TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, September 23, 2026 3:00 pm
Courtroom 19 –Hon. Oscar A. Pardo
3055 Cleveland Avenue, Santa Rosa

The tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument, **YOU MUST NOTIFY** the Judge's Judicial Assistant by telephone at **(707) 521-6602**, and all other opposing parties of your intent to appear, **and whether that appearance is in person or via** Zoom, no later 4:00 p.m. the court day immediately preceding the day of the hearing.

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

TO JOIN ZOOM ONLINE:

Department 19 Hearings
MeetingID: 160-421-7577
Password: 410765
https://sonomacourt-org.zoomgov.com/j/1604217577

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

PLEASE NOTE: The Court's Official Court Reporters are "not available" within the meaning of California Rules of Court, Rule 2.956, for court reporting of civil cases.

1-2. 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.

The instant Demurrer and motion to strike were filed on July 6, 2026. On July 15, 2026, Defendants filed a First Amended Answer ("FAA") without leave of the court as allowed by CCP § 472. Plaintiff has filed a new demurrer and motion to strike targeting the FAA, and it's set for hearing on October 21, 2026. The present Demurrer and motion to strike are therefore **MOOT**. It is accordingly dropped from calendar.

3. 25CV04069,, Nesbitt v. Whitey's TBA, Inc.

Plaintiff has filed a dismissal of this case on August 25, 2026. Accordingly, the hearing for Plaintiff's motion is DROPPED.

4. **<u>25CV05117, Belluomini v. A0690 Windsor LP</u>**

Plaintiff Brandon Belluomini ("Plaintiff") filed the presently operative complaint ("Complaint") against defendants A0690 Windsor LP ("Windsor"), Buckingham Property Management ("Buckingham"), Nations Finest ("Nations"), Urban Housing Communities ("Urban", together with all other defendants, "Defendants"), and Does 1-50. This matter is on calendar for Nations' demurrer to Plaintiff's Complaint.

The demurrer is SUSTAINED in part and OVERRULED in part.

I. <u>Governing Law</u>

A. <u>Demurrers Generally</u>

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.

B. <u>Partnership Liabilities</u>

"Except as otherwise provided…, all general partners are liable jointly and severally for all obligations of the limited partnership unless otherwise agreed by the claimant or provided by law." Corp. Code, § 15904.04 (a). "To the extent not inconsistent with Section 15904.04, a general partner may be joined in an action against the limited partnership or named in a separate action." Corp. Code, § 15904.05(a).

C. <u>Intentional Infliction of Emotional Distress</u>

Claims of intentional infliction of emotional destress require: “(1) extreme and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the probability of causing, emotional distress; (2) the plaintiff's suffering severe or extreme emotional distress; and (3) actual and proximate causation of the emotional distress by the defendant's outrageous conduct. Whether treated as an element of the prima facie case or as a matter of defense, it must also appear that the defendants' conduct was unprivileged. Conduct to be outrageous must be so extreme as to exceed all bounds of that usually tolerated in a civilized community.” *Davidson v. City of Westminster* (1982) 32 Cal.3d 197, 209 internal citations and quotations omitted. To constitute a basis for emotional distress, the alleged conduct must extend beyond mere insults, indignities, threats, annoyances, petty oppressions or other trivialities. *Hughes v. Pair* (2009) 46 Cal.4th 1035, 1051. The conduct must be such that on hearing of the alleged conduct an average member of the community would resent the defendant and lead the community member to exclaim, “Outrageous!” *Cochran v. Cochran* (1998) 65 Cal.App.4th 488, 494. “In order to avoid a demurrer, the plaintiff must allege with great specificity the acts which he or she believes are so extreme as to exceed all bounds of that usually tolerated in a civilized community.” *Vasquez v. Franklin Management Real Estate Fund, Inc.* (2013) 222 Cal.App.4th 819, 832 (Internal quotations omitted). “Without such pleading, no cause of action for intentional infliction of emotional distress will stand.” *Ankeny v. Lockheed Missiles and Space Co.* (1979) 88 Cal.App.3d 531, 536.

“Severe emotional distress means ‘emotional distress of such substantial quality or enduring quality that no reasonable [person] in civilized society should be expected to endure it.’” *Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 1004, quoting *Girard v. Ball* (1981) 125 Cal.App.3d 772, 787–788. “(T)he requisite emotional distress may consist of any highly unpleasant mental reaction such as fright, grief, shame, humiliation, embarrassment, anger, chagrin, disappointment or worry.” *Fletcher v. Western National Life Ins. Co.* (1970) 10 Cal.App.3d 376, 397. “It is for the court to determine whether on the evidence severe emotional distress can be found; it is for the jury to determine whether, on the evidence, it has in fact existed.” *Ibid*.

II. Evidentiary and Procedural Issues

Nations and Plaintiff are admonished that briefs exceeding 10 pages are *required* to include a table of contents and a table of authorities. Rule of Court, Rule 3.1113(f).

III. Demurrer

A. Partnership Liability

Nations’ repeatedly argues, to each cause of action with little to no additional bases, that Plaintiff has failed to plead sufficient facts to formulate agency liability, and accordingly the demurrer must be sustained. Nation reiterates this argument to all eleven causes of action. Plaintiff in turn argues that the facts are sufficiently presented to show the theory of liability,

The Complaint clearly alleges that Windsor is a limited partnership, of which Nations is a member. Complaint ¶¶ 2 and 8. Windsor owned the property that Plaintiff leased, and was responsible for leasing, maintenance and oversight. *Ibid.* The Complaint also alleges Nations is a general or managing partner in Windsor. Complaint ¶ 9. Plaintiff alleges various claims associated with his lease, and Windsor's conduct in relation to that lease. Nations has demurred, arguing that the "conclusion" of general partnership is insufficient.

Indeed, Nation's position appears patently unreasonable. Nations' argument is that Plaintiff has failed to elucidate ultimate facts sufficient to articulate their liability under partnership principles, arguing that it is "conclusory". However, Plaintiff cites to the relevant statute in is opposition, and his pleading of their partnership liability is far *less* conclusory than their argument to that effect. The theory of liability is clearly expressed in the Complaint. Windsor is Plaintiff's landlord. Windsor is a limited partnership. Nations is a general partner in that limited partnership. While Nations *repeatedly* argues that this is conclusory pleading, these are well articulated ultimate facts which are more than sufficient at demurrer. The facts alleged clearly show the fact that Nations can disprove to disclaim liability (their general partnership status). While they argue that this is not sufficient, they fail to express what is missing from Plaintiff's pleading, only vaguely opining that it is conclusory.

Nations argues that Plaintiff's pleading requires the Court to "presume" that partnership status leads to liability. This argument is frivolous. Nations fails to genuinely address Corp. Code, § 15904.04.That section provides in relevant part, "Except as otherwise provided in subdivision (b), all general partners are liable jointly and severally for all obligations of the limited partnership unless otherwise agreed by the claimant or provided by law." Corp. Code, § 15904.04(a). The joinder of a general partner to an action with their limited partnership is expressly allowed by statute. Corp. Code § 15904.05(a). Indeed, inclusion of Nations as a party based on their general partnership is a potential *requirement* to their liability. Corp. Code § 15904.05(b-c); see also *21st Century Financial Services, LLC v. Manchester Financial Bank* (S.D. Cal. 2017) 255 F.Supp.3d 1012, 1025. Nations attempts to cloud the issue on reply with other, less relevant statutes within the Corporations Code. See Corp. Code §§ 15904.03 (dealing instead with limited partnership liability for actions of the general partner) & 15904.08 (dealing with general partner's duties to partnership). The section appliable to the instant facts is clearly relied on and cited by Plaintiff. Nations argues on Reply that Plaintiff needs to plead facts related to "actual control, management, or conduct" (Replay, pg. 3:8-10), but this ignores the substance of the statute. Corp. Code, § 15904.04(a) contains no requirement that Nations exercise active control over the limited partnership to be liable. All that is required is general partner status. At demurrer, this is sufficient.

On Reply, Nations also attempts to pivot their argument to state that Plaintiff needs to adequately plead liability of the partnership (Windsor), but no genuine deficiency in the allegations against Windsor is displayed. This is raised in such an incomplete manner that it serves as more of a distraction than genuine argument.

In both their moving papers and reply, Nations raises various inapposite decisions, repeatedly arguing that the Complaint alleges ultimate facts rather than conclusions. The sufficiency of the ultimate facts alleged related to the issues raised in the demurrer are clear. Examination of Nations' cited authorities further supports this result. "A complaint is sufficient if it alleges ultimate rather than evidentiary facts, (*Citation*) but the plaintiff must set forth the essential facts of his or her case with reasonable precision and **with particularity sufficient to acquaint [the] defendant with the nature, source and extent of the plaintiff's claim**." *Annocki v. Peterson Enterprises, LLC* (2014) 232 Cal.App.4th 32, 36 (emphasis added). As is addressed above, the nature, source and extent of the claim are clear. Plaintiff alleges precisely how and why Nations is liable for the conduct of Windsor. That Nations is alleged to be a general partner is an ultimate fact, not a legal conclusion. *Contra, Ankeny v. Lockheed Missiles and Space Co.* (1979) 88 Cal.App.3d 531, 537 (that conduct alleged was "tortious" was a legal conclusion). Even were Nations persuasive that the Complaint has conclusory allegations, *some* conclusory pleading is acceptable. *Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1237 (general pleading of compliance with Government Claims Act was sufficient pleading.). Other citations do not actually address conclusory pleading in their analysis, merely stating well-worn propositions of law. *Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1237; *Yalung v. State of California* (2023) 98 Cal.App.5th 71, 80; *Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 253. None of Nations' cited cases deal with the sufficiency of the pleading of general partner status.

Once that is sufficiently pled, generalized principles of vicarious liability dispose of the demurrer to the First, Second, Third, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Eleventh causes of action. Nations is sufficiently alleged to be liable for the conduct of Windsor as a general partner. Nations fails to express how these causes of action are inadequately stated as to Windsor. The demurrer to the First, Second, Third, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Eleventh causes of action is OVERRULED.

B. Intentional Infliction of Emotional Distress.

The only cause of action on which Nations distinguishes its demurrer is Plaintiff's claim for intentional infliction of emotional distress. Here, Nations argues that the Complaint fails to express "outrageous conduct" as would be required for IIED claims.

Plaintiff appears to concede this issue, not addressing the sufficiency of the outrageous conduct, and noting that his intended amended complaint removes this cause of action altogether. The substance of the objection by Nations is persuasive. Outrageous conduct is consistently held to be an onerous standard. Cases where allegations were found to be outrageous sufficient to survive demurrer are marked by their allegations of conduct not acceptable in a civilized society. *Kiseskey v. Carpenters' Trust for So. California* (1983) 144 Cal.App.3d 222, 229 (plaintiff received repeated harassing calls, threatening the safety of his family); *Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 498 (use of racial epithets in combination with discriminatory employment action was sufficient to allege outrageous conduct). In contrast, courts of appeal have repeatedly held that alleged conduct must be sufficiently outrageous, or the matter is susceptible to demurrer. *Cochran v. Cochran* (1998) 65 Cal.App.4th 488, 497 (even where defendant's comments were clearly threatening, where the threats lacked immediacy and had veiled meaning, the statements were not sufficiently outrageous and demurrer was properly sustained); *Ankeny v. Lockheed Missiles and Space Co.* (1979) 88 Cal.App.3d 531, 536 (vague and conclusory allegations of outrageous conduct does not satisfy that element, and a cause of action for intentional infliction of emotional distress so plead will not withstand demurrer.) The outrageousness of conduct is only a matter for a finder of fact "(w)here reasonable men may differ". *Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 499. Plaintiff's allegations allege various types of conduct, but nothing so far beyond the pale that it meets the legal standard of "outrageous". Given that Plaintiff concedes that this cause of action should not be included in further versions of the Complaint, the demurrer is SUSTAINED without leave to amend.

IV. Conclusion

The demurrer is SUSTAINED without leave to amend as to the Seventh cause of action, and otherwise OVERRULED.

Nations 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).

5. 25CV07191, Sawyer-Garcia v. Indigenous Medicine Conservation Fund

Plaintiff Ivan Sawyer-Garcia ("Plaintiff") filed the complaint (the "Complaint") against defendants Indigenous Medicine Conservation Fund, ("Defendant"), and Does 1-50 for causes of action arising out of alleged employment relationship. This matter is on calendar for the motion by Defendant to compel responses to requests for production of documents ("RPODs") under Code of Civil Procedure ("CCP") § 2031.300, to compel responses to special interrogatories ("SIs") under CCP § 2030.290. The motions are MOOT.

I. Governing Law

Regarding interrogatories, a party responding to an interrogatory must provide a response that is "as complete and straightforward as the information reasonably available to the responding party permits" and "[i]f an interrogatory cannot be answered completely, it shall be answered to the extent possible." Code Civ. Proc. ("CCP") §2030.220(a)-(b). "If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party." CCP §2030.220(c). If a party fails to serve a timely response to interrogatories, the court shall impose sanctions unless it finds that the party subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. CCP §2030.290(c). Code of Civil Procedure section 2030.290 provides that if a party to whom interrogatories were directed fails to serve timely responses, the responding party waives all objections, including those based on privilege and work product protection, and the propounding party may move for an order compelling responses. CCP §2030.290(a)-(b); see also, *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 404. All that the moving party needs to show in its motion is that a set of interrogatories was properly served, that the time to respond has expired, and that no response has been provided. See, *Leach v. Superior Court* (1980) 111 Cal.App.3d 902, 905-906.

Regarding RPODs, a demand for production may request access to "documents, tangible things, land or other property, and electronically stored information in the possession, custody, or control" of another party. A party to whom a document demand is directed must respond to each item in the demand with an agreement to comply, a representation of inability to comply, or an objection. CCP § 2031.210(a). If only part of an item or category demanded is objectionable, the response must contain an agreement to comply with the remainder, or a representation of the inability to comply. CCP § 2031.240(c)(1). If a responding party cannot comply with a particular request, that party "shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand." CCP § 2031.230. "This statement shall also specify whether the inability to comply is because the particular item or category has never existed, has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party" and "[t]he statement shall set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item." *Id.* Where no response was served to a RPOD, there is no time requirement in moving to compel, nor any requirement to show good cause for the production requested. *See* CCP § 2031.300; *see also* Cal. Prac. Guide Civ. Pro. Before Trial Ch. 8H-8, Enforcing Demand: §§ 8:1484, 8:1487; contra CCP § 2031.310 (b-c) (a motion to compel further shall set forth good cause for the demand and shall be filed within 45 days of service of the unsatisfactory response). Code of Civil Procedure section 2031.300 provides that if a party fails to serve timely responses to requests for production of documents, the responding party waives all objections, including those based on privilege and work product and "[t]he party making the demand may move for an order compelling [a] response to the demand." CCP §2031.300(a)-(b).

There is no requirement to meet and confer prior to filing a motion to compel where there has been no response to discovery requests. *Leach v. Superior Court* (1980) 111 Cal.App.3d 902, 906; *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 405.

II. <u>Analysis</u>

Defendant served their SIs, and RPODs to Plaintiff on May 8, 2026, along with an offer for settlement under CCP § 998. Aparicio Declaration in Support ¶ 5-6. The § 998 offer settled Plaintiff's substantive claims and gave him the ability to move the Court for attorney's fees as a prevailing party. *Id*. at ¶ 5. The SIs and RPODs target the facts relevant to Plaintiff's averred costs and attorney's fees. *Id*. at 8. Plaintiff signed the § 998 offer on May 15, 2026. Plaintiff provided no responses to the discovery requests. *Id.* at ¶ 7. The motion was filed on June 18, 2026. Notice of the acceptance of the § 998 offer was filed with the Court on July 30, 2026. Plaintiff provided subsequent responses to the discovery requests on September 4, 2026. Brendlin Declaration in Opposition, ¶ 8-9.

As an initial matter, the service of subsequent responses has rendered the substance of the motion MOOT. Defendant contends that the Court should address the sufficiency of the supplemental responses, but the Court declines to do so. While the Court has the power to assess those matters, that decision is within the Court's discretion. *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants* (2007) 148 Cal.App.4th 390, 409.

Even if Plaintiff had not mooted the motion with substantive responses, the Court is not persuaded that Defendant had shown good cause in their moving papers for this discovery.

Defendant simply concludes that they are entitled to discovery because attorney's fees remained at issue under the terms of the § 998 offer. However, Defendant offers no caselaw that stands for the proposition that discovery should effectively continue even after the party has accepted a C.C.P. § 998 offer at that point, the matter is technically resolved. They were clearly aware of the legal issue at the time their moving papers were filed, as they note "Plaintiff would not provide written responses because, in his view, the case had been resolved because [he] had already signed the 998 offer." Memorandum in Support, pg. 2:27-3:1. Acceptance of a § 998 offer "leads to the entry of a judgment." *Arriagarazo v. BMW of North America, LLC* (2021) 64 Cal.App.5th 742, 748. The § 998 offer contains no mention of the requirement that Plaintiff respond to discovery related to the attorney's fees allowed under the agreement. "The offer must be strictly construed in favor of the party sought to be bound by it." *Ignacio v. Caracciolo* (2016) 2 Cal.App.5th 81, 86. While Defendant contends that the necessity of the discovery is heavily implied, they fail to make it express in the offer. "The true, subjective, but unexpressed intent of a party is immaterial and irrelevant." *Vaillette v. Fireman's Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 690. It is not unreasonable that Plaintiff believed the matter was resolved (beyond the allowed attorney's fees motion) by agreement to the § 998 offer. Being construed against the drafter, the lack of express term would mean that judgment is properly entered after execution, with exceptions only for the matters specified in the offer.

Plaintiff's position is further supported by the law surrounding settlements. The parties do not address the nature of the settlement at issue, but based on the terms, the Court interprets the § 998 offer to qualify as a "conditional" settlement under the law. On notice of a conditional settlement the Court "must vacate all hearings and other proceedings requiring the appearance of a party" other than those related to sanctions, or for determination of good faith settlement. Cal. Rule of Court, Rule 3.1385 (c). This certainly reinforces Plaintiff's position that once settlement was filed, those matters pending were presumptively resolved.

In reply, Defendant raises several new cases for the first time which go to the issue of good cause. Defendant's citations to *Oak Grove School Dist. of Santa Clara County v. City Title Ins. Co.* (1963) 217 Cal.App.2d 678, 712 and *State of California v. Meyer* (1985) 174 Cal.App.3d 1061. First, as the Court makes clear above, this is a contention central to the motion that is raised for the first time on reply. New arguments raised the first time on reply may be properly disregarded. *Maleti v. Wickers* (2022) 82 Cal.App.5th 181, 228. Second, the Court notes that both cases predate the enactment of the discovery cutoff under CCP § 2024.020 (formerly CCP § 2024, added in 1986). Defendant provides no persuasive reason why these cases remain applicable authority. Even if the motion were not mooted by subsequent responses, Defendant would not have shown sufficient basis to compel responses.

Plaintiff asks in opposition for sanctions but fails to provide the information required under CCP § 2023.030. Sanctions must be "reasonable and actual", and Plaintiff provides neither an amount nor evidence of actual costs. *See Kwan Software Engineering, Inc. v. Hennings* (2020) 58 Cal.App.5th 57, 74; *Argaman v. Ratan* (1999) 73 Cal.App.4th 1173, 1181 (costs must be both actual **and** reasonable). Defendant also requests sanctions within their reply, but no sanctions were requested in the notice of motion. See CCP § 2023.040. Accordingly, none can be granted to Defendant.

III. Conclusion

The motion is MOOT.

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). Plaintiff shall serve a copy of this order to Defendant in compliance with CCP § 1019.5 and attach the relevant discovery requests.

6. 25CV07545, Ornelas v. General Motors LLC

Plaintiff Biranna Ornelas ("Plaintiff") filed the currently operative complaint (the "Complaint") in this action against defendants General Motors, LLC ("Defendant"), and Does 1-10. The Complaint contains causes of action for: 1) violation of the Magnuson-Moss Warranty Act (15 U.S.C. § 2310); 2) breach of express warranty under California Uniform Commercial Code (the "Commercial Code") § 2313; and 3) breach of express warranty.

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

I. Evidentiary and Procedural Issues

Plaintiff has made various objections to the evidence presented by Defendant in support of summary judgment. Even considering all the evidence, there is no difference to the result of the motion. Accordingly, the Court does not need to provide evidentiary rulings under CCP § 437c(q), and Plaintiff is entitled to litigate those issues in the event of appeal.

II. Underlying Facts

Plaintiff purchased a 2023 Chevrolet Blazer (the "Vehicle") on or around October 30, 2023. Defendant's Separate Statement of Undisputed Facts ("DUMF") ¶ 1. Plaintiff purchased the Vehicle used from Manly Honda. DUMF ¶ 2. Defendant was not a party to the sale, and Manly Honda is not a GM-authorized dealership. DUMF ¶ 3. The Vehicle was originally purchased new on May 30, 2023, from Matt Mazzei Chevrolet. DUMF ¶ 5. In connection with the May 30, 2023, sale of the new Vehicle, Defendant issued a New Vehicle Limited Warranty with (i) bumper-to-bumper coverage for the earlier of 3 years or 36,000 miles and (ii) powertrain coverage for the earlier of 5 years or 60,000 miles. DUMF ¶ 6; Declaration of Bryan Jensen in Support ("Jensen Declaration"), Ex. C (the "Warranty"). The Warranty coverages began when Matt Mazzei Chevrolet delivered the Vehicle to its original owner(s) on May 30, 2023. DUMF ¶ 7. Defendant did not issue any new or additional warranty coverage in conjunction with Plaintiff's purchase of the Vehicle. DUMF ¶ 8. Defendant did not have any direct contact with Plaintiff, nor did they make any direct representations to Plaintiff, nor provide any "sample[s] or model[s]" to Plaintiff during Plaintiff's purchase of the Vehicle. DUMF ¶ 9.

The express written Warranty issued with the original sale of the Vehicle states "GM will cover repairs to the vehicle during the warranty period in accordance with the following terms, conditions, and limitations" and, subject to exclusions, "[t]he complete vehicle is covered for 3 years or 36,000 miles, whichever comes first," and powertrain "[c]overage is provided for 5 years or 60,000 miles, whichever comes first." Plaintiff's Additional Undisputed Material Facts ("PAUMF"), ¶ 1; See also Warranty, pg. 5. The Warranty, by its terms, "is provided to…any subsequent owners of the vehicle during the warranty period." PAUMF ¶ 2; Warranty, pg. 5.

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

"(1) Express warranties by the seller are created as follows… Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise." Cal. U. Com. Code, § 2313. "Privity is not required for an action based upon an express warranty." *Hauter v. Zogarts* (1975) 14 Cal.3d 104, 115. "A cause of action for breach of contract is an assignable right." *Dagher v. Ford Motor Co.* (2015) 238 Cal.App.4th 905, 925 (applying principle to express warranty for automobile).

"Privity is generally not required for liability on an *express* warranty because it is deemed fair to impose responsibility on one who makes affirmative claims as to the merits of the product, upon which the remote consumer presumably relies." *Cardinal Health 301, Inc. v. Tyco Electronics Corp.* (2008) 169 Cal.App.4th 116, 143–144

C. Magnuson-Moss Warranty Act ("MMWA")

"Magnuson-Moss governs warranties for consumer products distributed in interstate commerce. It requires disclosures in connection with written warranties, regulates the substantive content of warranties, and establishes a federal cause of action for breach of a written or an implied warranty (15 U.S.C. § 2310(d)), among other provisions. Magnuson-Moss does not substitute federal law for state law of consumer product warranties, but instead supplements state law." *Orichian v. BMW of North America, LLC* (2014) 226 Cal.App.4th 1322, 1330. "Magnuson–Moss calls for the application of state written and implied warranty law, not the creation of additional federal law, except in specific instances in which it expressly prescribes a regulating rule." *Daugherty v. American Honda Motor Co., Inc.* (2006) 144 Cal.App.4th 824, 833 (internal quotation omitted).

IV. <u>Analysis</u>

A. Defendant's Moving Burden

As the moving party, Defendant 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. Commercial Code

Defendant argues that Plaintiff cannot present each element of her causes of action related to express warranty under the Commercial Code because there was no privity between Defendant and Plaintiff. Defendant opines an incorrect standard for breach of express warranty, relying on a combination of dicta and improvidently worded generalizations within. The cases that directly examine the issue are abundantly clear. "Privity is not required for an action based upon an express warranty." *Hauter v. Zogarts* (1975) 14 Cal.3d 104, 115. Defendant primarily relies on inapposite cases which deal with the issue of warranty and sale of motor vehicles, and subsequent attempts by manufacturers to compel arbitration. *Ballesteros v. Ford Motor Co.* (2025) 109 Cal.App.5th 1196, 1217; *Davis v. Nissan North America, Inc.* (2024) 100 Cal.App.5th 825, 840. They do not purport to narrow the scope of substantive warranty law, which Defendant fails to legitimately address. Importantly, no case provided by Defendant shows that Plaintiff was required to have privity, or that Plaintiff must have purchased the Vehicle from a certified dealership.

Plaintiff cites various cases in opposition which are substantially more analogous to the instant facts and make relevant binding rulings. Dispositive in showing Defendant's error is *Dagher v. Ford Motor Co.* (2015) 238 Cal.App.4th 905. In that case, plaintiff brought a claim under the Song-Beverly Act, seeking its heightened remedies for defects related to a vehicle he purchased used but still within the express warranty provided by the manufacturer. *Id*. at 910-911. The manufacturer defendant moved for summary judgment, arguing that because the vehicle was purchased used, plaintiff was not entitled to remedies under the Song-Beverly Act. *Id*. at 911. The plaintiff opposed summary judgment, and filed a motion for leave to amend, seeking to add a claim under the MMWA as an alternative viable theory. *Ibid.* The trial court granted summary judgment and denied leave to amend, and plaintiff subsequently appealed. *Ibid*. The court of appeal affirmed on the summary disposition but reversed the trial court's denial of leave to amend. *Id*. at 928-929. In so doing, the court of appeal held that the facts alleged were sufficient to display a clear basis for cause of action under California warranty law from plaintiff to manufacturer. *Id*. at 928. "Strict adherence to privity rules for express warranty causes of action has not been required in the products liability context." *Id*. at 927.

Defendant addresses *Dagher* on reply but erroneously argues that the relevant holding is dicta. Indeed, Defendant avoids engaging with language within the case in a manner beneficial to their argument. See, Reply, pg. 7:23-8:2 ("The issue before the court was whether the complaint could be amended to add Song-Beverly claims. (*Id.* at 912.) *Dahger* did not decide whether an express warranty was formed under the U.C.C. section 2313 in a later used-vehicle sale, which is the issue presented here."). The result in *Dahger* expressly **did** rely on the availability of an MMWA claim, which in turn relied on sufficient basis for state law express warranty claims. "Plaintiff admittedly has some viable cause of action under Magnuson–Moss, and this record supports a conclusion that the trial court abused its discretion in denying the motion to amend the current complaint. We will reverse the judgment and direct the trial court to permit a new motion to amend that reflects the unavailability of remedies under the Act, consistent with the views expressed in this opinion, but that may seek to set forth express warranty and Magnuson–Moss claims." *Dagher v. Ford Motor Co.* (2015) 238 Cal.App.4th 905, 929.

Defendant's framing of the statement in *Rodriguez v. FCA US, LLC* (2022) 77 Cal.App.5th 209 is equally inaccurate. While the Supreme Court's decision in *Rodriguez v. FCA US LLC* (2024) 17 Cal.5th 189, 205-206 avoids the issue, the decision of the court of appeal is not conditional. "Though not entitled to the Act's refund-or-replace remedy, the beneficiary of a transferrable express warranty can sue a manufacturer for breach of an express warranty to repair defects under the California Uniform Commercial Code." *Rodriguez v. FCA US, LLC* (2022) 77

Cal.App.5th 209, 225. Defendant does not argue, but it is apparent, that this statement *is* dicta. While the court of appeal may be examining the viability of other remedies when explaining its result, nowhere in the decisional analysis does that decision rely on the result on those available remedies. *Dagher* remains the clear applicable precedent.

More importantly, Defendant's reply fails to provide any case more analogous to the present, and the Court has already found the cases Defendant relies upon inapplicable. Instead, Defendant argues rote conclusions that the Commercial Code is restricted to sellers and buyers. Voluminous California law makes clear that is not the case. Nothing cited by Defendant addresses the holding that, "Privity is not required for an action based upon an express warranty." *Hauter v. Zogarts* (1975) 14 Cal.3d 104, 115, fn. 8. This includes parties who are not the original purchaser of the warranted good. *Id*. at 115.

What *Dagher* elucidates is that the foundational principles of contract law are incorporated into express warranties. This is not a misconstrual of Commercial Code § 2313, but application of contractual principles to its language. Actions under contract are generally assignable. *Dagher v. Ford Motor Co.* (2015) 238 Cal.App.4th 905, 925. Express warranties for automobiles may meet this general rule. *Ibid*. While "some restrictions exist" on this right, Defendant does not elucidate any of those here, nor do they appear to apply based on the undisputed material facts. *Id*. at 925-926.

The interpretation of express warranties and Commercial Code § 2313 by the *Dagher* court is not just persuasive but binding. Defendant's reliance on the "seller" language in the statute is not dispositive. Numerous cases make clear that California's use of the term "basis of the bargain" is an important distinction from prior law. See, e.g., *Weinstat v. Dentsply Internat., Inc.* (2010) 180 Cal.App.4th 1213, 1227 (Affirmative representations by the seller are actionable and "[t]he statute thus creates a presumption that the seller's affirmations go to the basis of the bargain."). Such actions have been repeatedly extended to manufacturers who are not the "seller" of the good. See *Hauter v. Zogarts* (1975) 14 Cal.3d 104, 110; *Seely v. White Motor Co.* (1965) 63 Cal.2d 9, 14. The question is if a representation by Defendant (whether made directly or not) was part of the basis of the bargain for the purchase. Plaintiff's Complaint clearly alleges that he relied on the express warranty in making the purchase, and Defendant does not challenge this contention with evidence at summary judgment.

Therefore, the Court must look at the terms of the warranty to determine the viability of Plaintiff's claim. Here, Defendant's own warranty makes abundantly clear by its express terms that Plaintiff has standing to enforce the warranty obligations. The express warranty for the Vehicle, which was provided by Defendant at sale to the original consumer, was "provided to the original and any subsequent owners of the vehicle during the warranty period." Warranty, Pg. 5. Defendant offers no evidence supporting their effort to disclaim the transfer of the warranty when they elected to include such transfer as part of the basis of the bargain. *Cf.*, Commercial Code, § 2316 (statutory provision governing modification of express warranties). Holding to the contrary would unreasonably allow Defendant to make such promises with no intent to keep them, even where original and subsequent purchasers relied on such express warranties in determining the value of the good. The assignment of the right under the Warranty is clearly not outside the contemplation of the parties. The Warranty here expressly includes coverage to a subsequent purchaser like Plaintiff. Defendant agreed to that in issuing the warranty with this language. Defendant provides no law relieving manufacturers from their express agreement to cover products beyond the original purchasers. The cases contrary to this are numerous. Defendant has failed to show a lack of triable issue of fact.

b. Common Law

Defendant argues that the elements of common law breach of warranty also preclude liability since they also require privity. Defendant's reliance on *Scott v. Metabolife Internat., Inc.* (2004) 115 Cal.App.4th 404, 416 is misplaced. As Plaintiff accurately argues in opposition, *Scott* merely restates West's California Civil Jury Instructions ("BAJI"), Jury Instruction § 9.40. Whether manufacturer and plaintiff were in privity is not a matter examined within the case. See, generally, *Scott v. Metabolife Internat., Inc.* (2004) 115 Cal.App.4th 404. Plaintiff points out that the California Civil Jury Instruction ("CACI") issued by the Judicial Council includes factual circumstances beyond sellers and buyers. See CACI § 1243. As the Court has already examined above, privity is secondary, the question is whether the scope of the promise made was part of the "basis of the bargain". *Hauter v. Zogarts* (1975) 14 Cal.3d 104, 114.

Even the dicta within *Ballesteros v. Ford Motor Co.* (2025) 109 Cal.App.5th 1196, 1217 makes clear that Defendant's argument regarding the Commercial Code has no applicability to the common law claims for breach of express warranty. ("[W]hile express warranties apply under the California Uniform Commercial Code only to a seller in privity with the buyer, the buyer may sue a third-party manufacturer for breach of an express warranty in the absence of privity.") This conforms with other, more direct holdings on the issue. *Cardinal Health 301, Inc. v. Tyco Electronics Corp.* (2008) 169 Cal.App.4th 116, 143–144 ("Privity is generally not required for liability on an *express* warranty because it is deemed fair to impose responsibility on one who makes affirmative claims as to the merits of the product, upon which the remote consumer presumably relies."). Here, Defendant made express promises to warrant the Vehicle for not just the original purchaser, but "any subsequent owners of the vehicle during the warranty period." Warranty, Pg. 5. Defendant has provided no evidence to contradict that Plaintiff meets this warranty term. Defendant has failed to shift their burden as to common law breach of express warranty.

2. Magnuson-Moss Warranty Act ("MMWA")

Defendant argues that the MMWA claims fail because the express warranty claims are deficient. Defendant cites various cases, but particularly *Daugherty v. American Honda Motor Co., Inc.* (2006) 144 Cal.App.4th 824, 830, holding that the MMWA claim fails because the express warranty action fails. As the Court has already addressed above, the express warranty claim is adequately stated here, and Defendant does not rebut that with evidence. Though *Daugherty* did deal in part with vehicles purchased used, it did not render any decision on that basis. Rather, the claims in *Daugherty* were inadequately pled because the warranty had run at the time the defects became apparent, and accordingly the warranty could not be read to cover the repairs. *Daugherty v. American Honda Motor Co., Inc.* (2006) 144 Cal.App.4th 824, 832.

Here, the Court has found the Commercial Code and common law breach of express warranty claims have triable issues of fact. Plaintiff's claim is undisputedly predicated on a written warranty. Plaintiff has alleged, and Defendant has not produced evidence attempting to shift the burden, that Defendant violated that express written warranty. Defendant has therefore failed to show that there is no triable issue of fact as to the MMWA claim.

Defendant has failed to shift their burden as to each cause of action.

Summary judgment is DENIED. Summary adjudication is DENIED.

V. <u>Conclusion</u>

Defendant's motion for summary judgment is **DENIED**.

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

7. <u>26CV01052, Blakeley, Jr. v. Kyorkian</u>

Plaintiff Edward Blakeley ("Plaintiff") filed the presently operative petition to compel arbitration and verified complaint ("Petition") against defendant Tiwart B. Kyorkian ("Defendant"). This matter is on calendar for the hearing on Plaintiff's "Petition"

There is no opposition. Plaintiff has filed a proof of service reflecting that he has given Defendant "Notice of Continued Case Management Conference" on July 20, 2026. Plaintiff has also filed a proof of service indicating Defendant was served June 11, 2026, with the Summons, Petition to Compel Arbitration, and Notice of Assignment of One Judge For All Purposes. While it is clear that Defendant has notice of the CMC hearing, the Court is concerned that the notice provided does not adequately appraise Defendant of the fact that the merits on the Petition to Compel Arbitration are also set for hearing. In an abundance of caution, the Court CONTINUES the petition to December 2, 2026, at 3:00 pm in Department 19. Plaintiff is to provide Defendant notice that the Petition to Compel Arbitration is being heard on that date.

8. <u>26CV02757, Gonzalez v. Marin Sun Farms, Inc.</u>

Defendant Marin Sun Farms, Inc.'s unopposed motion to compel arbitration is **GRANTED**. Plaintiff Daniel Gonzalez's Complaint is **STAYED** pending completion of arbitration.

I. <u>Procedural History</u>

Plaintiff Daniel Gonzalez ("Plaintiff") filed a putative class and representative action against Defendant Marin Sun Farms, Inc. ("Defendant") and Does 1—50 (together as "Defendants") on April 20, 2026. Plaintiff alleges eight causes of action arising from his employment as a nonexempt meat processor: unpaid overtime, minimum wage violations, unreimbursed business expenses, meal-period violations, rest-period violations, waiting-time penalties, wage statement violations, and unfair competition. (See Complaint, filed April 20, 2026.)

As part of the hiring process, Plaintiff signed an Arbitration Agreement (the "Agreement") and states in relevant part:

> "1. Arbitrable Claims: The parties understand and agree that this Agreement applies to all claims (the "Arbitrable Claims") arising out of, related to or connected with the Employee's employment with the Company, including, but by no means limited to, claims of discrimination, harassment, unpaid wages, breach of contract (express or implied), wrongful termination, torts, claims for stock or stock options, as well as claims based upon any federal, state or local ordinance, statute, regulation or constitutional provision, including, but not limited to, the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq., the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001 et seq., Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., and 42 U.S.C. § 1981, and any and all state or local laws prohibiting discrimination or regulating any terms or conditions of employment. For purposes of this Agreement, the term "Arbitrable Claims" shall be deemed not to include any claims which by law cannot be subject to a contractual requirement of mandatory binding arbitration (e.g., claims for workers' compensation benefits, claims for unemployment compensation, and claims arising under the National Labor Relations Act that are brought before the National Labor Relations Board).The parties agree that arbitration shall be the exclusive method by which to resolve any Arbitrable Claims, and specifically agree that they will not file a court lawsuit to pursue any Arbitrable Claims. Arbitration shall be final and binding upon the parties. THE PARTIES HEREBY WAIVE ANY RIGHTS THEY MAY HAVE TO TRIAL BY JURY IN REGARD TO ARBITRABLE CLAIMS.
>
> (Declaration of David Evans in Support of Defendant's Motion to Compel Arbitration ["Evans Declaration"], Exhibit A.)

On June 3, 2026, Defendant demanded that Plaintiff submit this action to arbitration. (Declaration of Drexwell M. Jones in Support of Defendant's Motion to Compel Arbitration ["Jones Decl."], ¶ 4.) Plaintiff did not respond to the demand. (Jones, Decl., ¶ 5.) Defendant thereafter filed the present motion on June 18, 2026. (Jones, Decl., ¶ 6.) Defendant had not previously filed a motion, conducted discovery, asserted a counterclaim, or participated in settlement negotiations. (Jones, Decl., ¶ 6.)

II. <u>Governing Law</u>

A. Statutory Requirements for Compelling Arbitration

Under Code of Civil Procedure section 1281.2, a party seeking arbitration must establish the existence of a written agreement to arbitrate the controversy and the opposing party's refusal to arbitrate. If the Court determines that such an agreement exists, it must order the parties to arbitrate unless the right to compel arbitration has been waived, grounds exist for rescission, or another statutory exception applies. (Code Civ. Proc. § 1281.2)

B. Burdens of Proof & Effect of an Unopposed Motion to Compel Arbitration

"As the language of [Code of Civil Procedure section 1281.2] makes plain, the threshold question presented by every petition to compel arbitration is whether an agreement to arbitrate exists. (*Trinity v. Life Ins. Co. of North America* (2022) 78 Cal.App.5th 1111, 1120.) The moving party bears the initial burden of establishing the existence of an arbitration agreement by a preponderance of the evidence. (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (U.S.), LLC* (2012) 55 Cal.4th 223, 226.) Once the moving party establishes that burden, the party opposing arbitration bears the burden of establishing any defense to enforcement. (*Id*. at 236.)

A party's failure to oppose a motion does not relieve the moving party of its initial burden. The Court must still determine whether an agreement exists and whether the claims at issue fall within its scope. (Code Civ. Proc. § 1281.2.)

C. Stay Pending Arbitration

When arbitration is ordered as to a controversy involved in a pending action, Code of Civil Procedure section 1281.4 requires the Court, upon motion, to stay the action until arbitration is completed or until an earlier time specified by the Court.

III. <u>Analysis</u>

Defendant has met its burden of proving the existence of an enforceable arbitration agreement. The Agreement identifies Plaintiff as the employee and Defendant as the employer, bears the parties' signatures, and states that it was executed on June 28, 2023. (Evans, Decl., Exh. A.) David Evans, Defendant's hiring manager and co-executive officer, authenticates the document as a business record as states that Plaintiff signed it in Evans's presence after Evans reviewed its terms with him. (Evans, Decl., ¶¶ 1—3.)

The party seeking arbitration bears the burden of the agreement's existence by a preponderance of the evidence, while the opposing party bears the burden of proving any defense to enforcement. (*Pinnacle Museum Tower Assn.*, *supra*, 55 Cal.4th at 226.) Here, Plaintiff has submitted no opposition and therefore has identified no contrary evidence concerning the agreement's authenticity, signature, formation, or validity.

Defendants' motion to compel arbitration is **GRANTED**. Pursuant to the terms of the Agreement, JAMS is the default arbitrator, and Defendants have chosen JAMS to conduct the arbitration. (Evans, Decl., Exh. A, ¶ 2.) Thus, the Court finds that the arbitrator shall be JAMS pursuant to the terms of the Agreement.

IV. <u>Conclusion</u>

Based on the foregoing, Defendant's motion to compel arbitration is **GRANTED**. Plaintiff shall submit his individual claims against Defendant to binding arbitration in accordance with the parties' Arbitration Agreement.

Plaintiff's Complaint, including the putative class allegations, is **STAYED** pending the completion of arbitration. Unless oral argument is requested, the Court will sign the proposed order filed with the motion.

9. <u>26CV03868, Star Trail Naturals California v. Mar SR LLC</u>

Plaintiffs Star Trail Naturals California ("Star Trail") and Bloom Valley California ("Bloom", together with Star Trials, "Plaintiffs") filed the complaint in this action against MAR SR LLC ("MAR"), Mackenzie Marker ("Mackenzie"), Miriam Marker ("Miriam[1]"), Robert Blay ("Blay", all together, "Defendants") with causes of action related to an alleged contract for sales and services (the "Complaint"). This matter is now on calendar for Plaintiffs' motion for writ of attachment pursuant to Cal. Code Civ. Proc. ("CCP") § 484.090 *et. seq*.

I. <u>Underlying Facts</u>

Plaintiffs are cannabis growers who sell frozen, unprocessed cannabis. FAC ¶ 1. Plaintiffs allege in the FAC that around October 2024, Mackenzie, as partner and agent for MAR, proposed and agreed to a contract for washing and pressing of rosin and sales of rosin thereafter. FAC ¶¶ 2-3; FAC, Ex. A (the "Agreement"). The Agreement provided that the processed material would be split with 80% being provided to Plaintiffs, and the remaining 20% would serve as payment to MAR for their processing services (with a different split applying if Plaintiffs did not provide at least 20,000 grams of raw material). See Agreement. If MAR sold any processed rosin, it would be entitled to 3-5% commission based on the cost per gram for the sale. *Ibid*. Plaintiffs were entitled to ask for return of any unprocessed material and for their unsold share of processed rosin at any time with 48 hours-notice. *Ibid*. Mackenzie sent multiple updates over time reflecting accounting for the processed material, and each accounting provided showed MAR's percentage under the Agreement was 20%. FAC, Exhs. E, G, H, and L. Thereafter, when Plaintiffs began to ask for payments they asserted were overdue, Miriam and Blay asserted that the Agreement was not effective, and that the parties were either operating without an agreement or were under an agreement from 2022. FAC, Ex. K. Miriam sent an email on October 20, 2025, reflecting a new accounting of what Plaintiffs had produced, and what was owed to Plaintiffs. *Ibid*. Reflected therein was kilos of processed product, and a statement that Defendants had sold 39,291 grams of product. *Ibid*. The accounting reflects that for those sales, Plaintiffs had been paid $152,926, and that they were owed a further $47,000. *Ibid*. Plaintiff alleges that while this represents a significant understatement of the amount owed, this is the minimum amount of money possibly owed under the Agreement. FAC ¶ 93-95.

II. <u>Governing Law</u>

A. <u>Right to Attach</u>

[1] Mackenzie and Miriam, due to their shared surname, are referred to by given name for clarity. No lack of respect is intended.

"Attachment is an ancillary or provisional remedy to aid in the collection of a money demand by seizure of property in advance of trial and judgment." *Kemp Brothers Construction Inc. v. Titan Electric Corp.* (2007) 146 Cal.App.4th 1474, 1476. "California's Attachment Law…is purely statutory and is strictly construed." *Id.* In order to obtain a right to attach order, the plaintiff must demonstrate that the claim is one upon which attachment is permitted and must demonstrate the probable validity of the underlying claim. *See* CCP §§483.010; 484.090(a)(2).

A claim is one upon which an attachment may issue if it is: (1) a claim for money based upon a contract, express or implied; (2) of a fixed or readily ascertainable amount not less than $500; (3) that is either unsecured or secured by personal property, not real property (including fixtures); and (4) that is a commercial claim. CCP §483.010.

"A claim has 'probable validity' where it is more likely than not that the plaintiff will obtain a judgment against the defendant on that claim." CCP §481.190. In determining probable validity, the court "must consider the relative merits of the positions of the respective parties and make a determination of the probable outcome of the litigation." *Loeb & Loeb v. Beverly Glen Music* (1985) 166 Cal.App.3d 1110, 1120.

Thus, "[a]t the hearing of an application for a right to attach order, the court shall consider the showing made by the parties appearing and shall issue such an order if it finds (1) the claim upon which the attachment is based is one upon which an attachment may be issued; (2) the plaintiff has established the probable validity of the claim upon which the attachment is based; (3) the attachment is not sought for a purpose other than the recovery on the claim upon which the attachment is based; and (4) the amount to be secured by the attachment is greater than zero. CCP § 484.090(a). The court's determinations shall be made upon the basis of the pleadings and other papers in the record." *Goldstein v. Barak Construction* (2008) 164 Cal. App. 4th 845, 852-853, citing CCP §484.090(d); see also *Loeb & Loeb,* 166 Cal.App.3d at 1120 ("court must consider the relative merits of the positions of the respective parties and make a determination of the probable outcome of the litigation."). A claim has "probable validity" where "it is more likely than not that the plaintiff will obtain a judgment against the defendant on that claim." CCP § 481.190; *see also Santa Clara Waste Water Co. v. Allied World Nat'l Assur. Co.* (2017) 18 Cal.App.5th 881, 885.

Second, claims must be for a "fixed or readily ascertainable amount not less than $500." CCP § 483.010. The damages sought need not be liquidated, but must be measurable by reference to the contract itself. *See Kemp Bros. Const., Inc. v. Titan Elec. Corp*. (2007) 146 Cal.App.4th 1474, 1481, n. 5. "It is not necessary that the amount for which the defendant may be liable should appear on the face of the contract by or from which liability is to be determined." *Bringas v. Sullivan* (1954) 126 Cal.App.2d 693, 699 (explaining that the CCP "does not require that the amount due on the contract shall appear from the contract itself[,] but that the amount of indebtedness shall be shown by affidavit."). To demonstrate that a claim is readily ascertainable, "the contract sued on must furnish a standard by which the amount due may be clearly ascertained and there must exist a basis upon which the damages can be determined by proof." *Id*. (internal citation omitted). *See also CIT Group/Equipment Financing, Inc. v. Super DVD, Inc*.

(2004) 115 Cal.App.4th 537, 540; *Hayward Lumber & Inv. Co. v. Construction Prods. Corp*. (1952) 110 Cal.App.2d 386, 387.

Unlike many other types of motions, motions for writ of attachment require the court to make substantive determinations on the merits of claims, which includes weighing the evidence. *Hobbs v. Weiss* (1999) 73 Cal.App.4th 76, 80. These determinations are made only for the purpose of the motion and are not otherwise applicable to other matters in the case. CCP § 484.100. Evidence submitted in support of or in opposition to a writ of attachment must meet regular evidentiary standards. See, e.g., *Generale Bank Nederland v. Eyes of the Beholder Ltd.* (1998) 61 Cal.App.4th 1384, 1390. "The court's determinations shall be made upon the basis of the pleadings and other papers in the record; but, upon good cause shown, the court may receive and consider at the hearing additional evidence, oral or documentary, and additional points and authorities, or it may continue the hearing for the production of such additional evidence or points and authorities." CCP, § 485.240(c).

III. Analysis

Plaintiffs move for attachment of MAR. In the moving papers, Plaintiffs argue that the claims at issue are derived from contract, and therefore may support attachment, that it seeks to recover an amount greater than zero, and that there is no alternative reason for attachment beyond recovery of the claim. Plaintiff's evidence in support consists of the Declaration of Alex Bohn, and the FAC, which is verified.

Plaintiffs provide a copy of the contract, which does not bear any signatures. See FAC, Ex. A. Plaintiffs state that the contract was agreed to, just not signed, and that it was further affirmed by conduct. Plaintiffs argue that Defendants have conceded that they owe Plaintiffs, at minimum, $47,000, citing to FAC, Ex. K. Defendants oppose the motion, but their position arguing lack of contract and lack of definite ascertainable damages is unpersuasive. At the outset, Plaintiffs are successful in meeting their burden establishing the existence of the 80/20 split contract through evidence sufficiently establishing execution of its terms, which now appear actionable for a writ of attachment. The terms were agreed to in writing, though not by signatures borne on the Agreement itself. Mackenzie's subsequent accountings thereon are reflective of the effect of that agreement, and MAR provides no particular evidence challenging Mackenzie's ability to bind MAR to contractual obligations. Miriam's subsequent protestations are not shown to be dispositive in countermanding the apparently existing obligation. Plaintiffs' prima facie breach of contract claim appears adequately supported to determine whether the amount is ascertainable.

Defendants also argue that Plaintiffs have failed to establish the propriety of the attachment amount. All that is required for damages to be ascertainable is that the contract provides a "clear and definite formula for the computation of damages". *CIT Group/Equipment Financing, Inc. v. Super DVD, Inc.* (2004) 115 Cal.App.4th 537, 541. The Agreement makes clear that the Plaintiffs are entitled to, at minimum, 95% of sale proceeds derived from their share of the rosin, with the remaining 5% balance serving as a commission for MAR. Plaintiffs aver the fixed amount of $47,000 is proper for attachment, which is the amount conceded to being owed under the Agreement by Miriam. See, FAC, pg. 79-80 (Ex. K.). That same communication from Miriam communicates that MAR sold 39,291 grams of product, and that Plaintiffs had already been paid $152,926 resulting from that sale. The ascertainable nature of the damages is capable of being derived from MAR's concession that an amount was owed. In the evidence, MAR concedes that sales of 39, 921 grams occurred which gave rise to $199,926 of proceeds to be paid to Plaintiffs. MAR concedes that $47,000 of those proceeds remained outstanding. Plaintiffs have shown that the Agreement exists, that MAR is obligated to make certain payments under it, and at least $47,000 of those payments are outstanding.

Defendant argues that we do not have all the variables within the damages calculation. Provided the sale price of the 39,291 grams, the damages are clearly calculable, but Defendants omit that from their communication to Plaintiffs. Instead, they clearly communicate the amount they concede is owed under the contract. To deny Plaintiffs the ability to attach because the equation is incomplete, but Defendants have provided the answer would place form over substance. Defendants' omission of the sale price from this discussion does not serve to render their admission of amount owed unclear. This sufficiently expressed ascertainable damages.

Therefore, Plaintiff's request for issuance of a writ of attachment is **GRANTED, subject to an u**ndertaking set at $10,000 per CCP § 489.220 (a).

Plaintiffs 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).

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