TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, June 10, 2026 3:00 pm
Courtroom 19 – Covered by Hon. Jeanine Nadel for 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. 24CV07397, Lundborg v. Ford Motor Company

Plaintiff Kevin Lundborg ("Plaintiff") filed the currently operative complaint (the "Complaint") in this action against defendants Ford Motor Company ("Manufacturer"), W.C. Sanderson Ford ("Repair Facility, together with Manufacturer, "Defendants"), and Does 1-10. The Complaint contains causes of action for: 1) breach of express warranty through failure to repair or replace under the Song-Beverly Consumer Warranty Act, Civ. Code § 1790 et seq. (the "Act") (Civ. Code § 1793.2(d)); 2) Failure to Timely Repair Under the Act (Civ. Code § 1793.2(c)); 3) Failure to Maintain Service Literature and Parts Under the Act (Civ. Code § 1793.2(a)(3)); 4) Breach of Implied Warranty Under the Act (Civ. Code §§ 1792-1792.1); 5) Fraudulent Inducement - Concealment; and 6) Negligent Repair.

This matter is on calendar for motion by Manufacturer for summary judgment pursuant to Cal. Code Civ. Proc. ("CCP") § 437c. Manufacturer's motion for summary judgment is **GRANTED**.

I. Evidentiary and Procedural Issues

A. Requests for Judicial Notice and Objections

While Plaintiff submits numerous requests for judicial notice, Manufacturer has objected to each on various bases, but particularly argues that the matters submitted for judicial notice are not properly considered under Evid. Code § 452. Plaintiff misapprehends the purpose and basis of judicial notice.

Judicial notice of official acts and court records is statutorily appropriate. See Cal. Evid. Code § 452(c) and (d) (judicial notice of official acts). The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under CCP § 452. CCP § 453. However, the court may, on its own motion, take judicial notice of any matter under CCP § 452. 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 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. Additional information which is included in the documentation or contentions as to the truth of the contents is not appropriate for judicial notice. *Id.* Discovery documents that are not part of the filed records of the court are not capable of being judicially noticed. *People v. Nadey* (2024) 16 Cal.5th 102, 208. Discovery responses are not properly the subject of judicial notice. *TSMC North America v. Semiconductor Manufacturing Internat. Corp.* (2008) 161 Cal.App.4th 581, 594, fn. 4.

There are multiple issues with Plaintiff's requests for judicial notice. First, As to RPOD Ex. 1-17 Plaintiff flatly avers that the documents are "part of the public record" because they were "unsealed" in a federal court case. The only information provided as to each document are the Bates numbers, or that they are deposition transcripts. None of these matters provide the Court with sufficient information to determine whether these records are *filed* with a court. Plaintiff jumps to the conclusion that they are public because they are not sealed, but that appears insufficient, as these otherwise appear to be entirely discovery documents not normally on file with the court. Unfiled discovery documents are not properly the subject of judicial notice. *People v. Nadey* (2024) 16 Cal.5th 102, 208. Plaintiff provides no evidence the documents at issue are filed within the other case. Similarly, Exhibit 18 is also argued to be "public", but Plaintiff provides *no* exposition on how such documents were public. This is far from sufficient information for the Court to determine whether the matters are part of the public record.

Second, Plaintiff's request for judicial notice would be insufficient to allow the Court to draw the argued conclusions. Judicial notice merely allows the Court to notice the existence of the documents in a court's file, "not the truth of its hearsay contents". *People v. Nadey* (2024) 16 Cal.5th 102, 208. Discovery responses are not properly the subject of judicial; notice. *TSMC North America v. Semiconductor Manufacturing Internat. Corp.* (2008) 161 Cal.App.4th 581, 594, fn. 4. The existence of these documents does not provide the evidentiary proposition that Plaintiff advances. Given that the truth of the document's content is not a matter for judicial notice, the request is for the Court to take notice of an irrelevant matter. Accordingly, there is no basis to grant judicial notice. Manufacturer's objections are SUSTAINED and Plaintiff's requests for judicial notice are DENIED.

Nor may the Court jump to simply considering the matters as evidence. Had these matters been submitted as evidence, they would be subject to various objections (that Manufacturer asserts in the alterative) regarding the lack of foundation for the documents provided. The Court would not consider the matters as evidence when submitted under a request for judicial notice, nor would it be admissible evidence even if the Court were to do so.

Nowhere within Plaintiff's Separate Statement in Opposition does Plaintiff cite to evidence *other* than their requests for judicial notice. Accordingly, none of the facts reliant thereon are supported by evidence. Plaintiff also submitted a personal declaration, but it is not referred to anywhere in the separate statement. If it is omitted from the separate statement, "it does not exist." *O'Byrne v. Santa Monica-UCLA Medical Center* (2001) 94 Cal.App.4th 797, 800, fn. 1.

B. Separate Statement Deficiencies

Plaintiff's separate statement in opposition is subject to *numerous* procedural deficiencies. First, Plaintiff, *for each UMF*, must state whether the fact is disputed or undisputed. CCP § 437c (b)(3). Plaintiff properly responds by stating either disputed or undisputed only twice. See Plaintiff's Separate Statement of Disputed and Undisputed Material Facts ("PSS"), ¶ 1, 16. This is relevant because a fact within the separate statement being undisputed waives any evidentiary objections to the support for that fact. *Hurley Construction Co. v. State Farm Fire & Casualty Co.* (1992) 10 Cal.App.4th 533, 540–541. Moreover, if Plaintiff disputes a material fact, evidence showing that the matter is disputed must be cited. CCP § 437c (b)(3).

Moreover, while Plaintiff never uses the word "objection", they repeatedly assert what appears to be objections within the separate statement. "All written objections to evidence must be served and filed separately from the other papers in support of or in opposition to the motion. Objections to specific evidence must be referenced by the objection number in the right column of a separate statement in opposition or reply to a motion, but the objections must not be restated or reargued in the separate statement." Cal. Rules of Court rule 3.1354. Given that Plaintiff has not properly asserted any objections, any contentions thereon are disregarded.

Nor does the Court consider Manufacturer's Separate Statement on Reply. The statute explicitly prohibits production of evidence on reply. CCP § 437c (b)(4). There is no statutory basis for the moving party being able to file a responsive separate statement on reply. In short, it is unauthorized and therefore disregarded.

II. <u>Underlying Facts</u>

Plaintiff purchased a 2018 Ford F150 (the "Vehicle") from on May 15, 2018. Manufacturer's Separate Statement of Undisputed Facts ("MUMF") ¶ 1. The Vehicle was sold with a three year/36,000-mile Bumper to Bumper Warranty; and a five year/60,000-mile Powertrain Warranty. MUMF ¶ 15. No repairs were performed for matters covered by warranty during the warranty periods. MUMF ¶ 16. On October 22, 2021, at 22,292 miles, the Vehicle was presented for the brake lights staying on intermittently even when the Vehicle was off. MUMF ¶ 17. This issue fell under the bumper to bumper warranty, which had already expired on May 15, 2021. MUMF ¶ 18. On May 18, 2022, at 23,649 miles, the Vehicle was presented for the taillights

staying on even when the Vehicle was off and the Vehicle additionally indicated it was "not properly in park." MUMF ¶ 19. The BCM was replaced, and the dealer found an aftermarket brake controller backfeeding into the circuit was the cause of the issue. MUMF ¶ 19. This issue fell under the already expired bumper to bumper warranty. MUMF ¶ 20. On August 26, 2024 at 31,153 miles, the Vehicle was presented for a check engine light being illuminated and the brake light being out, resulting in the brake light being replaced. MUMF ¶ 21. At this point, both the bumper to bumper and powertrain warranties were expired. MUMF ¶ 22. On September 16, 2024, at 31,703 miles, the Vehicle was presented for repair and the dealership determined that the map sensor needed replacement. MUMF ¶ 23. There were no active warranties at that time. MUMF ¶ 24. On May 23, 2025, at 38,132 miles, a recall repair to the Powertrain Control Module was performed, absent any indication there was a correlating issue with the Vehicle. MUMF ¶ 25. No warranty was in place at the time. MUMF ¶ 26. The Vehicle has only been in service for repair for 10 days across all the repair incidents. MUMF ¶ 27. None of the repair orders for the repair incidents indicate that the service facility lacks sufficient information to repair the Vehicle, or lacks the parts to do so. MUMF ¶ 28.

Plaintiff filed the instant case on December 9, 2024. MUMF ¶ 2. Plaintiff alleges that the Vehicle was sold with a transmission defect, and that he purchased the Vehicle due to the inducement of Manufacturer. MUMF ¶¶ 2-3. Plaintiff also alleges breach of express warranties. MUMF ¶ 5-6. Manufacturer propounded written discovery to Plaintiff asking for any documents which would support his fraudulent concealment claims. MUMF ¶ 7, 10-13. Plaintiff responded to interrogatories by rotely referring to produced documents, and produced only four pages of documents consisting of the Vehicles title, registration, and insurance information. MUMF ¶ 8-14.

Plaintiff shows that the car was subject to one recall repair related to the transmission selector lever cable adjuster lock clip on April 22, 2018. See PSS ¶16.

III. The Burdens and Standards on Summary Judgment and Adjudication

A. Generally

Summary judgment or 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 ("*Aguilar*").

A moving defendant meets its initial burden to show that one or more elements of a cause of action "cannot be established" (CCP § 437c(p)(2)) by presenting evidence that, if uncontradicted, would constitute a preponderance of evidence that an essential element of the plaintiff's case cannot be established. *Aguilar, supra,* 25 Cal.4th at 851; *Kids Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 879. Alternatively, a defendant may show that there is a "complete defense" to a cause of action. CCP § 437c(p)(2). To show a complete defense, a defendant must present admissible evidence of each essential element of the defense upon which it bears the burden of proof at trial. *See, e.g. Anderson v. Metalclad Insulation Corp.* (1999) 72 Cal.App.4th 284, 289.

A defendant cannot base its "showing" on the plaintiff's lack of evidence to disprove its claimed defense. *Consumer Cause, Inc. v. SmileCare* (2001) 91 Cal.App.4th 454, 472.

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.

If a defendant meets its initial burden to show a "complete defense," the burden shifts to the plaintiff to provide sufficient evidence to raise a triable issue of fact as to the defense asserted. CCP § 437c(p)(2). *Consumer Cause, Inc.*, 91 Cal.App.4th at 468. 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.

"(T)he pleadings determine the scope of relevant issues on a summary judgment motion." *Nieto v. Blue Shield of California Life & Health Ins. Co.* (2010) 181 Cal.App.4th 60, 74. "(T)he burden of a defendant moving for summary judgment only requires that he or she negate plaintiff's theories of liability *as alleged in the complaint;* that is, a moving party need not refute liability on some theoretical possibility not included in the pleadings." *Hutton v. Fidelity National Title Co.* (2013) 213 Cal.App.4th 486, 493 (emphasis in original). Where the deficiency is with the complaint, and not the evidence presented, the legal effect of a motion for summary judgment is the same as that of a motion for judgment on the pleadings. *American Airlines, Inc. v. County of San Mateo* (1996) 12 Cal.4th 1110, 1117.

B. Breach of Express Warranty

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

"To succeed on a claim for breach of an express warranty for a vehicle, the buyer plaintiff must prove that (1) the vehicle had a defect or nonconformity covered by a written warranty that substantially impaired the vehicle's use, value, or safety to a reasonable person in plaintiff's shoes (the nonconformity element); (2) the vehicle was presented to an authorized representative of the manufacturer for repair (the presentation element); (3) the manufacturer or its authorized repair facility did not repair the defect after a reasonable number of repair attempts (the failure to repair

element); and (4) the manufacturer did not promptly replace or repurchase the vehicle from the plaintiff (the failure to replace or repurchase element)." *Carver v. Volkswagen Group of America, Inc.* (2024) 107 Cal.App.5th 864, 879; see also Judicial Council Of California Civil Jury Instruction ("CACI") 3201.

A claim for breach of express warranty may result in civil penalties if the plaintiff can show the breach was willful. Civ. Code, § 1794 (c). Offers made for repurchase under the Song-Beverly act are to include nearly all purchase expenses of the consumer, including taxes and fees paid. Civ. Code, § 1793.2 (d)(2)(B). Offers made for replacement under the Song-Beverly act are to include nearly all purchase expenses of the vehicle, which is to be substantially similar to the replaced vehicle, and "in no event shall the buyer be required by the manufacturer to accept a replacement vehicle." Civ. Code, § 1793.2 (d)(2)(B). When a consumer remits a product to the manufacturer or their representative for repair, "Unless the buyer agrees in writing to the contrary, the goods shall be serviced or repaired so as to conform to the applicable warranties within 30 days." Civ. Code, § 1793.2 (b). Manufacturers are also required to have sufficient service and repair facilities, which must be provided service literature and replacement parts to effect repairs. Civ. Code § 1793.2(a). However, claims for breaches of express warranty still require that plaintiff prove that the vehicle is nonconforming in order to effectuate claims for breaches of the manufacturer's obligations under the statute. *Ramos v. Mercedes-Benz USA, LLC* (2020) 55 Cal.App.5th 220, 227. (Failure to repair within 30 days is not actionable if the vehicle is not nonconforming).

C. Breach of Implied Warranty

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

> As defined in the Song–Beverly Consumer Warranty Act, "an implied warranty of merchantability guarantees that 'consumer goods meet each of the following: [¶] (1) Pass without objection in the trade under the contract description. [¶] (2) Are fit for the ordinary purposes for which such goods are used. [¶] (3) Are adequately contained, packaged, and labeled. [¶] (4) Conform to the promises or affirmations of fact made on the container or label.' (Civ.Code, § 1791.1, subd. (a).)" (*Mocek v. Alfa Leisure, Inc.* (2003) 114 Cal.App.4th 402, 406, 7 Cal.Rptr.3d 546.) Unlike an express warranty, "the implied warranty of merchantability arises by operation of law" and " 'provides for a minimum level of quality.' " (*American Suzuki, supra,* 37 Cal.App.4th at pp. 1295–1296, 44 Cal.Rptr.2d 526.)

Isip v. Mercedes-Benz USA, LLC (2007) 155 Cal.App.4th 19, 26; See also, CACI 3211.

"The duration of the implied warranty of merchantability and where present the implied warranty of fitness shall be coextensive in duration with an express warranty which accompanies the consumer goods, provided the duration of the express warranty is reasonable; but in no event shall such implied warranty have a duration of less than 60 days nor more than one year following the sale of new consumer goods to a retail buyer." Civ. Code, § 1791.1 (c).

D. 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.

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. *Ibid.* The pleading must be adequately specific to show actual reliance on the omission, and that the damages causally resulted therefrom. *Ibid*. California law "requires a plaintiff to allege specific facts not only showing he or she actually and justifiably relied on the defendant's misrepresentations, but also how the actions he or she took in reliance on the defendant's misrepresentations caused the alleged damages." *Rossberg v. Bank of America, N.A.* (2013) 219 Cal.App.4th 1481, 1499.

IV. Analysis

A. Manufacturer's Moving Burden

As the moving party, Manufacturer bears the burden of showing for each cause of action that there is no triable issue of material fact.

1. Breach of Express Warranty

    a. Repurchase/Replacement

Causes of Action One, Two and Three are all claims predicated on Manufacturer's obligations under Civ. Code § 1793.2. Manufacturer contends that Plaintiff cannot meet his burden as to that statute, because Plaintiff did not tender the Vehicle to Manufacturer for a "reasonable" number of repair attempts during the warranty period. Plaintiff's opposition contends that the repair attempts were met. Plaintiff argues that there were two repair attempts during the warranty period. First, Plaintiff contends that the Vehicle was repaired under a recall on April 18, 2018, which addressed a transmission issue. Second, Plaintiff points to the repair on May 18, 2022, where Plaintiff complained of where the Vehicle improperly showed that it was "not in park", which Plaintiff ascribes to further transmission defects. On Reply, Manufacturer points out that only *one* repair occurred during the warranty period, and that repair was not subject to an express warranty. The repair in April 2018 *preceded Plaintiff's purchase of the Vehicle.* Manufacturer accordingly avers that Plaintiff has failed to show any deficiency in their reasoning in the moving papers, and that summary judgment should be granted.

As to Manufacturer's moving burden, they have clearly shifted the burden as to the first cause of action. Manufacturer provides evidence showing that Plaintiff only presented the Vehicle for argued transmission issues once during the Powertrain warranty period, and that the issue was not covered by the Powertrain warranty. Plaintiff did not present the Vehicle at any time during the bumper-to-bumper warranty period. Manufacturer has presented evidence that Plaintiff does not meet the requirement of Civ. Code § 1793.2(d) that the Vehicle was subject to a "reasonable number of repair attempts". Given that a multiplicity is necessary under the statute (*Silvio v. Ford Motor Co.* (2003) 109 Cal.App.4th 1205, 1209 [one repair attempt insufficient]), the single repair incident during warranty, which was a repair not covered by the applicable warranty, is insufficient. Manufacturer has shifted the burden as to the First cause of action.

    b. Failure to Timely Repair Under Civ. Code § 1793.2 (b)

Plaintiff's Second cause of action fails for similar reasons. This matter is largely subject to disposition on legal argument related to the facts, which are that the Vehicle was never out for repair for more than ten days total, but that the statute separately requires that repairs begin within a "reasonable time". MUMF ¶ 27; PSS ¶ 27. Plaintiff also avers that issues remained unrepaired and so the Vehicle was never "conformed to warranty". *Ibid*. Plaintiff therefore argues the conclusion that Manufacturer failed to repair the Vehicle within 30 days. The Court addresses these in reverse order.

The undisputed facts make clear that no single repair attempt, nor even the sum of all repair attempts, exceed thirty days. MSSUMF ¶ 27. Plaintiff offers no factual dispute on this issue. See PSS ¶ 27. While Civ. Code § 1793.2 (b) is not perfectly clear, and California courts of appeal

have declined to grapple with defining this provision (*Ramos v. Mercedes-Benz USA, LLC* (2020) 55 Cal.App.5th 220, 226, fn. 2), the Court nonetheless construes the statute as requiring an individual repair attempt as exceeding the thirty-day period. Federal courts have persuasively interpreted the statute in such a manner. *Schick v. BMW of North America, LLC* (9th Cir. 2020) 801 Fed.Appx. 519, 521. Other statutes construe the 30 days as being "out of service by reason of repair of nonconformities by the manufacturer or its agents for a cumulative total of more than 30 calendar days" only if the vehicle meets stringent statutory requirements. Civ. Code, § 1793.22 (a)(3). The only reasonable construal of 30-day repair timelines not under Civ. Code § 1793.22 is in accord with the findings of the Ninth Circuit, and Plaintiff must show that the Vehicle was out for more than thirty days *on a single instance of repair.* The only evidence presented to the Court shows that repairs were undertaken immediately, and the Vehicle was out of service for less than 10 days *across all repair attempts*. Manufacturer has met their moving burden to show there is no triable issue of material fact as to this portion of the cause of action.

Second, Plaintiff argues that Civ. Code § 1793.2 has two separate requirements, the 30-day rule addressed above, and "reasonable time" requirement. Plaintiff is correct that there is support for reasonable time being a separate requirement. *Kirzhner v. Mercedes-Benz USA, LLC* (2020) 9 Cal.5th 966, 984; California Civil Jury Instruction 3205. Manufacturer's obligation is to commence repairs within "reasonable time" where "service or repair of the goods is necessary because they do not conform with the applicable express warranties". Civ. Code, § 1793.2 (b). However, Manufacturer has shown that the Vehicle was never tendered to them for a warranty repair. Accordingly, they cannot have failed to undertake such repair within "reasonable time". Actual nonconformity of the vehicle is a predicate to claims on failures to timely repair. *Ramos v. Mercedes-Benz USA, LLC* (2020) 55 Cal.App.5th 220, 226. Since Manufacturer has presented evidence that there were no warrantable nonconformities, Plaintiff cannot rely on vague pleading to evade summary judgment. Manufacturer shifts their burden as to the second cause of action.

c. Civil Code § 1793.2 (a)(3).

The third cause of action is similarly vague, and it does not appear actionable. Several things appear notable in coming to this conclusion. In the Complaint, Plaintiff avers, without any factual predicate, that Manufacturer has failed to serve the required literature or parts to allow for sufficient service to vehicles. Manufacturer argues that the repair orders provide no indication of a lack of service literature or repair parts. Moreover, Manufacturer has shown that Plaintiff cannot prove a nonconformity to express warranty during the warranty period. It appears reasonable to conclude that there is no triable issue of material fact as to this cause of action as a result. Actual breach of the warranty, in the form of a nonconformity to express warranty, is a predicate to claims related to obligations under Civ. Code § 1973.2. *Ramos v. Mercedes-Benz USA, LLC* (2020) 55 Cal.App.5th 220, 223 (failure to timely repair claim must be supported by a qualifying nonconformity). The alternative would open the floodgates to parties who have not suffered nonconformities to sue for allegations of lack of service materials. This assumes that Civil Code § 1793.2 (a)(3) is actionable *at all*. The Court could locate no published authority where it was found to be a viable cause of action. There is no California Jury Instruction on the issue, distinguishable from all of Plaintiff's other claims. Even if the claim were viable, Plaintiff cannot show that there was nonconformity related to the Vehicle during the warranty period, and

therefore Plaintiff cannot assert causes of action which rely on breach of the express warranty. Manufacturer shifts their burden as to the Second cause of action.

2. Breach of Implied Warranty.

For breach of implied warranty, Manufacturer shows that the Vehicle did not manifest any issues during the implied warranty period. This appears sufficient to shift the burden to Plaintiff. While Plaintiff makes various legal arguments regarding the fact that implied warranty claims require no showing that Plaintiff tendered the Vehicle for repair attempts, Plaintiff does not show that Manufacturer's showing is insufficient as a result. The implied warranty expired on May 18, 2019. Plaintiff raised no issue with the condition of the Vehicle until October 22, 2021, more than two years after the implied warranty's expiration. MUMF ¶ 17. The evidence as presented by Manufacturer is insufficient to support Plaintiff's argument regarding a "latent defect undiscoverable at the time of sale". See *Mexia v. Rinker Boat Co., Inc.* (2009) 174 Cal.App.4th 1297, 1305. There is no evidence that the Vehicle had a latent defect "at the time of sale". "(I)n order to prove a breach of the implied warranty, the purchaser was required to show that the defect existed at the time the product was sold or delivered." *Mexia v. Rinker Boat Co., Inc.* (2009) 174 Cal.App.4th 1297, 1304. Given that there is no evidence that there was a defect at the time of delivery of the Vehicle, Manufacturer has shifted their burden.

3. Fraudulent Concealment

For the fraudulent concealment cause of action, Manufacturer argues that Plaintiff cannot meet their burden as to the cause of action because their discovery responses were factually devoid. *Union Bank v. Superior Court* (1995) 31 Cal.App.4th 573, 590. Plaintiff provided only four pages in response to discovery requests, none of which provided evidence of fraud, consisting only of the Vehicle's title, registration and insurance information. MUMF ¶¶ 7-14. None of the evidence supporting the elements of fraudulent concealment, Plaintiff's factually devoid discovery responses are sufficient for Manufacturer to shift their burden as to Fraudulent Concealment. Even without such matters, as the Court has thoroughly explored, Manufacturer shows that there is no evidence of transmission defect. It appears questionable that Plaintiff can prove harm when he provides no evidence of actionable transmission defect, as his Complaint predicates the fraud claim particularly on the failure to disclose such a defect. There being evidence to show no triable issue of material fact as to a transmission defect, Plaintiff's damages from a defect not shown to be present in the Vehicle are speculative.

Manufacturer has shifted their burden as to each cause of action.

B. Plaintiff's Burden in Opposition

Manufacturer having met their burden, the burden shifts to Plaintiff to show triable issue of material fact.

1. Express Warranty Claims

The relevant facts here are not the subject of genuine dispute, and mandate the result. The Vehicle was repaired by Manufacturer on two occasions before the express warranty expired, April 22, 2018 and May 18, 2022. However, Manufacturer is persuasive that the first repair on April 18, 2018 is not a qualifying repair under the statute. The Vehicle was not purchased until May 15, 2018. Plaintiff argues that the April 2018 repair should be counted by citing to various cases with inapposite factual patterns. Plaintiff offers no case directly applicable to the facts where only one repair occurred after purchase but before expiration of the warranty, and a repair occurred before the vehicle was ever purchased. While Plaintiff is correct that repairs that occur as part of a recall are qualifying repairs, this is a distraction from the legally salient issues.

Plaintiff relies largely on *Donlen v. Ford Motor Co.* (2013) 217 Cal.App.4th 138. That case fails to be controlling for multiple reasons. In *Donlen*, the plaintiff tendered the car for two recall repairs, and two other repairs during the warranty period, for a total of four repair attempts. *Id*. at 183-184. Each of the repairs related to or affected the vehicle's transmission, including a complete rebuild of the transmission on two occasions. *Ibid*. The plaintiff thereafter brought the vehicle in for a transmission repair after expiration of the warranty. *Ibid*. The manufacturer denied that the issue was covered by the now expired warranty, and plaintiff demanded repurchase and brought the action. *Id*. at 184. The matter proceeded to jury trial, where plaintiff was allowed to present evidence of the subsequent repair after expiration of the warranty, and presented expert testimony showing that the subsequent transmission issues were due to a defect unrepaired by the four warranty repairs, including two recall repairs. *Id*. at 185-186. The *Donlen* court found that the subsequent repair was relevant and admissible, as it shows a continuity of the defect had arisen during the warranty, but persisted unrepaired after its expiration. *Id*. at 188-189.

Plaintiff avers that the April 2018 recall repair is relevant and counts as a repair under the statute. Plaintiff fails to be persuasive. As Manufacturer argues, the warranty had not yet commenced, as the April 2018 recall repair occurred *before Plaintiff purchased the Vehicle*. It cannot be a repair attempt to conform to warranty, because no warranty can have begun at that time. Indeed, the Act *prohibits* warranties from beginning before "the date of delivery of the good." Civ. Code, § 1793.01. Civ. Code § 1793.2 also lends itself to this interpretation. The April 2018 repair *cannot* be a warranty repair under Civ. Code § 1793.2, because there was no warranty in effect under which to conform the Vehicle. This is further supported by other language within Civ. Code § 1793.2, which requires that "(t)he buyer shall deliver the non-conforming goods". Civ. Code § 1793.2 (c). The repurchase and restitution described under subdivision (d) cannot be read in isolation, the remainder of § 1793.2 is relevant to its interpretation. The repair requirement is entirely ensconced in subdivision (c), and subdivision (d) is the consequence for inability to repair. That subdivision (c) states that the buyer is to deliver the vehicle is not idle language, and because Plaintiff did not deliver the Vehicle, it cannot be construed as a repair attempt.

Plaintiff contends that *Donlen* supports their case, but it remains inapplicable. The existence of the April 2018 recall repair is both relevant and admissible, but *Donlen* does not give vitality to Plaintiff's required showing, that the pre-warranty repair is a qualifying repair under Civil Code § 1793.2(d). That matter was not examined by the *Donlen* court, as plaintiff there had tendered the vehicle for repair four times during the warranty period. Plaintiff does not make a similar showing.

Moreover, even if the April 2018 repair were counted, Plaintiff fails to raise a triable issue of fact showing that the May 2022 repair applies to the express warranty claims. While Plaintiff argues that the warranty repair in May 2022 is related to the transmission, Plaintiff only offers a vague conclusion that the matter is transmission related, unsupported by any actual evidence. This is not sufficient to rebut the actual evidence provided by Manufacturer, which shows that the issue was related to an aftermarket brake controller, and not the transmission. See MUMF ¶ 19. Plaintiff's speculation is insufficient to raise a triable issue of fact regarding the source of the issue. Since the evidence shows that the repair that occurred is not one covered by warranty, and Plaintiff fails to present evidence that this is a warranty repair, Plaintiff fails to show that the May 2022 repair would present a triable issue.

Moving to the Second cause of action, Plaintiff offers no evidence to show that the cause of action related to timeliness of repair has a triable issue of fact. Plaintiff does not offer evidence of a warranty repair, and therefore offers no evidence related to the express warranty. No warranty breach being apparent, timeliness of repair cannot create a cause of action. There is no triable issue of fact as to timeliness of repair as a result.

Plaintiff does not produce evidence related to the Third cause of action sufficient that the Court could find triable issue of fact. Plaintiff has presented *no* evidence of service literature deficiencies, no evidence sufficient for the Court to find express warranty claims, and the very viability of such a cause of action is not supported by any citation to authority.

Therefore, as to the First, Second and Third causes of action, there are no triable issues of material fact.

2. Breach of Implied Warranty

Plaintiff avers in opposition that the Vehicle has suffered "persistent transmission problems" (PSS, Issue 2, ¶ 17), but the evidence does not reflect this. The Vehicle's pre-sale recall repair related to the transmission. As the Court has already analyzed, Plaintiff has produced no evidence the May 2022 repair was caused by a faulty transmission.

3. Fraudulent Inducement.

Plaintiff's opposition to this cause of action is entirely predicated on their requests for judicial notice, which were denied. While Plaintiff shows that a transmission repair under recall was performed, it was performed before Plaintiff purchased the Vehicle, and therefore cannot be said to the Vehicle being defective at the time of purchase. Accordingly, Plaintiff has produced no evidence to raise triable issues of material fact.

C. Summary Judgment

Manufacturer has shifted their burden as to each cause of action, and Plaintiff has failed to meet the shifted burden on any cause of action. Manufacturer's motion for summary judgment is GRANTED.

V. Conclusion

Manufacturer's motion for summary judgment is **GRANTED**.

Manufacturer 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, Manufacturer shall provide notice of the order per CCP § 1019.5.

2. 24CV07555, Steward v. Fay Servicing, LLC

Plaintiffs Kara Michelle Stewart and Christopher Charles Stewart ("Plaintiff") filed the currently operative first amended complaint (the "FAC") in this action against defendants the Fay Servicing, LLC ("Fay"), U.S. Bank Trust National Association, as trustee of the LSF9 Master Participation Trust ("US Bank", together with Fay, "Defendants"), and Does 1-20, for multiple alleged causes of action arising out of a mortgage transaction.

This matter is on calendar for the motion by Plaintiffs for leave to supplement the Complaint (the "FAC") pursuant to Cal. Code Civ. Proc. ("CCP") § 464.

I. Governing Law

A plaintiff may, on a motion, be allowed to make a supplemental complaint alleging facts material to the case occurring after the former complaint or answer. CCP § 464.

> The office of a supplemental complaint is to plead facts material to plaintiff's cause of action accruing after the filing of the complaint. Code Civ.Proc. § 464. It is not proper to set forth a new and independent cause of action, but only such matters as may be consistent with and in aid of the case made by the original complaint. "It is no objection to a supplemental complaint that different or additional relief is asked for. Indeed, the object of the supplemental complaint is to obtain additional or different relief without resort to a new trial." *Jacob v. Lorenz*, 98 Cal. 332, 33 Pac. 119; *Baker v. Bartol*, 6 Cal. 483. In *Miller v. Cook,* 135 Ill. 190, 25 N.E. 756, 10 L.R.A. 292, it is said: "If the original bill is sufficient for one kind of relief, and facts afterward occur which entitle the complainant to other and more extensive relief, he may have such relief by setting out the new matter in a supplemental bill."

Melvin v. E.B. & A.L. Stone Co. (1908) 7 Cal.App. 324, 326.

"(T)he issues in a case refer to the beginning of an action, and that matters occurring pendente lite cannot be put in evidence and are not adjudicated by the judgment unless brought before the court by a supplemental pleading." *Grand Union Hotel v. Industrial Acc. Commission* (1924) 67 Cal.App. 123, 127. It is not proper for supplemental pleadings to allege new causes of action or defenses, rather the new facts must "supplement" the already alleged causes of action. *Flood v.*

Simpson (1975) 45 Cal.App.3d 644, 647. "It is the policy of law to permit generally the filing of supplemental pleadings (Citation). While it is a general rule that an application for permission to file a supplemental pleading is addressed to the court's discretion (Citation), the discretion referred to is a legal discretion subject to review. (Citation.)" *Louie Queriolo Trucking, Inc. v. Superior Court of Kern County* (1967) 252 Cal.App.2d 194, 197–198.

"A complaint and a supplemental complaint are considered as separate pleadings…" *Stack v. Welder* (1935) 3 Cal.2d 71, 76.

> Appellant fails to note the distinction between a complaint (or one as amended) and a supplemental complaint. They are to be considered as separate pleadings, the office of the supplemental complaint being merely to bring to the notice of the court, and the opposite party, matters which occurred after the commencement of the action, and which do, or may, affect the rights asserted, and the rule asked in the action, as originally instituted.

Conlin v. Southern Pac. R. Co. (1919) 40 Cal.App. 733, 741.

In contrast "(a)n 'amended' complaint supersedes all prior complaints (*Citation*), and the original complaint ceases to have any effect either as a pleading or as a basis for judgment (*Citation*)." *Malear v. State of California* (2023) 89 Cal.App.5th 213, 221 (internal citations and quotations omitted).

II. Motion

Plaintiffs have filed a motion for leave to file a supplemental complaint. Defendants have filed no opposition. Plaintiffs have filed a proposed supplemental complaint with their motion reflecting significant changes.

Plaintiffs' motion has significant procedural deficiencies that are of concern. Plaintiff's [proposed] supplemental; complaint restates and modifies significant amounts of the FAC. This seems indicative that Plaintiffs misapprehend the purpose and form of a supplemental complaint. Supplemental complaints are separate pleadings from the complaint of the action, intended only to make clear that there be additional forms of damage or relief that are appropriate based on facts which occurred after the filing of the action. *Stack v. Welder* (1935) 3 Cal.2d 71, 76. By combining the supplemental complaint with the rest of the pleading, Plaintiff obscures what facts are pled to have occurred afterward, and what facts are necessarily part of the FAC that has been tested and settled.

Plaintiffs' effectively amended complaint is not without prejudicial effect. A motion for leave to amend a complaint is subject to significant procedural requirements that make abundantly clear the nature of the changes being made. Cal. Rule of Court, Rule 3.1324(a). Plaintiffs may not shift the burden to Defendants and the Court to perform such examination by filing an improper pleading.

Defendants have filed no opposition. Further denial without prejudice would only serve to further delay this matter. A continuance therefore appears appropriate for Plaintiff to file an appropriate supplemental complaint separate and apart from the settled amended complaint.

The motion is CONTINUED to July 1, 2026 at 3:00pm in Department 19. Plaintiffs are to file a supplemental declaration with an attached proposed supplemental complaint by June 18, 2026.

III. Conclusion

The matter is CONTINUED.

3-4. 25CV00830, Ortiz v. Rowana Court Partners, LP

Plaintiff, Vilma Leticia Ortiz ("Plaintiff"), has filed the currently operative third amended complaint (the "TAC") against defendants Rowana Court Partners, LP ("Rowana"), Burbank Housing Management Corporation ("Burbank"), Ivonne Morales ("Morales"), Jeane Lavarta ("Lavarta", together with all other defendants, "Defendants"), and Does 1-10 with thirteen causes of action related to alleged property disputes and violations of tenant protection laws.

This matter is on calendar for demurrer to the TAC filed by Defendants for failure to state a cause of action, and the motion to strike particular allegations from the TAC. The Demurrer is SUSTAINED WITHOUT LEAVE TO AMEND as to the Ninth causes of action, and otherwise OVERRULED. The Motion to strike is DENIED.

I. Governing Law

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, "falsity," must be demonstrated by reference to the pleading itself or of judicially noticeable matters, not extraneous facts. *See* CCP § 437. 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.). A motion to strike is 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).

B. Demurrers Generally

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. At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591. Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. *Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702. 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. Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.

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 allegations are that the incident occurred "on or about" a particular date, the demurrer should be overruled, as it is sufficient for the purposes of pleading that the claim may be timely. *Childs v. State of California* (1983) 144 Cal.App.3d 155, 160. Where a series of wrongs or injuries may be viewed as each triggering its own limitations period, a suit for relief may be partially time barred as to older events, but timely as to events within the statute of limitations, per the principle of continuing accrual. *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1192.

C. Warranty of Habitability

"[A] warranty of habitability is implied by law in residential leases." *Green v. Superior Court* (1974) 10 Cal.3d 616, 637. "The elements of a cause of action for breach of the implied warranty of habitability 'are the existence of a material defective condition affecting the premises' habitability, notice to the landlord of the condition within a reasonable time after the tenant's discovery of the condition, the landlord was given a reasonable time to correct the deficiency, and resulting damages.'" *Peviani v. Arbors at California Oaks Property Owner, LLC* (2021) 62 Cal.App.5th 874, 891, quoting *Erlach v. Sierra Asset Servicing, LLC* (2014) 226 Cal.App.4th 1281, 1297. "When the alleged defect is in a common area, the landlord's duty to inspect and maintain the common area removes any excuse by the landlord regarding a lack of knowledge." *Peviani v. Arbors at California Oaks Property Owner, LLC* (2021) 62 Cal.App.5th 874, 891. "A violation of a statutory housing standard that affects health and safety is a strong indication of a materially defective condition." *Ibid*.

D. Negligence

"The elements of a cause of action for negligence are: duty; breach of duty; legal cause; and damages." *Friedman v. Merck & Co.* (2003) 107 Cal.App.4th 454, 463. Whether a duty of care is owed is a question for the court and not a jury. *Ballard v. Uribe* (1986) 41 Cal.3d 564, 572. "Legal duties are not discoverable facts of nature, but merely conclusory expressions that, in cases of a particular type, liability should be imposed for damage done." *Tarasoff v. Regents of University of California* (1976) 17 Cal.3d 425, 434.

E. Breach of Contract

"A contract is an agreement to do or not to do a certain thing." Civ. Code, § 1549. Contracts require capable parties, the consent of those parties, a lawful object, and mutual consideration. Civ. Code § 1550. "The object of a contract is the thing which it is agreed, on the part of the party receiving the consideration, to do or not to do." Civ. Code, § 1595. "The object of a contract must be lawful when the contract is made, and possible and ascertainable by the time the contract is to be performed." Civ. Code, § 1596. "An offer is the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." *City of Moorpark v. Moorpark Unified School Dist.* (1991) 54 Cal.3d 921, 930, quoting Restatement 2d Contracts § 24. "To be enforceable, a

promise must be definite enough that a court can determine the scope of the duty and the limits of performance must be sufficiently defined to provide a rational basis for the assessment of damages." *Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 770.

The elements of a cause of action for breach of contract are: "'(1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff.'" *See Coles v. Glaser* (2016) 2 Cal.App.5th 384, 391; quoting *Hamilton v. Greenwich Investors XXVI, LLC* (2011) 195 Cal.App.4th 1602, 1614, 126 Cal.Rptr.3d 174. "It is the general rule that if an instrument is ambiguous the party pleading is required to set forth the meaning of the writing. The meaning attributed to the writing must be one to which it is reasonably acceptable, and where 'a pleaded instrument is, because of the uncertainty of the language in which it is expressed, susceptible of more than one construction As to its nature or as to the purpose intended by the parties to be attained by it, … the construction of the party pleading it should be accepted, if such construction be reasonable' in considering a pleading attacked by general demurrer." *Connell v. Zaid* (1969) 268 Cal.App.2d 788, 794–795 (internal citations omitted).

A tenant under a lease binds the landlord "to secure to the hirer the quiet possession of the thing hired during the term of the hiring, against all persons lawfully claiming the same." Civ. Code, § 1927. "(A) landlord is bound to refrain from action which interrupts the tenant's beneficial enjoyment." *Guntert v. City of Stockton* (1976) 55 Cal.App.3d 131, 138. "Breach can take many forms, including actual or constructive eviction." *Nativi v. Deutsche Bank National Trust Co.* (2014) 223 Cal.App.4th 261, 293. The duty of a landlord under the covenant extends to taking reasonable steps to protect a tenant from other lessees. *Andrews v. Mobile Aire Estates* (2005) 125 Cal.App.4th 578, 593.

A written contract may be pleaded either by its terms—set out verbatim in the complaint or a copy of the contract attached to the complaint and incorporated therein by reference—or by its legal effect. *Miles v. Deutsche Bank National Trust Co.* (2015) 236 Cal.App.4th 394, 401-402. In order to plead a contract by its legal effect, plaintiff must allege the substance of its relevant terms, which requires careful analysis of the contract, comprehensiveness in statement, and avoidance of legal conclusions. *McKell v. Washington Mutual Inc*. (2006) 142 Cal.App.4th 1457, 1489; *Construction Protective Services Inc. v. TIG Specialty Insurance Company* (2002) 19 Cal.4th 189, 198-192. "Where a party relies upon a contract in writing, and it affirmatively appears that all the terms of the contract are not set forth in haec verba, nor stated in their legal effect, but that a portion which may be material has been omitted, the complaint is insufficient." *Gilmore v. Lycoming Fire Ins. Co.* (1880) 55 Cal. 123, 124.

F. Nuisance

Civil Code § 3479 defines nuisance as "(a)nything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property." "[Nuisance] has meant all things to all people, and has been applied indiscriminately to everything from an alarming advertisement to a cockroach baked in a pie. There is general agreement that it is incapable of any exact or comprehensive definition." *City of*

San Diego v. U.S. Gypsum Co. (1994) 30 Cal.App.4th 575, 585 ("*Gypsum*"); quoting Prosser and Keeton, Law of Torts (5th ed. 1984) § 86, p. 616.

"(P)rivate nuisance is a civil wrong based on disturbance of rights in land." *Monks v. City of Rancho Palos Verdes* (2008) 167 Cal.App.4th 263, 302. "First, the plaintiff must prove an interference with his use and enjoyment of his property. (*Ibid.*) Second, 'the invasion of the plaintiff's interest in the use and enjoyment of the land [must be] *substantial*, i.e., that it cause[s] the plaintiff to suffer 'substantial actual damage.' (*Ibid.*) Third, '[t]he interference with the protected interest must not only be substantial, but it must also be unreasonable' [citation], i.e., it must be 'of such a nature, duration or amount as to constitute unreasonable interference with the use and enjoyment of the land.' (*Ibid.*, italics omitted.)" *Mendez v. Rancho Valencia Resort Partners, LLC* (2016) 3 Cal.App.5th 248, 262–263, quoting *San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893, 938. However, where a plaintiff does not allege a perceptible injury to their individual property interest distinguishable from the community at large, plaintiff has not pled a cause of action for private nuisance. *Brown v. Petrolane, Inc.* (1980) 102 Cal.App.3d 720, 727.

"[Nuisance] has meant all things to all people, and has been applied indiscriminately to everything from an alarming advertisement to a cockroach baked in a pie. There is general agreement that it is incapable of any exact or comprehensive definition." *City of San Diego v. U.S. Gypsum Co.* (1994) 30 Cal.App.4th 575, 585 ("*Gypsum*"); quoting Prosser and Keeton, Law of Torts (5th ed. 1984) § 86, p. 616. "A nuisance may be either a negligent or an intentional tort. If the latter, then exemplary damages are recoverable." *Stoiber v. Honeychuck* (1980) 101 Cal.App.3d 903, 920.

G. The Unfair Competition Law ("UCL")

Business & Professions Code section 17200, prohibits "any unlawful, unfair or fraudulent" business practices. Bus. & Prof. Code §17200. "Since section 17200 is [written] in the disjunctive, it establishes three separate types of unfair competition" and "prohibits practices that are either 'unfair' or 'unlawful,' or 'fraudulent.'" *Pastoria v. Nationwide Ins.* (2003) 112 Cal.App.4th 1490, 1496; see also *CelTech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.*, (1999) 20 Cal.4th163, 180 (1999).

A party may bring a section 17200 claim only if he or she shows that he or she "suffered injury in fact and has lost money or property as a result of the unfair competition." Bus. & Prof. Code § 17204. To have standing, a plaintiff must sufficiently allege that (1) he has "lost 'money or property' sufficient to constitute an 'injury in fact' under Article III of the Constitution" and (2) there is a "causal connection" between the defendant's alleged UCL violation and the plaintiff's injury in fact. See, *Rubio v. Capital One Bank* (9th Cir. 2010) 613 F.3d 1195, 1203-1204. The UCL incorporates other laws and treats violations of those laws as unlawful business practices independently actionable under state law. *Chabner v. United Omaha Life Ins. Co.* (9th Cir. 2000) 225 F.3d 1042, 1048. Violation of almost any federal, state, or local law may serve as the "unlawful" basis for a UCL claim. *Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 838-839. In addition, a business practice may be "unfair or fraudulent in violation of the UCL even if the practice does not violate any law." *Olszewski v. Scripps Health* (2003) 30 Cal.4th 798, 827.

Where plaintiff's UCL claim is entirely derivative of other fatally flawed causes of action, the UCL claim also fails. See, *Hawran v. Hixson* (2012) 209 Cal.App.4th 256, 277 [finding plaintiff's "UCL claim is derivative of [his] defamation cause of action, that is, it is based on the same [allegations] and likewise that cause of action stands or falls with that underlying claim."]. "A breach of contract may ... form the predicate for Section 17200 claims, *provided it also constitutes conduct that is 'unlawful, or unfair, or fraudulent.*" *Puentes v. Wells Fargo Home Mortgage, Inc.* (2008) 160 Cal.App.4th 638, 645 (internal quotations omitted, emphasis original).

"With respect to the *unlawful* prong, virtually any state, federal or local law can serve as the predicate for an action under section 17200." *People ex rel. Bill Lockyer v. Fremont Life Ins. Co.* (2002) 104 Cal.App.4th 508, 515 (internal quotations omitted). "Unlike common law fraud, a UCL fraud claim "can be shown even without allegations of actual deception, reasonable reliance and damage"; what is required to be shown is that members of the public are likely to be deceived." *Collins v. eMachines, Inc.* (2011) 202 Cal.App.4th 249, 258 (internal quotations omitted)("*Collins*"). Fraud claims under the UCL must be stated with "reasonable particularity". *Gutierrez v. Carmax Auto Superstores California* (2018) 19 Cal.App.5th 1234, 1261; *Khoury v. Maly's of California, Inc.* (1993) 14 Cal.App.4th 612, 619.

H. Defamation

To constitute an action for libel, a plaintiff must show that the defendant made a false and unprivileged publication which causes damage to plaintiff's reputation. Civ. Code, § 45. In pleading libel, a plaintiff must confer the exact statement which is claimed to be false. *Des Granges v. Crall* (1915) 27 Cal.App. 313, 315.

"Defamation is an invasion of the interest in reputation. The tort involves the intentional publication of a statement of fact that is false, unprivileged, and has a natural tendency to injure or which causes special damage." *Smith v. Maldonado* (1999) 72 Cal.App.4th 637, 645. Publication means communication to any third person who understands the defamatory meaning of the statement and the application to whom reference is made. *Vedovi v. Watson & Taylor* (1930) 104 Cal.App. 80, 83. A plaintiff cannot publish the defendant's statements in order to manufacture the publication requirement; defendant must be responsible for the publication leading to libel claims. *Live Oak Publishing Co. v. Cohagan* (1991) 234 Cal.App.3d 1277, 1284. Only where plaintiff is compelled to re-publish the statements in aid of disproving them is the defendant's publication not required. *Id*.

In contrast, slander is an allegation of spoken defamatory statements falsely averring any of the following:

> "1. Charges any person with crime, or with having been indicted, convicted, or punished for crime;
> 2. Imputes in him the present existence of an infectious, contagious, or loathsome disease;
> 3. Tends directly to injure him in respect to his office, profession, trade or business, either by imputing to him general disqualification in those respects which the office or other

occupation peculiarly requires, or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profits;
4. Imputes to him impotence or a want of chastity; or
5. Which, by natural consequence, causes actual damage."

Civ. Code, § 46.

The litigation privilege of CC section 47 (b), bars a civil action for damages for communications made "[i]n any (1) legislative proceeding, (2) judicial proceeding, (3) in any other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law and reviewable pursuant to [statutes governing writs of mandate]."
On the other hand, section 47 (c) provides a *qualified* privilege to other communications *made without malice*, stating that this applies to "communication[s] ... to a person interested therein, (1) by one who is also interested or (2) by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication to be innocent, or (3) who is requested by the person interested to give the information."

"(B)ecause the litigation privilege applies only to communications, the 'threshold issue' is whether the defendant's conduct was communicative or noncommunicative." *Mireskandari v. Gallagher* (2020) 59 Cal.App.5th 346, 368. "That is, the key in determining whether the privilege applies is whether the injury allegedly resulted from an act that was communicative in its essential nature." *Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1058. The litigation privilege related to statements in a judicial proceeding is "absolute" other than claims for malicious prosecution. *Brown v. Department of Corrections* (2005) 132 Cal.App.4th 520, 525. Workplace violence restraining orders are subject to further protections, and cannot form the basis for a malicious prosecution cause of action. *Robinzine v. Vicory* (2006) 143 Cal.App.4th 1416, 1424.

II. Motion to Strike

A. "Improper" Allegations

Defendants also argue that the complaint is burdened by both "irrelevant" allegations related to third parties, and evidentiary allegations that they assert are improper. They also argue that the TAC should have "argumentative and inflammatory characterization" struck. This is denied for three reasons. First, again, the entire motion to strike appears to be a request to reconsider the Court's prior ruling, because Defendants ask that the Court come to a different finding. Even where the motion to strike attacks a different basis than that previously raised, it is in effect requesting that the Court examine matters that should have been previously raised, and therefore would be a "renewed" motion under CCP § 1008(b). They have, as outlined above, not presented any of the requirements for a renewed motion.

Second, it is not the burden of the Court to pick through those allegations Defendants would like struck and determine what argument applies to which allegation. Defendants request to strike 35 separate sections of the TAC, and their memorandum contains *no* delineation of what argument applies to which request. Plaintiff raises the issue that Defendants are required to "quote in full" matters to be struck unless it is an "entire paragraph cause of action, count, or defense", another

procedural defect in the motion. Rules of Court, Rule 3.1322(a). Defendants' contention on Reply that they have *one* properly stated request to strike ¶ 9 does not revitalize the remainder of the deficient motion. The striking of lines is **not** "an entire paragraph, cause of action, count, or defense", and Defendants' argument to the contrary is frivolous.

Defendants fail to show that the "irrelevant" allegations are properly struck, because they fail to make clear what of their requests to strike are "irrelevant". Defendants' averment of irrelevance is largely targeted to the conduct of third parties. Said conduct may be relevant if the conduct falls under those limited exceptions where the landlord where the landlord participated in the wrongful act by authorizing or permitting it to be done. *Chee v. Amanda Goldt Property Management* (2006) 143 Cal.App.4th 1360, 1373. Moreover, Defendants' contention that evidentiary pleading is so improper that the Court should strike it is not supported by any authority provided. The requirement in stating a cause of action is the pleading of ultimate facts, but often those facts would otherwise appear conclusory if not for the pleading of detailed factual occurrences. Defendants fail to display the impropriety of such allegations.

Defendants averment of argumentative and inflammatory allegations fails for both the procedural reasons, and substantively. Defendants have cited *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6 for the contention that Plaintiff must allege ultimate facts and "not argumentative conclusions or pejorative characterizations." Motion, pg. 6:3-6. While *Perkins* does state that pleading requires ultimate facts, the latter contention appears nowhere within the case. Indeed, the finding of the court was that such characterizations were *appropriate* where supported by factual allegations. *Ibid* ("Taken in context, the words 'wrongfully and intentionally' in paragraph eight describe a knowing and deliberate state of mind from which a conscious, disregard of petitioner's rights might be inferred—a state of mind which would sustain an award of punitive damages."). Defendant's contention is unsupported by law as a result.

B. <u>"Time Barred Conduct"</u>

Again, the motion is a renewed motion not meeting the requirements. It is properly denied on that basis alone. Defendants ask that the Court strike time barred conduct, citing *Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 164. This case contains *no* finding regarding striking allegations that are time barred. This is a perturbing substantive defect in the vein of Defendants' other misattributions of authority.

C. <u>Damages</u>

Defendants nonsensically attack the requests for damages related to the UCL not related to restitution. The UCL cause of action contains to request for other forms of damages, merely asking for disgorgement, restitution, and those penalties available under Business and Professions Code §§ 17206 and 17206.1. See TAC, pg. 47:26-48:2. These are all proper forms of relief under the UCL. Perhaps, the Court must surmise because Defendants fail to state, the argument is that the Prayer within the TAC contains no request for restitution. However, that would not form a basis to strike other forms of relief, as they are supported by other causes of action.

As to punitive damages, the Court has already analyzed the issue, and Defendants have failed to identify any changes between the pleadings that would somehow render the punitive damages claims deficient. The Court has no jurisdiction to reconsider as a result.

The motion to strike is DENIED.

III. Demurrer

A. Allegations as to Time

Defendants aver that the TAC is precluded because it alleges dates outside the statute of limitations. Defendants fail to appreciate the significant hurdle in demurring to statute of limitations. "It is not enough that a complaint shows that the action may be barred." *Geneva Towers Ltd. Partnership v. City of San Francisco* (2003) 29 Cal.4th 769, 780. Certainly, the type of allegations here are subject to principles of continued accrual, and one timely allegation may be sufficient to state a viable cause of action. *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1192. Defendants have not shown that the mere existence of older allegations precludes the causes of action as a matter of law.

Between these deficiencies, the demurrer is OVERRULED on these bases.

Plaintiff has sufficiently stated claims for retaliation, breach of the covenant of quiet enjoyment and intrusion of private affairs.

The demurrer on these causes of action is OVERRULED.

Likewise, the claims for breach and unfair business practices are sufficiently plead at this time. Therefore, these demurrers as to these claims is overruled.

B. Nuisance

The Court has already overruled the demurrer as to nuisance. Plaintiff has dropped the cause of action related to intentional nuisance to which the demurer was previously sustained. The Court does not consider Defendants' arguments further because they have failed to present a basis for reconsidering or renewing the prior decision.

As to the cause of action for Nuisance, the Demurrer is OVERRULED.

C. Defamation

Plaintiff has pivoted her defamation claims to allegations that Defendants filed a Work Place Violence restraining order against her in another court case. Defendants, demurring to this substantially changed cause of action to which the demurrer was previously sustained, aver that the cause of action as now stated is fully precluded by the litigation privilege.

The cause of action remains insufficiently pled. First, Plaintiff has not stated the false statements with the specificity required for libel causes of action. While the TAC makes reference to slander, and not libel, the substantive allegation makes reference to the "filed" workplace violence restraining order. Clearly, the cause of action is not based on an "oral utterance", but a writing. Libel is the appropriate cause of action, and libel must be pled with the exact statement claimed to be false. *Des Granges v. Crall* (1915) 27 Cal.App. 313, 315.

Second, Defendants are correct that the cause of action as pled is fully precluded by the litigation privilege. Statements to a court are privileged and nonactionable. Plaintiffs' only allegation is that there were false statements in a court filing. *Brown v. Department of Corrections* (2005) 132 Cal.App.4th 520, 526; *Robinzine v. Vicory* (2006) 143 Cal.App.4th 1416, 1424. The cause of action is fully precluded on its face as a result.

Litigation privilege fully precludes the cause of action as stated, and no amendment may any contention which is substantively based on the same facts. This is also the Third Amended Complaint after a demurrer to this cause of action was previously sustained on one occasion. There does not appear to be a reasonable probability of curing the defect as a result. The Demurrer to the Ninth cause of action is SUSTAINED without leave to amend.

D. Breach of Contract

While Defendants' notice of motion states that they demur to the cause of action for breach of contract, the memorandum does not reflect any argument thereon beyond the general arguments already rejected by the Court. It is apparent from the TAC that the previously identified deficiency was remedied. The Lease is attached to the TAC. The demurrer to breach of contract is OVERRULED.

E. Punitive Damages

Despite already being informed on the prior order that demurrers do not go to damages, but causes of action Defendants again assert the same argument. The Court has already ruled against Defendants on this matter and lacks jurisdiction. It also still remains true that Defendants' assertion of this matter at demurrer is improper. *Venice Town Council, Inc. v. City of Los Angeles* (1996) 47 Cal.App.4th 1547, 1561. It is deeply concerning that the Court's prior order was clear on this subject, and yet Defendnats again assert the issue. This contention is frivolous and not considered for not being in proper form.

V. Conclusion

Based on the foregoing, the Demurrer is **SUSTAINED without leave to amend as to the Ninth cause of action.** The demurrer is **OVERRULED as to the First through Eighth causes of action.**

The motion to strike is **DENIED**.

Defendants 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).

Defendants shall file their answer to the Third Amended Complaint within 10 days from the date the order is signed.

5. 25CV03234, JP Morgan Chase Bank, NA v. Dorazio

Plaintiff JP Morgan Chase Bank, N.A. ("Plaintiff"), filed the complaint in this action against Elizabeth Dorazio ("Defendant") with causes arising out of an alleged breach of contract (the "Complaint").

This matter is on calendar for the motion by Plaintiff to seeking to deem admissions admitted under CCP § 2033.280. The Motion is GRANTED.

I. Governing Law

Code of Civil Procedure section 2033.280(a) provides in relevant part that if a party to whom requests for admission are directed "fails to serve a timely response," the party to whom the requests are directed waives any objection. CCP § 2033.280(b) provides that "[t]he requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for a monetary sanction." CCP § 2033.280(c) provides that the court "shall make this order" unless it finds that the party to whom the requests have been directed has served a proposed response in substantial compliance with sections 2033.210-2033.230 before the hearing on the motion.

II. Analysis

The Motion is accompanied by proofs of service showing that service of the moving papers was timely made on Defendant. The Motion is not timely opposed. Plaintiff served the request for admission on October 30, 2025, and Defendant served no response. This motion followed on February 27, 2026. The hearing date was served on March 23, 2026. No opposition was filed. The Motion is therefore **GRANTED**. The truth of the matters set forth in Plaintiff's First Set of Requests for Admission (Declaration of Gregory Parks, Ex. 1) are deemed admitted. CCP § 2033.280(b).

III. Conclusion

Plaintiff's motion to deem admissions is **GRANTED**. The truth of the matters set forth in Plaintiff's First Set of Requests for Admission (Declaration of Declaration of Gregory Parks, Ex. 1) are deemed admitted. Plaintiff will attach the admissions as an exhibit to the proposed order submitted.

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).

6. 25CV07896, Tavelli Co, Inc. Credit Services v. Newark Fence Inc.

Plaintiff Tavelli Co., Inc. ("Plaintiff") filed complaint (the "Complaint") against Newark Fence, Inc. ("Defendant") and Does 1-20. This matter is on calendar for Plaintiff's motion to strike the Answer for being filed in a manner that was 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 appropriate remedy thereon is to strike the Answer. Plaintiff's request to enter Defendant's default is DENIED. This is a curable defect, and leave to amend is appropriate. *CLD Construction, Inc. v. City of San Ramon* (2004) 120 Cal.App.4th 1141, 1146.

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).

7. 25CV08606, Downie v. Fritsch

The Court notes that Defendants filed their demurrer and motion to strike together as one motion. Doing so is improper as a demurrer and a motion to strike are two distinct motions under different sections of the Code of Civil Procedure. "Motions to strike and demurrers should be filed as separate documents." (Weil & Brown, Cal. Prac. Guide Civ. Pro. Before Trial § 7:162.1.) The Court will consider the motions on their merit in this instance, but cautions counsel against continuing this practice.

Defendants Jerry and Arlene Fritsch and Tammy Brogden's Combined Demurrer and Motion to Strike Plaintiff Carolyn Downie's Complaint is **SUSTAINED with leave to amend** as to the Demurrer and **DENIED** as to the motion to strike as the Demurrer is being sustained with leave to amend.

I. PROCEDURAL HISTORY

Plaintiff's Complaint alleges 9 causes of action against Defendants stating that she, an individual with disability, was a tenant of on the Fritsch's rental property in Sonoma County and needed reasonable accommodations to have equal access and use of her rental property, but that Defendants failed to provide these reasonable accommodations or modifications. (Complaint, ¶¶ 8-10.) Defendants initiated an unlawful detainer case against Plaintiff, which Plaintiff argues was a "fraudulent eviction scheme." (*Id*. at ¶¶ 15-18.)

Defendants filed a combined demurrer and motion to strike on each cause of action stated in the Complaint on the basis that they arise out of the unlawful detainer trial, their participation in which Defendants argue is protected by the litigation privilege under Civil Code section 47(b). (Combined Motion, pp. 3-4.) Otherwise, Defendants argue that Plaintiff failed to state sufficient facts to support the claims stated in the Complaint.

II. COMBINED DEMURRER/MOTION TO STRIKE

A. Legal Standard

1. 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. (C.C.P. § 430.30(a).) At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 591.) Similarly, opinions, speculation, or allegations contrary to law or judicially noticed facts are also disregarded. (*Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 702.) Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. (*C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal. 4th 861, 872.) Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts, but the distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6.)

Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The burden of proving that there is a reasonable possibility to cure the defect is squarely on the party that filed the pleading, but if that burden is met and leave to amend is not granted, then that constitutes an abuse of discretion by the trial court. (*Ibid*.)

2. Motion to Strike

The Court may strike a pleading that 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." (C.C.P. §§ 435, 436(b).)

B. Analysis

Defendants argue that Plaintiff's entire Complaint is speculative, that the litigation privilege applies to every single claim as they arise from the unlawful detainer action, that each cause of action is deficient, that no conduct was alleged against Tammy Brogden or Arlene Fritsch, and that Plaintiff failed to allege any actual disability. (Combined Motion, pp. 11-14.)

Plaintiff argues that the litigation privilege does not bar this action because it does not apply to extrinsic fraud, fraud upon the court, non-communicative conduct, and violations of statutes that could render them inoperable. (Opposition, pp. 2-3.) Plaintiff otherwise argues that each claim states sufficient facts and that the Court should allow leave to amend if it is deemed necessary. (*Id*. at 3:11-26.)

In the Reply, Defendants argue that Plaintiff's opposition is inconsistent by trying to avoid the litigation privilege while also conceding that her claims follow from the unlawful detainer trial. (Reply, 1:3-11.) Defendants reaffirm the arguments made in the combined motion and request the Court not allow leave to amend because there is no reasonable possibility of curing the defects. (*Id*. at 1:12-19.)

C. Application

The Court finds that Defendants have raised deficiencies that exist in the Complaint in their combined motion and that Plaintiff has failed to adequately defend against the Defendants' arguments. To allow at least one opportunity should there by any reasonable possibility that Plaintiff can cure the defects in the Complaint, the Court will sustain the demurrer and allow leave to amend. On this basis, the Court will deny the motion to strike at this time due to the ruling on the demurrer.

III. CONCLUSION

Defendants' Combined Demurrer and Motion to Strike is **SUSTAINED with leave to amend** as to the Demurrer and **DENIED** as to the Motion to Strike. Defendants shall submit a written order on their motions to the Court consistent with this tentative ruling and in compliance with Rule of

Court 3.1312(a) and (b). Plaintiff shall file an Amended Pleading with 20 days from the date the order is signed.

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