging the contempt. They might also serve as evidence at the hearing but they did not constitute such evidence until offered and received by the court, and upon their being offered petitioner would have the

> right to object to any matter stated therein upon any proper legal ground as to its relevancy or competency. In the proceedings here he would also have the right, if the evidence was offered and received, to cross-examine the affiant (Citation)"

Collins v. Superior Court In and For Los Angeles County (1957) 150 Cal.App.2d 354.

III. Motion to Hold Capital One Liable, or Issue an OSC

This motion was previously continued for Capital One to be properly served with the motion. Capital One has filed an opposition to the motion averring that they cannot be held liable, and that if the Court were inclined to hold them liable, they must be joined to the case. Zuckerman has also filed an opposition. Abel has filed a Reply responding to both.

As an initial matter, Abel shows that Capital One was properly served with the levy, and that subsequently funds have passed through the relevant account.

Capital One opposes on the principles of due process, as they are not a party to this case, and they aver that what they communicated to Abel was that Zuckerman had no leviable funds "in the State of California." This contention is pure argument, as Capital One provides no evidence in support of their opposition. The question remains whether this Court may exert jurisdiction over them despite their status as a non-party.

Zuckerman argues in opposition that his social security payments are automatically exempt from any garnishment or assignment. See CCP § 704.080(b)(2). He also argues that other moneys received are gifts from his sons, "necessary for support" under CCP § 704.225. Zuckerman's arguments are persuasive in part. His reliance on CCP § 704.225 is not effective, as he provides no authority showing that such exemptions under CCP § 704.225 are not required to be raised affirmatively or otherwise waived. See CCP § 703.030(a). However, the claim of exempt funds under CCP § 704.080 (b)(2) is *automatic* and therefore may act to omit some of those funds at issue. So long as the Capital One account was subject to direct deposit of social security payments, an exemption of $3,500 would have applied automatically. Zuckerman at least adequately raises substantial questions of fact as to what portion of the averred leviable amount might be subject to automatic exemption, subject to evidence that the Capital One account was the recipient of direct social security deposits. This is an evidentiary issue.

Abel cites to *Bergstrom v. Zions Bancorporation, N.A.* (2022) 78 Cal.App.5th 387. As a matter of law, Abel is incorrect that joinder is not required to hold Capital One liable for those non-exempt funds they refused to hold in spite of proper service of the levy. The sentence on which Abel likely relies is "Zions argues that it may not be held liable because plaintiff did not join CSC as a defendant in her lawsuit." *Bergstrom v. Zions Bancorporation, N.A.* (2022) 78 Cal.App.5th 387, 405. This is a contention that an *agent* (CSC) was not joined to a case where the principal (Zions) was being held liable under CCP § 701.020 for failure to garnish a debtor. That is materially distinguishable from the contention that a principal (Capital One, or Zions) need not be joined. Capital One is persuasive that its joinder is at the very least the most effective way to ensure due process.

Additionally, Abel is not persuasive that motions under CCP § 701.020 are summary processes by which a non-party can be held liable without opportunity to present evidence or mount a defense. Abel's position regarding the imposition of third-party liability as a matter of a motion without evidentiary hearing is defied by his own cited authorities. *Bergstrom v. Zions Bancorporation, N.A.* (2022) 78 Cal.App.5th 387 points to various issues which are clearly issues of fact to be determined with evidentiary showing. The trial court in that case continued the matter for multiple rounds of briefing and hearings. *Id*. at 397. It is a substantial question whether Capital One knew of the levy, or whether they had reason to believe that the property they were in receipt of was exempt under CCP § 704.080. It is reasonably probable, given Zuckerman's averment that some funds were gifts not apparently subject to CCP § 704.080, that some funds for which Abel claims Capital One was liable were exempt, and some were not. There is also the issue of Capital One's continued averment that there were no leviable funds within this state. The continued assertion of this conclusion without supporting facts or authority thereon deserves a final opportunity to be explored.

Capital One is JOINED to this matter as a possible judgment debtor. The motion for imposition of third-party liability as to Capital One is **CONTUNUED to June 24, 2026, at 3:00 p.m. in Department 19.** All interested parties will file any supplemental briefing and evidence by May 26, 2026. If there is apparent need for testimony, the Court will set an evidentiary hearing thereafter.

IV. Issuance of an Order to Show Cause re: Contempt as to Zuckerman

Zuckerman was served with all documentation related to the instant motion. The Court has reviewed the initiating affidavits and determined that Zuckerman allegedly has the ability to comply with the Turnover Order, which only relates to files allegedly within his custody and control. As such, the initiating affidavits are sufficient to issue the Order to Show Cause. In fact, per the affidavits submitted, Zuckerman has undertaken no efforts to comply with the orders of the Court, or even discuss the Turnover Order with Abel. Zuckerman will have the opportunity to address the merits of the charging allegations at the OSC.

Therefore, at the specified date and time, the Court will investigate the charge, hear any answer, and allow examination of witnesses. CCP § 1217. Each of the following must be established: facts establishing Court's jurisdiction (*e.g.*, personal service, validity of the order violated, etc.); the Defendant's knowledge of the order disobeyed; the Defendant's ability to comply; and the Defendant's willful disobedience of the order. *In re Jones* (1975) 47 Cal.App.3d 879, 881; *see also People v. Gonzalez* (1996) 12 Cal. 4th 804, 816. An adjudication for indirect contempt requires that the record contain "substantial evidence that the contemner willfully and contemptuously refused to obey the order of the court." *Oliver v. Sup. Ct.* (1961) 197 Cal.App.2d 237, 240. The maximum punishment is up to $1,000 in fine or 5 days in jail, or both, for each act of contempt. CCP § 1218(a). The court also may also order the contemnor to pay the reasonable fees and costs of the party initiating the proceedings. CCP § 1218(a).

An Order to Show Cause re: contempt "must be served personally." *In re Koehler* (2010) 181 Cal.App.4th 1153, 1169. "The order to show cause acts as a summons to appear in court on a

certain day and, as its name suggests, to show cause why a certain thing should not be done. [Citation.] Unless the citee has concealed himself from the court, he must be personally served with the affidavit and the order to show cause; *otherwise, the court lacks jurisdiction to proceed*." *Cedars-Sinai*, 83 Cal.App.4th 1281, 1286-87 (emphasis in original).

Zuckerman is ordered to appear and show cause on April 14, 2026, at 3:00 p.m. in Department 19, located at 3055 Cleveland Avenue, Santa Rosa, as to why the Court should not find him to be in contempt for disobedience of the Turnover Order, namely the failure to provide all files in his custody and control within the categories defined by the Turnover Order. In-person appearances by all parties is REQUIRED for this OSC Hearing.

V. Conclusion

The motion for issuance of an Order to Show Cause re: Contempt as to Zuckerman is **GRANTED**. The hearing on the Order to Show Cause will on April 14, 2026, at 3:00pm in Dept. 19.

Capital One is JOINED to this matter as a possible judgment debtor. The motion for imposition of third-party liability as to Capital One is **CONTUNUED to June 24, 2026, at 3:00 p.m. in Department 19.** All interested parties will file any supplemental briefings and evidence by May 26, 2026. If there is apparent need for testimony, the Court will set an evidentiary hearing thereafter.

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