TENTATIVE RULINGS
LAW & MOTION CALENDAR
Friday, July 31, 2026 3:00 p.m.
Courtroom 17 – Hon. Jane Gaskell
3035 Cleveland Avenue, Santa Rosa

PLEASE NOTE: In accordance with the Order of the Presiding Judge, a party or representative of a party may appear in Department 17 in person or remotely by Zoom, a web conferencing platform.

CourtCall is not permitted for this calendar.

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

TO JOIN D17 ZOOM ONLINE:
Meeting ID: 161 126 4123
Passcode: 062178
https://sonomacourt-org.zoomgov.com/j/1611264123

TO JOIN ZOOM BY PHONE:
By Phone (same meeting ID and password as listed for each calendar):
+1 669 254 5252

The following 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 as to any motion, **YOU MUST NOTIFY** Judge Gaskell's Judicial Assistant by telephone at **(707) 521-6723**, and all other opposing parties of your intent to appear, and **whether that appearance is in person or via Zoom**, by ***4:00 p.m. the court day immediately preceding the day of the hearing.***

1. 26CV01433, Silverman v. All Pro Bailbonds

Plaintiff Jacob Silverman ("Plaintiff") moves to compel Meta (parent company of Facebook) to produce all statements published by All Pro Bailbonds, Susan Shapiro, William Wilcox, and Danny Estrada on February 17, 2025, and February 18, 2025, relevant to Jacob Silverman. Plaintiff requests for such documents be mailed to the Court. The request is **DENIED**.

The motion is defective for numerous reasons. First, Plaintiff provides no legal authority to support his request generally and how the Court may compel Meta as a third-party to produce documents. Second, the proof of service does not show that Meta was served with the instant motion. Most notably, Plaintiff has not properly served his Complaint in this action and therefore this Court lacks personal jurisdiction over any of the parties. (See California Code of Civil Procedure §§ 413.10, 414.10, 415.10, 415.20, 415.30.) Lastly, Plaintiff may not use this Court's address to receive discovery or any other mailings on his behalf.

The next hearing in this case is a Case Management Conference on **Thursday, August 6, 2026, at 3:00 p.m.** in Department 17. (See California Rules of Court, Title Three, Division 7, Chapter 3: Case Management.)

The Minute Order shall constitute the order of the Court.

2. 24CV02375, Wang v. The Olive Press

Plaintiff Weiman "David" Wang ("Plaintiff") moves for summary adjudication of the Fourth Cause of Action for Negligence against Defendant The Olive Press, LLC ("TOP") and the issue that TOP owed a duty of care to exercise reasonable care in handling Plaintiff's olives pursuant to C.C.P. section 437c(f)(1). The motion is **DENIED**.

TOP's request for judicial notice is **GRANTED**. The rulings on objections are discussed below.

I. FACTUAL & PROCEDURAL HISTORY

TOP is a company that makes and sells extra virgin olive oil that it farms and bottles under its own label and also offers custom crush services for local olive growers. (Undisputed Material Fact ["UMF"], No. 1.) The custom crush operation is overseen by Master Miller, Sergio Tolentino, who has served as the Master Miller since 2020. (UMF, Nos. 2–3.) In October 2022, Plaintiff used TOP to mill olives he harvested from his property (the 2022 batch) that he shared with friends and colleagues, including Kawazaki San of Hakuto Co. Ltd, a chemical manufacturer based in Japan. (UMF, Nos. 4–5.)

The rest of the facts are disputed in this case. Plaintiff claims that after sampling the 2022 batch, Kawazaki San authorized an agreement with Plaintiff for Hakuto Co. to purchase olive oil from Plaintiff at $300 per liter for the purpose of incorporating it into a cosmetic line. (UMF, No. 6.) TOP claims that in discovery, Plaintiff represented that there is no evidence of communication between Plaintiff and any third-party concerning his olive oil, a third-party contract to purchase his olive oil, an agreed quantity to be sold, an agreed price therefor, contract "requirements," or his alleged damages resulting from his inability to sell his olive oil to any third-party because of TOPs purported negligence. (UMF Response, No. 6.) Furthermore, the parties entered into a Milling Services Agreement on October 29, 2023 (the "October 2023 Agreement"), which TOP argues that it only covers the one milling completed on October 29, 2023, and not future services. (UMF and Response, No. 7.) Needing more olives to meet TOP's minimum milling requirements, Plaintiff then sourced additional olives from the Jaeger family and began harvesting olives from the Jaeger property on November 11, 2023. (UMF and Response, Nos. 8–9.) Plaintiff had four bins of olives delivered to TOP on the evening of November 11, 2023; TOP insists that Master Miller, Mr. Tolentino, called Plaintiff the morning of November 11th and told him that they could not accept Plaintiff's olives or mill them but sent a thank you text later that evening to Plaintiff thanking him for dropping off a cheese plate, not accepting the drop off of the olives. (UMF and Response, Nos. 10, 14, 15, 16.) Plaintiff contends that the November 11th drop-off was received by Adriane Santos, Mr. Tolentino's assistant. (UMF and Response, No. 11.)

On November 12, 2023, Plaintiff contends he had an additional six containers of olives delivered to TOP and left with Mr. Santos, while TOP disputes that Plaintiff, or anyone else acting on his behalf at his instruction, delivered olives to TOP at any time on November 12, 2023. (UMF and Response, Nos. 17, 18, 19, 20.) Plaintiff claims that while TOP took possession of Plaintiff's olives, TOP did not communicate to Plaintiff until November 14, 2023, that it could not mill his olives. (UMF, No. 24.) However, TOP maintains that on November 13, 2023, it accepted olives from Jaeger who had a contract with TOP to mill her olives on November 14, 2023, and TOP was unaware that Plaintiff has comingled his olives with Jaeger's olives and that Jaeger's employee was the one who delivered Plaintiff's olives with Jaeger's. (UMF Response, No. 24.) Plaintiff secured milling at Figone Olive Oil Co., which compromised the quality of Plaintiff's oil so that he ultimately could not sell it to Hakuto Co. for the intended price of $70,419.00. (UMF and Response, No. 25, 26, 27, 28, 29.)

Plaintiff filed his Complaint on April 9, 2024, alleging several causes of action, including breach of contract and negligence. The operative Complaint in this action is the Second Amended Complaint ("SAC") which alleges five causes of action: breach of contract, breach of implied covenant of food faith and fair dealing, breach of implied-in-fact- contract, negligence, and assault. Plaintiff now moves for summary adjudication ("MSA") of the Fourth Cause of Action for Negligence against TOP on the issue of whether TOP owed a duty of care to exercise reasonable care in handling Plaintiff's olives.

II. GOVERNING LAW

A. Standard at Summary Adjudication

A party moving for summary adjudication of a cause of action must prove that the cause of action has no merit and summary adjudication may only be granted if it completely disposes of the cause of action. (C.C.P. § 437c(f)(1).) A plaintiff or cross-complainant moving for summary adjudication must prove every element of the cause of action and that there is no defense to a cause of action entitling the plaintiff to judgment on the cause of action. (C.C.P. § 437c(p)(1).) "From commencement to conclusion," the moving party bears the burden of persuasion and production to make a prima facie showing that there are no triable issues of material fact. (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 850.) "[I]f a plaintiff who would bear the burden of proof by a preponderance of evidence at trial moves for summary judgment, he must present evidence that would *require* a reasonable trier of fact to find any underlying material fact more likely than not—otherwise, he would not be entitled to judgment *as a matter of law*, but would have to present his evidence to a trier of fact." (*Ibid.*) "Once the plaintiff or cross-complainant has met that burden, the burden shifts to the defendant or cross-defendant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto." (C.C.P. § 437c(p)(1).)

While Courts may not generally adjudicate part of a cause of action, subdivision (f) of Section 437c allows a party to move for summary adjudication as to one or more issues of duty, including that one or more defendants owed a duty to the plaintiff. The Court may grant summary adjudication if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty. (C.C.P. § 437c(f)(1).)

B. Negligence

Negligence requires a showing that there was a legal duty to use due care, a breach of such legal duty, and the breach as the proximate or legal cause of the resulting injury. (*Ladd v. County of San Mateo* (1996) 12 Cal. 4th 913, 917.) The existence of a legal duty is generally a pure question of law for the court. (*Clarke v. Hoek* (1985) 174 Cal.App.3d 208, 213.) However, this determination may depend on underlying triable issues of fact. (See generally *Mayes v. La Sierra University* (2022) 73 Cal.App.5th 686, 703–708.)

III. DISCUSSION

A. The Hearing Date on the Motion is Proper

In its Opposition, TOP takes issue with the hearing date on the motion being set within 30 days of trial in violation of C.C.P. section 437c(a)(3) and relying on *Robinson v. Woods* (2008) 168 Cal.App.4th 1258, 1268, warranting a procedural denial of the motion. However, *Robinson* presented a different factual scenario where the defendants themselves noticed their motion for a hearing within 30 days of the trial date without first obtaining a finding of good cause from the trial court. Here, the Court itself set the hearing on July 31, 2026, which does not require the moving party to obtain a finding of good cause prior to the hearing on the motion. While not ideal, this is the soonest date the Court could accommodate while still accounting for the required minimum 81 days under C.C.P. section 437c(a)(2). TOP was still given the mandatory minimum notice period for the hearing as required by Section 437c(a)(2), which the Court does not have authority to shorten. (*Urshan v. Musicians' Credit Union* (2004) 120 Cal.App.4th 758, 767–768.) As such, the Court finds that the July 31st date is proper and impliedly found good cause when it set the hearing date on July 31, 2026, which is within 30 days of trial. Neither party moved to advance this hearing date once notice of the hearing date was served on May 7, 2026, or moved the Court for a short trial continuance. Thus, there is no procedural basis to deny the motion and the Court shall consider TOP's substantive Opposition it made in the alternative to this procedural argument.

B. Evidentiary Objections

1. TOP's Objections

TOP filed 11 evidentiary objections to evidence in support of Plaintiff's MSA. Objection Nos. 1–5 to Plaintiff's declaration are **OVERRULED**. Objection Nos. 6–10 to Plaintiff's deposition testimony are **OVERRULED**. Objection No. 11 to Aaron Levine's Declaration is **OVERRULED**.

2. Plaintiff's Objections to TOP's Evidence

Plaintiff filed 26 objections to TOP's evidence filed in support of its Opposition to the MSA. Objection Nos. 1–13 to the Hernando Declaration are **OVERRULED**. Objection Nos. 14, 15, 16, 17, 18, 20, and 21 to the Tolentino Declaration are **OVERRULED**. Objection No. 19 to the Tolentino Declaration is **SUSTAINED**. Objection Nos. 22–26 to the Santos Declaration are **OVERRULED**.

3. Plaintiff's Objections to TOP's Additional Material Facts

In support of its Opposition, TOP filed additional material facts ("AMF"). Plaintiff objects to all AMFs as containing legal argument rather than a concise recitation of material facts. Plaintiff's objections to the AMFs were not stated in his objections to TOP's other evidence but instead are made in the "response" column in Plaintiff's response to TOP's AMFs. Therefore, these objections are improper and should have been filed separately as required by Rule 3.1354 of the California Rules of Court. (*Hodjat v. State Farm Mutual Automobile Ins. Co.* (2012) 211 Cal.App.4th 1, 9 [affirming the trial court's decision in refusing to rule on evidentiary objections contained in a separate statement because "interposing objections into the separate statement defeats the goal of allowing the trial court to quickly and efficiently determine what particular piece of evidence is admitted and what is not."].) While the Court need not consider such objections, the Court agrees that the statements contained in the AMFs are legal arguments rather than facts, in violation of Rule 3.1350 of the California Rules of Court. Therefore, the Court will not consider the AMFs.

C. TOP's Requests for Judicial Notice

The court must take judicial notice of any matter requested by a party, so long as it complies with the requirements under Evidence Code section 452. (Evid. Code § 453.) The court may take judicial notice of records of any court record of California, the U.S., or any other state. (Evid. Code § 452(d).) Courts may "take judicial notice of the *existence* of judicial opinions and court documents, along with the truth of the results reached—in the documents such as orders, statements of decision, and judgments—but cannot take judicial notice of the truth of hearsay statements in decisions or court files, including pleadings, affidavits, testimony, or statements of fact." (*People v. Harbolt* (1997) 61 Cal.App.4th 123, 126–127 [citations omitted]; Evid. Code §§ 452, 453.)

In support of its Opposition, TOP requests judicial notice of its General Denial to the SAC filed on May 8, 2026. The request is **GRANTED** but the Court does not take notice of the truth of any of the statements therein.

D. Negligence and the Issue of Duty

The Court focuses on the issue of duty since it is an issue Plaintiff seeks separate adjudication of and it is also a required element of negligence.

Plaintiff contends that TOP owed a duty of care to Plaintiff and that there are no triable issues as to this duty or the other elements of negligence (breach and causation). Conversely, TOP argues that Plaintiff cannot establish that it owed him a duty of care based on any theory he advanced: bailment, industry or trade practices, or contractual privity.

1. Bailment

"Bailment is a contractual relationship" encompassing "the delivery of a thing in trust for some special object or purpose, upon a contract, express or implied." (*Greenberg Bros., Inc. v. Ernest W. Hahn, Inc.* (1966) 246 Cal.App.2d 529, 531.) "The general rule that the assent of both parties is necessary before a contract, either express or implied in fact, can come into existence, is applicable to the ordinary case of a contract of bailment. [citations omitted] The duties and obligations of a bailee ordinarily cannot be thrust on one against his consent—they must be voluntarily assumed as in every obligation founded on contract." (*H. S. Crocker Co. v. McFaddin* (1957) 148 Cal.App.2d 639, 644.) Bailment cannot be implied "where it appears it was the intention of the parties, as derived from their relationship to each other and from the circumstances of the case, that the property was to be held by the party in possession in some capacity other than as bailee." (*Ibid*.) "Where the right of recovery rests on the existence of the bailment relationship and the fact of bailment is in issue as it was in the case at bar, the burden of establishing a bailment rests on the plaintiff and includes the burden of proving the making of a valid contract of bailment between the parties, the delivery to the bailee under the contract, and acceptance by the bailee." (*Id.* at 647.)

Here, Plaintiff fails to show that the parties had a valid contract of bailment as a matter of law. Plaintiff produced no evidence that it had a contract with TOP for the milling of Plaintiff's olives on November 11, 2013, November 12, 2023, or November 14, 2023. The Court does not read the October 2023 Agreement as narrowly as TOP construes it. The Agreement "applies to all custom milling appointments" between TOP and Plaintiff and states that "[e]ach delivery receipt and [TOP] invoice now or hereafter executed by the parties shall form part of this Agreement (whether or not physically attached hereto)." (Villa Decl., Exhibit C–Hernando Decl., Exhibit 1.) Therefore, it is plausible for the October 2023 Agreement to cover the November 2023 milling. However, Plaintiff has not produced any evidence that he had a custom milling appointment on November 11–14, 2023 or that there was a milling invoice between the parties executed during this time. Instead, Plaintiff relies on the contract entered between Kris Jaeger and TOP whereby Plaintiff comingled his olives with Jaeger's that were scheduled to be milled on November 14, 2023. (Villa Decl., Exhibit C–Hernando Decl. and Exhibit 2 attached thereto.) Plaintiff is not named in the Jaeger contract as either a contracting party or a third-party beneficiary.

Plaintiff's reliance on *Gordon H. Ball, Inc. v. Parreira* (1963) 214 Cal.App.2d 697 is not persuasive. The court in *Gordon* held that the trial court erred in granting a motion for nonsuit because defendant in that case "could be found to have created a bailment for the mutual benefit of the plaintiff and himself" by preventing plaintiff's representatives from entering defendant's land to retrieve their airplane after plaintiff crashed his airplane on defendant's land and defendant declaring that he was holding the plane until he could secure damages. (*Gordon H. Ball, Inc., supra,* 214 Cal.App.2d at 703–704.) This does not support Plaintiff's contention that effectively dropping off olives on TOP's doorstep or mixing them with another customer's olives (which were ultimately returned to Plaintiff) created a contract in bailment with TOP when Plaintiff has not shown that he had a custom milling appointment on November 11–14, 2023 or that there was a milling invoice between the parties executed during this time pursuant to their October 2023 Agreement.

While acceptance of olives is not required to be actual, acceptance is not "inferred unless there is something to show notice or knowledge on the part of the alleged bailee that the goods are in fact in his possession, and that they are the property of the bailor." (*Gordon H. Ball, Inc., supra,* 214 Cal.App.2d at 703–704.) The facts of notice or knowledge that Plaintiff's olives were comingled with Jaeger's are directly disputed by the parties. Plaintiff claims that his single text message to Mr. Tolentino on November 11, 2023, is sufficient notice that TOP had possession of Plaintiff's olives while Mr. Santos claims that he did not have notice until November 14, 2023, that some of the olives that were dropped off with Jaeger's were in fact Plaintiff's olives. (Wang Decl., Exhibit C; Villa Decl., Exhibit E–Santos Decl.,

¶¶ 6–9.) Mr. Santos, who received Jaeger's olives and is allegedly the recipient of Plaintiff's olives on November 11, 2023, and November 12, 2023, states that he did not remember Plaintiff dropping off olives on these dates. (Villa Decl., Exhibit E–Santos Decl., ¶¶ 4–5.) Mr. Tolentino also declared that he called Plaintiff around 9:00 a.m. on the morning of November 11, 2023, that he told Plaintiff he could not accept his olives for milling on that date or any date because TOP had no capacity to mill them and told Plaintiff not to drop off his olives. (Villa Decl., Exhibit D–Tolentino Decl., ¶¶ 4–5.) Furthermore, Plaintiff produced no evidence showing that TOP refused to return Plaintiff's olives at any point from November 11–14, 2023 or that Plaintiff attempted to retrieve his olives at any point during this time and TOP refused.

Plaintiff has not established that it entered into a valid contract of bailment, express or implied, with TOP for milling in November 2023 or had a custom milling appointment during this time. By failing to prove a valid contract of bailment, Plaintiff has failed to shift his burden that TOP was a bailee and thus was held to the exercise of ordinary care in safeguarding Plaintiff's olives under this theory, precluding summary adjudication in his favor.

2. Industry or Trade Practices

Plaintiff next cites to industry practice for olives to be milled within 24 hours of harvest to impose a duty on TOP, which TOP failed to do. TOP maintains that this standard does not apply to Plaintiff because he was not a customer of TOP's after October 29, 2023. In Reply, Plaintiff argues the TOP cites no authority to support its proposition that an absence of a contractual relationship negates a duty of care arising from established industry customs and practices.

TOP may not cite to authority that confirms that an absence of a contractual relationship negates a duty of care arising from established industry customs, but Plaintiff's cited cases do not support his proposition either. The parties in *Hawaiian Pineapple Co. v. Eckert Engineering Corp.* (1954) 129 Cal.App.2d 371, had a contract for defendant to store ripe peaches in refrigeration. The court in *Ward v. Otzen Packing Co.* (1918) 36 Cal.App. 124 does not affirmatively say there was an agreement between the parties, but this can be inferred since plaintiff shipped his prunes to defendant for processing, packing, and storage which the court found was negligently done.

TOP cites to *Rowland v. Christian*, which states:

> Section 1714 of the Civil Code provides: 'Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself. ...' This code section, which has been unchanged in our law since 1872, states a civil law and not a common law principle. [Citation]
>
> …
>
> California cases have occasionally stated a similar view: 'All persons are required to use ordinary care to prevent others being injured as the result of their conduct.' [Citations]

> Although it is true that some exceptions have been made to the general principle that a person is liable for injuries caused by his failure to exercise reasonable care in the circumstances, it is clear that in the absence of statutory provision declaring an exception to the fundamental principle enunciated by section 1714 of the Civil Code, no such exception should be made unless clearly supported by public policy. [Citations]
>
> A departure from this fundamental principle involves the balancing of a number of considerations; the major ones are the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved. [Citation]

(*Rowland v. Christian* (1968) 69 Cal.2d 108, 111–113.) TOP argues that the 24-hour harvest to milling custom is only applicable to its customers, which Plaintiff was not at any point in November 2023. Plaintiff has produced no evidence that he had a custom milling appointment on November 11–14, 2023, that there was a milling invoice between the parties executed during this time, or that Plaintiff was a third-party beneficiary to the Jaeger milling agreement and such agreement would have allowed milling prior to November 14, 2023. Plaintiff effectively attempted to piggyback off Jaeger's milling agreement for November 14, 2023, and has not established that TOP had notice of this arrangement. Plaintiff claims that TOP's internal policies require it to turn customers away when it lacks capacity to mill their olives. However, Plaintiff cannot show with admissible evidence that it was TOP's customer with a custom milling appointment at any time in November 2023. As discussed above, the facts of notice or knowledge that Plaintiff's olives were comingled with Jaeger's and whether they were dropped off together or separately on November 11, 2023, and November 12, 2023, are directly disputed by the parties. Plaintiff has failed to show as a matter of law that TOP knowingly possessed Plaintiff's olives on November 11–12, 2023, and this knowledge imposed a duty upon TOP to either not accept Plaintiff's olives or return Plaintiff's olives to him immediately. Without more, Plaintiff has failed to shift his burden that TOP owed a duty of reasonable care of Plaintiff's olives based on industry standards, precluding summary adjudication in his favor.

3. <u>Contractual Privity</u>

The Court is not persuaded by Plaintiff's contention that the October 2023 Agreement between Plaintiff and the TOP places the parties in contractual privity for Plaintiff's November 2023 efforts to mill olives. As explained above, the October 2023 Agreement could cover the November 2023 milling but Plaintiff has produced no evidence showing that he had a custom milling appointment on November 11–14, 2023 or that there was a milling invoice between the parties executed during this time. Plaintiff does not address this theory in his Reply. Therefore, Plaintiff has failed to establish duty on a theory of contractual privity.

Since Plaintiff has failed to establish as a matter of law that TOP owed a duty of reasonable care in handling his olives, summary adjudication of the Fourth Cause of Action and the issue of duty are **DENIED**.

IV. CONCLUSION

The motion is **DENIED**.

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

3. 24CV06871, Arriaza v. Nissan North America, Inc.

Plaintiffs Penelope Arriaza and Trevor Daughtery ("Plaintiffs") seek an award of attorney's fees pursuant to Civil Code section 1794(d) and in connection with the parties' C.C.P. Section 998 Offer. Attorney's fees are **GRANTED** in the amount of $17,090.00. Costs are **GRANTED** in the amount of $1,479.21. The total award of attorney's fees and costs is $18,569.21 to Plaintiffs pursuant to Civil Code Section 1794(d).

I. FACTUAL & PROCEDURAL HISTORY

On November 15, 2024, Plaintiffs filed their Complaint against Defendants Nissan North America, Inc. and Jim Bone Nissan of Santa Rosa (together as "Defendants") alleging various violations of the Song-Beverly Act. On August 28, 2025, Plaintiffs accepted a 998 Offer made by Defendant Nissan for a repurchase of Plaintiffs' vehicle in the amount of $44,229.32. The Offer also provides for Plaintiffs' attorney's fees and costs pursuant to Civil Code section 1794(d). On January 16, 2026, Plaintiffs filed a conditional notice of settlement of the entire case. Now Plaintiffs seek attorney's fees pursuant to Civil Code section 1794(d) as prescribed by the Section 998 Offer and its allocation of attorney's fees and costs. Defendants did not oppose the instant motion.

II. DISCUSSION

A. Governing Law

California Civil Code section 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.)

B. Requested Fees and Costs

Plaintiff seeks a total of $33,731.39 for the following: attorney's fees for $32,227.65 ($24,790.50 [lodestar] plus $7,437.15 [multiplier of 1.3 or 30%]) and costs for $1,503.74.

a. Fees

i. The Reasonableness of the Hourly Rates

The Court first notes that Plaintiffs reference the 998 Offer in this case but did not include a copy of the Offer in any of the filings with the motion. Therefore, the Court only considers the award of fees and costs pursuant to Civil Code section 1794(d) and not the parties' 998 Offer since the Court cannot verify the contents of the Offer.

Plaintiffs' counsel requests fees for approximately 45.5 hours of time split amongst five attorneys and two law clerks. Counsel requests the following rates: Acosta at $450 per hour for three years of experience as an attorney and partner of his firm, Perdue at $695 per hour for 17 years of experience, Greco at $595 per hour for 12 years of experience as an attorney, Urner at $525 per hour for 10 years of experience as an attorney, and Mora at $450 for five years of experience. The Law Clerks Kowalczyk and Garoian bill at $250 per hour and both have Juris Doctorate degrees. Counsel attached an itemized list of billable time to the Acosta Declaration as Exhibit A. To justify their rates, counsel also attached United States Attorney Fee Survey 2017-2018 and the Laffey Matrix. (Acosta Decl., Exhibit C.) However, "[t]he reasonable hourly rate is that prevailing in the community for similar work." (*PLCM*, *supra*, 22 Cal.4th at 1095.) "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.) Further, "a Court is entitled to rely on its own practical experience in determining what is a proper rate within the community." (*Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1009.) Therefore, the Court need not rely on the Attorney Fee Survey or the Laffey Matrix to determine whether the fees Plaintiffs request are reasonable and may rely on its own experience. The Court finds many of the attorney rates are high in this case for the Sonoma County locality and considering the fact that this case did not pose any unusual or complex issues, especially for a firm that specializes in claims under the Song-Beverly Act.

Based on the years of experience as stated for counsel, the following rates are more appropriate for the Sonoma County locality: Acosta at $400 per hour for three years of experience as an attorney being partner, Perdue at $600 per hour for 17 years of experience, Greco at $550 per hour for 12 years of experience as an attorney, Urner at $500 per hour for 10 years of experience as an attorney, and Mora at $450 for five years of experience. The Law Clerks' rate at $250 per hour for their experience is reasonable.

ii. The Number of Hours Expended

Amongst the seven individuals that billed in this case, counsel requests 45.5 hours of time in total. The Complaint was filed on November 15, 2024, and Plaintiffs accepted the 998 Offer on August 28, 2025 (about 9 months). Approximately 33.5 of the 45.5 hours billed occurred up until the 998 Offer being accepted. Until the 998 Offer, the time was spent analyzing purchase documents, service records, drafting the Complaint, and various discovery. The Court does not find it reasonable to bill for 0.6 hours (0.3 each) for drafting a notice of remote appearance and a corresponding order (dated April 30, 2026). The order is not a necessary form, and the notice of remote appearance is only necessary to request remote appearance for trial. Furthermore, both are forms from the Judicial Counsel of California that are three pages in total for both forms, requiring little preparation. Therefore, the Court finds that 0.1 hours are more appropriate for both tasks rather than 0.6. Furthermore, counsel billed 3.8 hours for the preparation of the instant attorney's fees motion and corresponding declaration of Acosta. Generally, the Court does not award attorney's fees for the preparation of an attorney's fees motion. Lastly, counsel has included 5.5 hours of anticipated time reviewing and responding to an Opposition and attending the hearing, which has not occurred in this case and therefore the Court shall not award fees for these 5.5 hours of anticipated time. The Court **GRANTS** the total reasonable fees in the amount of $17,090.00 as follows:

Staff	Adjusted Hourly Rate	Adjusted Time	Total Amount
Perdue	$600	16.7	$10,020
Greco	$550	6.7 (reduced by 3.0)	$3,685
Urner	$500	1.2 (reduced by 5.5)	$600
Mora	$450	1.3 (reduced by 0.5)	$585
Acosta	$400	0.0 (reduced by 0.8)	$0
Law Clerks	$250	8.8	$2,200
		34.7	$17,090.00

iii. The Application of a Multiplier

Plaintiffs seek an enhancement of $7,437.15, which is a multiplier of 1.3 or 30% of the total attorney's fees requested. In considering whether to apply a multiplier, the Court should not consider factors which are already included in the lodestar amount, such as extraordinary skill and the difficulty of the question involved. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1138-1139.) Here, while counsel took this case on a contingency basis, their firm is The Lemon Pros, LLP, and had seven different staff members (including five attorneys) working on this case throughout its pendency. There was no motion practice before the Court and the 998 Offer resulted in a repurchase of the vehicle by the manufacturer made approximately nine months after filing the Complaint. The Court also notes that there are some inconsistencies between the MPA and Acosta Declaration that indicate a lack of attention to detail. For example, the MPA states that Nissan repurchased Plaintiffs' vehicle for $44,229.32, while the Acosta Declaration at paragraph 32 states that the vehicle was purchased for $115,000.00. Plaintiffs cite to the contingency nature of the case and meeting/exceeding Plaintiff's litigation objectives warranting a multiplier. However, the Court is not persuaded and does not find an enhancement or multiplier warranted in this action.

b. Costs

Plaintiffs also filed a memorandum of costs, totaling $1,503.74 consisting of: $580.71 for filing and motion fees, $179.54 jury fees, $150.00 for service of process, $91.50 for fees for electronic filing or service, and $501.99 for "other". Part of item 1. for filing and motion fees for $580.71 includes a cost of $24.53 for the filing of a Reply to the instant motion. However, as noted above, Plaintiffs did not file a Reply. The Court shall deduct $24.53 from the total costs requested. All other costs appear to be reasonable. Therefore, costs are **GRANTED** in the amount of $1,479.21.

III. CONCLUSION

The motion is **GRANTED** pursuant to Civil Code section 1794(d). Attorney's fees are **GRANTED** in the amount of $17,090.00. Costs are **GRANTED** in the amount of $1,479.21. The total fees and costs awarded is $18,569.21 to Plaintiffs.

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

4. 24CV07759, Ghilotti Construction Company, Inc. v. The Weitz Company, LLC

Counsel Richard M. Harris and his firm Rogers Joseph O'Donnell requests to be relieved as counsel for Defendant Kendal at Sonoma, A Zen Inspired Community ("Kendal"), due to a breakdown in the attorney-client relationship. The motion is **GRANTED** pursuant to C.C.P. section 284(2) and California Rules of Court, Rule 3.1362.

On December 20, 2024, Plaintiff Ghilotti Construction Company, Inc. ("Ghilotti") filed the Complaint in this action arising out of a construction project of Kendal's property located at 1801 Boxheart Dr., Healdsburg, California (A.P.N. 091-060-037-000) (the "Property"). Ghilotti named the following entities as Defendants in the Complaint: The Weitz Company LLC ("Weitz"), Berkshire Hathaway Specialty Insurance Company, Kendal, Travelers Casualty and Surety Company of America, U.S. Bank National Association, and Zurich American Insurance Company. Aaron P. Silberman and Richard M. Harris of Rogers Joseph O'Donnell are the attorneys of record for Kendal, Weitz, U.S. Bank National Association, Travelers Casualty and Surety Company of America, Zurich American Insurance Company, and Berkshire Hathaway Specialty Insurance Company.

On August 28, 2025, the Court approved the parties' stipulation to submit to binding arbitration and stayed the action, pending completion of the arbitration. Counsel Harris then filed the instant motion to be relieved as counsel for Kendal on April 29, 2026. In his declaration, Counsel Harris states that his firm is required to be paid by a third party for Kendal's representation, which has refused to do so. Counsel Harris also states that Kendal has outside counsel that was served with the motion and therefore is no prejudice to withdraw from representing Kendal. However, Kendal's outside counsel, Kimberly Arouh of Buchanan Ingersoll & Rooney LLP, specially appeared to oppose the instant motion.

In Opposition, Counsel Arouh states that the basis for the motion is disingenuous because there are no unpaid invoices or any breakdown in communication that justify permissive withdrawal. (Helman Decl., Exhibit 1.) Arouh argues that Harris has been jointly representing Weitz and Kendal in this action and developed a joint strategy for those Defendants, which presents an unwaivable conflict. Kendal commenced litigation against Weitz concerning the same project at the Property in this Court on April 1, 2026 (Case No. 26CV02342), which Weitz removed to federal court. In the Kendal action, Weitz is represented by Segal McCambridge Singer & Mahoney, LTD. Arouh argues that Harris impermissibly seeks to terminate his representation of Kendal while remaining counsel for Weitz and urges the Court to deny the motion.

In Reply, Harris argues that there is no prejudice to Kendal in allowing Harris and his firm to withdraw as counsel. Harris maintains that Arouh/Kendal cannot cite to any prejudice because the matter is stayed pending arbitration and there are no hearings currently set in this case. In his Reply, Harris further requests the Court take judicial notice of Department 18's recent approval of Rogers Joseph O'Donnell's request to be relieved as counsel in a similar case *AC Products Inc. v. Weitz Supply Chain LLC*, Case No. 24CV01161, as persuasive authority. Harris' request for judicial notice is **DENIED** for failure to make this request in a separate document listing the specific items for which notice is requested. (Super. Ct. Sonoma County, Local Rules, rule 9.19(c).)

While the Court recognizes the ethical concerns raised by Arouh, this is not a basis for the Court to deny Harris' motion to be relieved as counsel. Arouh asserts arguments that are akin to a motion to disqualify counsel. There currently is no pending motion to disqualify counsel in the Court's docket for this case. Even so, Harris still remains as counsel for all other Defendants in this action: U.S. Bank National Association, Travelers Casualty and Surety Company of America, Zurich American Insurance Company, and Berkshire Hathaway Specialty Insurance Company. For the instant motion, the Court will not venture into the veracity of the statements about payments possibly owed by Kendal or other potentially omitted conversations between Harris and Helman/Kendal. However, the briefs and declarations in this motion exemplify the breakdown in the attorney-client relationship that has occurred between Harris and Kendal, which justifies Harris and his firm, Rogers Joseph O'Donnell, being relieved as counsel for Kendal.

The Court shall sign the proposed order lodged with the motion on April 29, 2026. Counsel Harris shall serve the signed Order and a copy of this tentative ruling on all parties who have appeared in this case and file a proof of service with the Court within five (5) days of service pursuant to Rule 3.1362(e) of the California Rules of Court.