SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/21/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV1903075

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

PLAINTIFF: MARK BENNETT, D.D.S. vs. DEFENDANT: OHIO NATIONAL LIFE ASSURANCE CORPORATION, ET AL	

NATURE OF PROCEEDINGS: MOTION – COMPEL -DISCOVERY FACILITATOR PROGRAM

RULING

Plaintiff Mark Bennett, DDS's ("Plaintiff") motion to compel further responses is **GRANTED** as to Request for Production of Documents, Set Three, Nos. 28 and 29. (Code Civ. Proc.[1], §§ 2031.310, subd. (a); 2031.320, subd. (a).) It is **DENIED** in all other respects.

Background

This case concerns an alleged bad faith denial of insurance benefits. Plaintiff, a former oral surgeon, purchased multiple disability insurance policies from Defendant Ohio National Assurance Corporation ("Ohio National" or "the Company"). (Complaint, ¶ 5.) Plaintiff alleges that each insurance policy entitled the policyholder to lifetime disability benefits provided the disability was due to sickness and began before age 55, or was due to injury and began before age 65. (*Id.* at ¶ 8.) The policies allegedly provided that in all other cases, disability benefits would end at or around age 65. (*Ibid.*)

The complaint alleges that while the policies were in effect and after he turned 55, Plaintiff was thrown from a horse and sustained injuries that rendered him unable to practice oral surgery. (Complaint, ¶ 10.) He submitted a claim to Ohio National. (*Id.* at ¶ 11.) Plaintiff claims the Company approved the claim, but attributed Plaintiff's disability to sickness instead of injury and so terminated his benefits once he turned 65. (*Id.* at ¶ 12.) Ohio National's determination that Plaintiff's disability was caused by sickness, not injury, was based on review of Plaintiff's medical records by a doctor who concluded that Plaintiff's symptoms were caused by cervical radiculopathy and not by his horse-riding accident. (Heibert Dec. in Supp. of Def.'s Mot. for Summary Judgment/Adjudication (filed Dec. 1, 2021) ("Heibert Dec."), ¶¶ 14-23 & Exs. R, V.)

[1] All further statutory references are to the Code of Civil Procedure.

At Plaintiff's request, Ohio National agreed to review its decision. By that time, the Company had contracted with Disability Management Services, subsequently rebranded as Davies Life & Health, Inc. ("DMS"), to administer disability claims. (Coleman Dec., Ex. A, 13:1-10.) DMS conducted the re-review of Ohio National's decision. In April 2019, DMS advised Plaintiff that the decision remained unchanged. (Heibert Dec., Ex. VV.) Plaintiff filed this lawsuit shortly thereafter.

Plaintiff asserts causes of action for breach of contract and breach of the covenant of good faith and fair dealing against Ohio National. The latter claim asserts that the Company acted in bad faith by contriving a plausible basis to deny Plaintiff lifetime coverage, rather than conducting a good faith evaluation of his claim. (Complaint, ¶ 26.) Plaintiff seeks punitive damages.

In February 2024, Plaintiff was examined by Dr. Viktoriya Irodenko, Ohio National's medical expert. (Murray Dec., ¶ 2.) Dr. Irodenko opined that Plaintiff lacked symptoms that would be expected of cervical radiculopathy, and it was "more likely than not" that his symptoms "originat[ed] from some degree of radial nerve damage." (Coleman Dec., Ex. C.) She stated that she could not determine the causal relationship, if any, between the nerve damage and Plaintiff's horse-riding accident. (*Ibid.*)

Approximately a month after Dr. Irodenko issued that report, Ohio National decided to pay Plaintiff "full Policy benefits," with interest, for the period of September 4, 2018 to April 26, 2024. (Coleman Dec., Ex. D.)

On August 29, 2024, Plaintiff served his Request for Production of Documents, Set Three and Supplemental Request for Production of Documents, Set One on Ohio National. (Coleman Dec., Exs. E & F.) As a general matter, these discovery requests are directed at the relationship between Ohio National and DMS. Plaintiff now moves to compel further responses to this discovery, as well as actual production of the documents.

Legal Standard

A party may move for an order compelling a further response to a request for production of documents if it deems that "(1) [a] statement of compliance with the demand is incomplete[;] (2) [a] representation of inability to comply is inadequate, incomplete, or evasive[; or] (3) [a]n objection in the response is without merit or too general." (§ 2031.310, subd. (a).)

The motion must set forth specific facts showing good cause justifying the discovery sought. (§ 2031.310, subd. (b)(1).) This requires "simply . . . a fact-specific showing of relevance." (*Glenfed Development Corp. v. Superior Court* (1997) 53 Cal.App.4th 1113, 1117; see also *Digital Music News LLC v. Superior Court* (2014) 226 Cal.App.4th 216, 224 [overruled on other grounds by *Williams v. Superior Court* (2017) 3 Cal.5th 531, 557, fn. 8] [discovery proponent must "identify a disputed fact that is of consequence in the action and explain how the discovery sought will tend in reason to prove or disprove that fact or lead to other evidence that will tend to prove or disprove that fact"].) All doubts about discoverability are to be resolved in favor of disclosure. (*Glenfed, supra*, 53 Cal.App.4th 1113, 1119.)

If the responding party states that it will comply with a request for production and then fails to act in accordance with that statement of compliance, the propounding party may move for an order compelling compliance. (§ 2031.320, subd. (a).)

Discussion

While this motion was pending, Ohio National produced documents responsive to certain of the requests at issue. In ruling on this motion, the Court considers the Company's responses as modified by that subsequent production. (See *County of San Benito v. Superior Court* (2023) 96 Cal.App.5th 243, 278-279.)

Request for Production of Documents, Set Three
No. 28 & No. 29

"All agreements YOU entered into with Disability Management Services, Inc. and/or Davies Life & Health, Inc. pertaining to the administration of disability insurance claims on YOUR behalf." / "All DOCUMENTS reflecting and/or evidencing the authority of Disability Management Services, Inc. and/or Davies Life & Health, Inc. to act on YOUR behalf with respect to the CLAIM."

Plaintiff argues that these requests relate to his claim that the Company denied him lifetime benefits in bad faith because "[a]greements between Ohio National and DMS speak to the financial incentives to terminate Plaintiff's claim[.]" (Separate Statement, p. 2.) Specifically, Plaintiff anticipates that he will find in the agreements "perverse incentives that promote the denial of legitimate claims," which are purportedly "common" in claim service agreements between insurance companies and their third-party claims administrators. (*Ibid.*)

Ohio National argues that Plaintiff has not demonstrated good cause for this discovery. Regardless, while this motion was pending, the Company produced the Claims Administrative Services Agreement between it and DMS ("ASA"), in redacted form, in response to RFP Nos. 28 and 29. (Murray Dec., ¶ 3.) "The ASA governs, among other things, [DMS'] administration of disability insurance claims submitted under policies issued by Ohio National and the services that [DMS] provides in that regard. [It] also sets forth the manner through which [DMS] is to be compensated[.]" (Cohen Dec., ¶ 3.)

Ohio National has conceded that "portions" of the ASA are "relevant" (Responsive Separate Statement, p. 5), and, by producing *any* documents in response to these requests, declined to stand by its objections, including those based on relevance and the scope of discovery. (Responsive Separate Statement, p. 5.) It is difficult to construe this behavior as anything other than a concession that these RFPs are supported by good cause.

Moreover, Plaintiff has "identif[ied] a disputed fact that is of consequence in the action" (whether or not Ohio National or its agent assessed Plaintiff's original claim and/or appeal in bad faith) "and explain[ed] how the discovery sought will tend in reason to prove or disprove that fact or lead to other evidence that will tend to prove or disprove that fact" (the documents requested are a logical place to look for evidence that Ohio National incentivized its claims administrator to deny claims, which would support the argument that the Company and/or DMS

was looking for a reason to deny the claim/appeal). (*Digital Music News, supra,* 226 Cal.App.4th 216, 224.) It is true that Plaintiff is speculating as to what he will find in the requested agreements between Ohio National and DMS, but that is how requests for production work in every case. The propounding party requests documents likely to contain relevant information without knowing whether the documents will in fact contain that information.

Nelson v. Superior Court (1986) 184 Cal.App.3d 444, cited by the Company, is not compelling. That was an auto tort case in which the plaintiff sued the State of California, alleging negligent or defective highway design. (184 Cal.App.3d 444, 447.) The state gave the plaintiff a computer printout with information about all vehicle accidents occurring at or near the scene of the plaintiff's accident during the five years preceding the accident. (*Ibid.*) The plaintiff then requested copies of the investigative reports relating to those other accidents, arguing that prior accidents in the same location were evidence that the state had prior knowledge of dangerous conditions on the highway. (*Id.* at pp. 447-448.) The appellate court held that the plaintiff had not shown good cause for this discovery because "[w]ithout a showing the other accidents were or might have been even remotely similar in nature to his own, plaintiff failed to show his request was reasonably calculated to discover admissible evidence." (*Id.* at p. 453.) It is difficult to see how this rule would apply to the instant case.

Defense counsel has explained that "[t]he ASA was redacted to remove information which has no bearing on any issues in this case[.]" (Foster Reply Dec., Ex. A.) The Court knows of no authority permitting a responding party to produce only those portions of a document it has unilaterally determined to be relevant to the case. If the request at issue seeks information within the scope of discovery (as RFP Nos. 28 and 29 do), and the document is responsive to that request, then (other valid objections aside) the document must be produced in full.

The Company raises confidentiality and privacy[2] concerns, but acknowledges that it produced the ASA subject to the parties' Stipulated Protective Order. (Murray Dec., Ex. 3.) The Company does not explain why the protective measures it itself agreed upon are supposedly insufficient to protect any confidentiality or privacy interest that might be implicated by these requests. Ohio National argues that "the ASA establishes that [DMS'] claims administration is neither motivated by any financial gain nor tied to any financial incentives." (Responsive Separate Statement, pp. 5-6.) The Court knows of no authority permitting a responding party to withhold any portion of a responsive document on the basis that the responding party does not believe the document bears out the propounding party's theory. Ohio National has cited no such case. The Company insists that it need not produce any other documents in response to either of these requests. It is unclear what the basis for that is, i.e., whether Ohio National is saying that no other documents responsive to the request exist or, alternatively, that they exist but should not have to be produced based on some objection. If it is the former, the Company must update its response

---

[2] Ohio National does not make a serious attempt to support its argument that any request at issue in this motion compromises third-party insureds' statutory or constitutional rights to privacy. The Company does not cite any privacy statute, and establishing that a discovery request implicates the state constitutional right to privacy entails much more than merely suggesting that the discovery might impinge upon undefined constitutional privacy interests. (See *Williams v. Superior Court* (2017) 3 Cal.5th 531, 552.)

to say that. (§§ 2031.210, subd. (a)(2); 2031.230.) If it is the latter, the Company has waived the argument by failing to defend any objections to these RFPs that the Court has not already rejected.

The motion is granted as to RFP Nos. 28 and 29. To be clear, this means that Ohio National must produce the ASA in unredacted form and must also produce any other documents responsive to RFP Nos. 28 and 29 it has yet to produce. It must also provide a code-compliant written response to these interrogatories.

Nos. 30 & 31

"All monthly reports provided to YOU by Disability Management Services, Inc. and/or Davies Life & Health, Inc. during the period January 2018 through the present pertaining to the administration of disability claims on YOUR behalf." / "All quarterly reports provided to YOU by Disability Management Services, Inc. and/or Davies Life & Health, Inc. during the period January 2018 through the present pertaining to the administration of disability claims on YOUR behalf."

Plaintiff explains that he is looking for evidence that Ohio National gave DMS "claim closure or recovery expectations," i.e., a target number of denied claims the Company wanted its claims administrator to meet. (Separate Statement, p. 6.) This would "create[] an inherent bias against the insured" and support Plaintiff's bad faith argument similar to the way evidence of perverse financial incentives to deny claims would. (*Ibid.*)

Setting aside whether Plaintiff has demonstrated good cause for these requests, the Court agrees with Ohio National that the requests are overbroad. If Plaintiff is looking for communications between DMS and the Company regarding "claim closure or recovery expectations" or quotas for denied claims, he can simply request that documents matching that description be produced. The Court does not see why it would be necessary for Ohio National to produce six or seven years' worth of periodic reports. The motion is denied as to these requests.

Supplemental Request for Production of Documents, Set One

No. 1

This asks that Ohio National "review [its] response to all requests for production of documents previously served on [it] in this action" and "if . . . any answer or production is no longer correct or complete," provide the information or documents necessary to complete the response. Ohio National responded that it does not possess any additional documents responsive to Plaintiff's previously served Requests. Plaintiff claims the Company has "conced[ed] that documents relating to its decision to reinstate Plaintiff's benefits are responsive to Plaintiff's previous requests[,]" but takes the position that the only document in its possession relating to that decision is the April 26, 2024 letter advising Plaintiff that the company would be partially reinstating his benefits.

A separate statement in support of a discovery motion "must be full and complete so that no person is required to review any other document in order to determine the full request and the full responses." (Cal. Rules of Court, rule 3.1345(c).) "If the response to a particular discovery

request is dependent on the response given to another discovery request, or if the reasons a further response to a particular discovery request is deemed necessary are based on the response to some other discovery request, the other request and the response to it must be set forth[.]" (Cal. Rules of Court, rule 3.1345(c)(5).)

Here, the sufficiency of Ohio National's response necessarily depends on the content of the RFPs previously served on the Company in this action and on how it responded to those RFPs. Plaintiff has not identified the request purportedly calling for "documents relating to [Ohio National's] decision to reinstate Plaintiff's benefits" by number or set, let alone provided its text. The motion is procedurally defective as to Supplemental Request for Production No. 1 for this reason. Plaintiff has not provided any evidence that he ever served a request for documents relating to Ohio National's decision to reinstate his benefits on the Company, that it responded in a manner that is deficient under Section 2031.310(a), or that it failed to abide by a statement that it would comply with the request, a prerequisite for relief under Section 2031.320(a). This portion of the motion is denied.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for January, 2025 is as follows:
https://www.zoomgov.com/j/1602925171?pwd=NUdsaVlabHNrNjZGZjFsVjVSTUVqQT09
Meeting ID: 160 292 5171
Passcode: 868745

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marin.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/21/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV1903799

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

PLAINTIFF: KOFI OPONG-MENSAH vs. DEFENDANT: MARIN COMMUNITY COLLEGE DISTRICT, ET AL	

NATURE OF PROCEEDINGS: MOTION - RECONSIDERATION

RULING

Plaintiff's motion for reconsideration of order denying relief from settlement is **DENIED**.

Factual and Procedural Background

On July 19, 2024, the parties and their counsel participated in a mandatory settlement conference with panelist Benjamin Graves. After reaching an agreement to settle, the parties signed a settlement agreement and then appeared before this Court. The Court asked the parties if they understood and agreed to the terms, and if they had an opportunity to discuss the agreement with counsel, and the parties both answered that they did. The Court signed orders dismissing this case and Case No. CV0002967 with prejudice pursuant to paragraph 5 of the settlement agreement and an order requiring Plaintiff to obtain a pre-filing order pursuant to paragraph 8a. On August 19, 2024, the Court entered an order amending and modifying the prefiling order to reflect the terms of the written agreement.

Plaintiff then moved for relief from the settlement agreement. In an order dated November 12, 2024 (the "November 12th Order"), the Court denied Plaintiff's motion. The Court held that (1) Plaintiff could not unilaterally revoke the settlement agreement because the agreement had already been accepted and signed by the parties and nothing in paragraphs 13 or 17 allowed Plaintiff to revoke the agreement; (2) Plaintiff could revoke his release of the ADEA claim but the District accepted this release and opted to continue to accept the settlement agreement as allowed under paragraph 14 of the agreement; (3) the incorrect dates in the agreement were not material terms and the fact that the prefiling order was not attached as an exhibit did not support Plaintiff's request as it was clearly described in paragraph 8a of the agreement, and the Court's amended order tracked that language; and (4) Plaintiff's vague claims of drowsiness and disorientation were insufficient to set aside the agreement because the transcript of the

proceedings reflected that Plaintiff never raised the issue and clearly responded to questions about his agreement and understanding of the terms of the agreement.

Standard

Code of Civil Procedure section 1008 provides that a party may file a motion for reconsideration where there are "new or different facts, circumstances, or law." There is a strict requirement of diligence. To move for reconsideration on the basis of "new or different facts" or newly discovered evidence, the moving party must provide a satisfactory explanation for the failure to produce that evidence at an earlier time. (*Shiffer v. CBS Corp.* (2015) 240 Cal.App.4th 246, 255; *Hennigan v. White* (2011) 199 Cal.App.4th 395, 405; *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 690.)

Discussion

On November 21, 2024, Plaintiff filed a motion for reconsideration of the November 12th Order. Plaintiff argues that the District submitted an improper and untimely declaration from Plaintiff's former attorney, Dylan Hackett, to oppose Plaintiff's motion for relief from settlement, and further that the Court allowed Mr. Hackett to appear as an observer at the hearing. Plaintiff argues that the Court should reconsider its Order to provide Plaintiff with the opportunity to rebut Mr. Hackett's statements.

Plaintiff's motion for reconsideration is denied. Plaintiff does not provide any "new or different facts, circumstances, or law." Rather, Plaintiff argues that the Court improperly considered evidence (i.e., Mr. Hackett's declaration) when ruling on Plaintiff's motion for relief from the settlement agreement. This argument fails for two reasons. First, as the November 12th Order reflects, Mr. Hackett's declaration was not a basis for the Court's ruling. The November 12th Order makes no mention at all of Mr. Hackett's declaration. Second, even if Plaintiff was correct that the Court considered this declaration, it would not be a proper basis for a reconsideration motion. "[A] court acts in excess of jurisdiction when it grants a motion to reconsider that is not based upon 'new or different facts, circumstances or law.'" (*Gilberd v. AC Transit* (1995) 32 Cal. App. 4th 1494, 1500 [citation omitted].) "[S]ection 1008 gives the court no authority when deciding whether to grant a motion to reconsider to 'reevaluate' 'or 'reanalyze' facts and authority already presented in the earlier motion." (*Crotty v. Trader* (1996) 50 Cal.App.4th 765, 771.) Thus, the Court has no authority to grant reconsideration based on "evidence" that was before it at the time of its prior ruling.

Plaintiff's memorandum also discusses relief from the settlement agreement under Code of Civil Procedure Section 473. A motion for relief under this section is not properly before the Court, as Plaintiff's notice of motion and motion references only a motion for reconsideration. (See Rule of Court 3.1112(d) [identifying subjects that must be included in motion]; *Musaelian v. Adams* (2011) 197 Cal.App.4th 1251, 1257.) Even if this motion was properly before the Court, it would be denied. Plaintiff argues that he suffered undue influence and surprise when his attorney, Mr. Hackett, accepted the settlement agreement money and prevented Plaintiff from adequately reviewing the settlement agreement before appearing before the Court to acknowledge his acceptance. The Court has already rejected this argument as it is belied by the transcript of the

July 19, 2024 proceedings before the Court, which reflects that Plaintiff clearly stated he understood and agreed to the terms of the settlement agreement.

Plaintiff's memorandum also discusses a motion for new trial under Code of Civil Procedure Section 657(7). This, too, is not included in Plaintiff's notice of motion and motion and is therefore not properly before the Court. Even if it was, it would be denied as Plaintiff has not identified any "error of law" in the November 12th Order. Mr. Hackett's declaration and/or testimony, which Plaintiff contends caused an error of law due to a conflict, was not considered by the Court.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for January, 2025 is as follows:
https://www.zoomgov.com/j/1602925171?pwd=NUdsaVlabHNrNjZGZjFsVjVSTUVqQT09
Meeting ID: 160 292 5171
Passcode: 868745

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marin.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/21/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV2203724

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

PLAINTIFF: MATTHEW JARVIS vs. DEFENDANT: WESTWARD BUILDERS, INC., ET AL	

NATURE OF PROCEEDINGS: MOTION – SUMMARY JUDGMENT

RULING

The motion of Defendant Total Equipment, Inc. dba Bobcat of Santa Rosa for summary judgment is **GRANTED.**

Allegations in Plaintiff's Complaint

On October 7, 2022, Plaintiff Matthew Jarvis filed his Complaint against Defendants Westward Builders, Inc., Terry Keast, Total Equipment, Inc. dba Bobcat of Santa Rosa ("Bobcat"), and Clark Equipment Company dba Bobcat Company, asserting causes of action for products liability (strict liability, negligence, breach of express warranty, and breach of implied warranty) and negligence after he was injured by a Bobcat skid steer. Plaintiff alleges among other things that before the incident, the defendants modified the subject skid steer.

Standard

The purpose of a motion for summary judgment or summary adjudication "is to provide courts with a mechanism to cut through the parties' pleadings in order to determine whether, despite their allegations, trial is in fact necessary to resolve their dispute." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) "Code of Civil Procedure section 437c, subdivision (c), requires the trial judge to grant summary judgment if all the evidence submitted, and 'all inferences reasonably deducible from the evidence' and uncontradicted by other inferences or evidence, show that there is no triable issue as to any material fact and that the moving party is entitled to judgment as a matter of law." (*Adler v. Manor Healthcare Corp.* (1992) 7 Cal. App. 4th 1110, 1119.)

"On a motion for summary judgment, the initial burden is always on the moving party to make a prima facie showing that there are no triable issues of material fact." (*Scalf v. D. B. Log Homes,*

Inc. (2005) 128 Cal.App.4th 1510, 1519.) A defendant moving for summary judgment or summary adjudication "has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to the cause of action." (Code Civ. Proc. § 437c(p)(2).) "Once the defendant . . . . has met that burden, the burden shifts to the plaintiff . . . to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto." (Code Civ. Proc. § 437c(p)(2).)

"When deciding whether to grant summary judgment, the court must consider all of the evidence set forth in the papers (except evidence to which the court has sustained an objection), as well as all reasonable inferences that may be drawn from that evidence, in the light most favorable to the party opposing summary judgment." (*Avivi v. Centro Medico Urgente Medical Center* (2008) 159 Cal.App.4th 463, 467; Code Civ. Proc. §437c(c).) The moving party's evidence must be strictly construed, while the opposing party's evidence must be liberally construed. (*Binder v. Aetna Life Ins. Co.* (1999) 75 Cal.App.4th 832, 838.) Any evidentiary doubts are resolved in favor of the opposing party. (*City of Santa Cruz v. Pacific Gas & Elec. Co.* (2000) 82 Cal.App.4th 1167, 1176.)

A party who objects to evidence presented on a motion for summary judgment must either timely file separate written objections or object orally at the hearing. (*Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 851 n. 11; Cal. Rules of Court, Rule 3.1352.) "Evidentiary objections not made at the hearing shall be deemed waived." (Code Civ. Proc. §437c(b)(5).)

Where a motion for summary judgment or summary adjudication is unopposed, the moving party may still not be granted summary judgment unless its papers establish that it is entitled to judgment as a matter of law. (*Harman v. Mono General Hospital* (1982) 131 Cal.App.3d 607, 613.)

Plaintiff's December 30, 2024 Letter to the Court

On or about December 30, 2024, Plaintiff's counsel sent a letter to the Court requesting a continuance of the hearing to February 15, 2025 so that Plaintiff could complete discovery. The Court denies this request. If Plaintiff needed additional time to conduct discovery, the proper means by which to request a continuance was Code of Civil Procedure Section 437c(h). Plaintiff has failed to make such a request or to make the showing required for a continuance under this section.

Discussion

Issue No. 1[1]

[1] Bobcat's issues identified in its notice of motion and motion are slightly different than the issues used in the separate statement. Specifically, the notice of motion and motion identifies two issues, while the separate statement identifies three. The second issue in the notice of motion and motion is broken down into two issues (the second and third issues) in the separate statement. The Court will address the issues as described in the notice of motion and motion.

Bobcat's Issue No. 1: "Defendant can have no liability on the First Cause of Action for Professional Negligence given that it did not owe Plaintiff any duty of care at the time he was injured since Defendant never owned/possessed/controlled the Skid Steer and/or inspected, repaired, or modified it at any time prior to said injuries."

Bobcat argues that "[t]o establish duty on the part of Bobcat, Jarvis must show that it either owned/ possessed/controlled/sold the Skid Steer at or before the time of the Incident, or that it somehow caused some material modification to the Skid Steer in the past." (MPA, p. 7:18-21.)

Bobcat's moving papers establish the following facts: On November 17, 2020, Plaintiff was injured when an unmanned skid steer partially ran over him. The incident occurred when Plaintiff grabbed onto the cab with his left hand so that he could turn it off with his right hand, causing the skid steer to lunge forward. (Undisputed Material Fact ("UMF") 1.) Bobcat has no record of servicing the skid steer at any time before the incident. (UMF 3.) Bobcat did not possess, own, or control the skid steer at any time prior to the incident. (UMF 4.) Bobcat did not make any modification to the skid steer at any time before the incident. (UMF 5.) Further, in response interrogatories asking for facts to support his negligence claim against Bobcat, Plaintiff identified no specific facts in response. (UMF 6.)

Based on this evidentiary record, Bobcat has established that it owed no duty to Plaintiff, which is an essential element of a negligence claim.

Issue No. 2

Issue No. 2: "Defendant can have no liability on the Second Cause of Action for Products Liability under any theory as it did not (1) design, distribute, assemble, manufacture, sell, inspect, modify, and/or repair the Skid Steer at issue; and (2) make any statements or provide any written warranties about the product to Plaintiff."

Chain of Distribution

"Strict liability has been invoked for three types of defects – manufacturing defects, design defects, and 'warning defects,' i.e., inadequate warnings or failures to warn." (*Anderson v. Owens-Corning Fiberglas Corp.* (1991) 53 Cal.3d 987, 995.) Generally, in order for a defendant to be liable under a strict liability theory, the defendant must have been in the "chain of distribution" of the product. (See *Taylor v. Elliott Turbomachinery Co., Inc.* (2009) 171 Cal.App.4th 564, 577-579; *Garcia v. Joseph Vince Co.* (1978) 84 Cal.App.3d 868, 874.)

Bobcat's evidence establishes that it did not design, manufacture, assemble, or distribute the skid steer or any of its component parts (UMF 7), it did not sell the skid steer to any individual or entity (UMF 8), and it did not inspect or repair the skid steer at any time before the incident. (UMF 9.) Further, in response interrogatories asking for facts to support his products liability claim against Bobcat, Plaintiff identified no specific facts in response. (UMF 11, 12.) This evidence is sufficient to meet Bobcat's initial burden to show that it was not in the chain of distribution of the skid steer.

Express or Implied Warranty

"In the absence of any affirmations of fact or promises made by defendants to plaintiff, plaintiff cannot recover damages under his theory of breach of express warranty." (*Pisano v. American Leasing* (1983) 146 Cal.App.3d 194, 197-198; CACI 1230.) A claim for breach of implied warranty is generally available against the seller of a product. (See *Gagne v. Bertran* (1954) 43 Cal.2d 481, 487; *Gautier v. General Tel. Co.* (1965) 234 Cal.App.2d 302, 306); *Arriaga v. CitiCapital Commercial Corp.* (2008) 167 Cal.App.4th 1527, 1532; CACI 1231.)

Bobcat's evidence establishes that it did not make any express warranty about the skid steer. (UMF 15.) Bobcat's evidence also establishes that it did not sell the skid steer to any individual or entity, thus negating Plaintiff's claim for implied warranty. (UMF 13.) Further, in response interrogatories asking for facts to support his breach of warranty claim against Bobcat, Plaintiff identified no specific facts in response. (UMF 14.) This evidence is sufficient to meet Bobcat's initial burden of showing it did not make any express or implied warranties to Plaintiff.

Summary Judgment

Bobcat has met its initial burden with respect to both Issue Nos. 1 and 2, and Plaintiff has failed to identify any evidence to raise any triable issues of fact. This ruling leaves no remaining causes of action against Bobcat. Accordingly, Bobcat's motion for summary judgment is granted.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for January, 2025 is as follows:
https://www.zoomgov.com/j/1602925171?pwd=NUdsaVlabHNrNjZGZjFsVjVSTUVqQT09
Meeting ID: 160 292 5171
Passcode: 868745

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marin.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/21/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0001114

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

PLAINTIFF: ANTHONY BYRD vs. DEFENDANT: MARIN AIRPORTER, A CALIFORNIA CORPORATION	

NATURE OF PROCEEDINGS: MOTION – OTHER – FOR PRELIMINARY APPROVAL OF CLASS, ETC.

RULING

Appearances required.

The parties are to address the plan for notice and exclusion and to set a hearing date for final approval. The settlement agreement does not appear to clearly specify a Response Date and therefore the Court cannot properly estimate the time needed before setting a hearing on final approval.

In addition, the Court notes an inconsistency in paragraph 58 of the settlement agreement. The provision addresses termination or revocation of the settlement and indicates a threshold of both five percent and ten percent.

In all other respects, Plaintiff's unopposed motion for preliminary approval of class-action and PAGA settlement is granted.

The court preliminarily finds that the requirements for conditional class certification for settlement purposes are met in that (a) the parties are sufficiently numerous that it is impracticable to bring them all before the court; (b) there are questions of law or fact common to the class that are substantially similar and predominate over questions affecting individual members; (c) the claims of the named representative are typical of those of the class; and (c) the named representative can fairly and adequately protect the interests of the class. (Code Civ. Proc., § 382; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App. 4th 224, 240.)

Accordingly, the Court orders that:

1. The proposed class is conditionally certified, and Plaintiff is conditionally appointed class representative.

2. The court conditionally appoints Otkupman Law Firm as class counsel and approves Apex Class Action Administrator as proposed.

3. After considering the factors set forth in *Clark v. American Residential Services LLC* (2009) 175 Cal.App. 4th 785, 799, the court preliminarily rules that the proposed class settlement is fair and reasonable.

4. The Court conditionally finds, subject to final approval, that the proposed attorney's fee amount is fair and appropriate.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for January, 2025 is as follows:
https://www.zoomgov.com/j/1602925171?pwd=NUdsaVlabHNrNjZGZjFsVjVSTUVqQT09
Meeting ID: 160 292 5171
Passcode: 868745

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marin.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/21/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0001482

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

PLAINTIFF: MARCELA VARGAS vs. DEFENDANT: BAYSIDE MARIN, INC. A DELAWARE CORPORATION, ET AL	

NATURE OF PROCEEDINGS: MOTION – COMPEL – DISCOVERY FACILITATOR PROGRAM

RULING

In this case, a referral to the discovery facilitator program was inadvertently delayed. The Court therefore **continues this matter to February 25, 2025 at 1:30 p.m. in Courtroom A** to allow the parties to participate in the facilitator program.

The Court reminds the parties that compliance with MCR Civ 2.13H requires the timely filing of a Declaration of Non-Resolution by each party five court days prior to the hearing. The Declaration shall briefly summarize the remaining disputed issues and each party's contentions.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for January, 2025 is as follows:
https://www.zoomgov.com/j/1602925171?pwd=NUdsaVlabHNrNjZGZjFsVjVSTUVqQT09
Meeting ID: 160 292 5171
Passcode: 868745

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marin.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/21/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0002832

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

PLAINTIFF: LVNV FUNDING LLC, vs. DEFENDANT: CARLOS A. RODRIGUEZ	

NATURE OF PROCEEDINGS: MOTION – SET ASIDE/VACATE

RULING

The unopposed motion of Plaintiff LVNV Funding LLC for judgment on the pleadings is **GRANTED**. (Code Civ. Proc., § 438.) The complaint states sufficient facts to constitute a cause of action against the defendant and the answer does not state facts sufficient to constitute a defense to the complaint.

Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for January, 2025 is as follows:
https://www.zoomgov.com/j/1602925171?pwd=NUdsaVlabHNrNjZGZjFsVjVSTUVqQT09
Meeting ID: 160 292 5171
Passcode: 868745

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marin.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/21/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0003203

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

PLAINTIFF: GEORGE THOR SCHJELDRUP vs. DEFENDANT: GENERAL MOTORS, LLC, ET AL	

NATURE OF PROCEEDINGS: 1) DEMURRER
2) MOTION – STRIKE

RULING

Defendant General Motors LLC's ("GM") demurrer to the First Amended Complaint ("FAC") is OVERRULED. Defendant's Motion to Strike Damages from the FAC is DENIED.

Background

On or about December 18, 2020, plaintiff George Thor Schjelderup ("Plaintiff") purchased a Certified Pre-Owned 2017 GMC Sierra, VIN 3GTU2PEJ2HG389298 (the "Subject Vehicle" or "Sierra"). (FAC, ¶ 6). On June 20, 2024, Plaintiff filed this action, alleging claims under the Song-Beverly Act (Causes of Action 1-4) and a "Fraudulent Inducement-Concealment" claim (Cause of Action 5). GM demurred and moved to strike damages from the Complaint. On October 2, 2024, Plaintiff filed his FAC with the same five Causes of Action. GM again demurs and moves to strike damages from the FAC.

Legal Standard – Demurrer

The function of a demurrer is to test the legal sufficiency of the challenged pleading. (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) As a general rule, in testing a pleading against a demurrer, the facts alleged in the pleading are deemed to be true, however improbable they may be. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The court gives the pleading a reasonable interpretation by reading it as a whole and all of its parts in their context. *(Moore v. Regents of Univ. of Calif.* (1990) 51 Cal.3d 120, 125.)

In a demurrer proceeding, the defects must be apparent on the face of the pleading or via proper judicial notice. (*Donabedian v. Mercury Ins.* Co. (2004) 116 Cal.App.4th 968, 994.) The face of the complaint includes matters shown in exhibits attached to the complaint and incorporated by

reference. (*Frantz v. Blackwell* (1987) 189 Cal.App.3d 91, 94.) "The only issue involved in a demurrer hearing is whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action." (*Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 747.)

If the complaint fails to state a cause of action, the court must grant the plaintiff leave to amend if there is a reasonable possibility that the defect can be cured by amendment. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 317.) The onus is on the plaintiff to articulate the "specifi[c] ways" to cure the identified defect, and absent such an articulation, a trial or appellate court may grant leave to amend "only if a potentially effective amendment [is] both apparent and consistent with the plaintiff's theory of the case." (*Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1145.)

DISCUSSION – DEMURRER

GM demurs to the fifth Cause of Action for Fraudulent Inducement-Concealment on the grounds that it 1. is barred by the applicable statute of limitations; 2. fails to state facts sufficient to establish the fraud cause of action; and 3. is barred by the Economic Loss Rule.

The elements of fraud are: (1) a misrepresentation (false representation, concealment, or nondisclosure), (2) knowledge of falsity (or scienter), (3) intent to defraud, i.e., to induce reliance, (4) justifiable reliance, and (5) resulting damage. (*Robinson Helicopter Co., Inc. v. Dana Corp.* (2004) 34 Cal.4th 979.) "There are 'four circumstances in which nondisclosure or concealment may constitute actionable fraud: (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations but also suppresses some material facts. [Citation.]" ' (*LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 336.)

Here, Plaintiff alleges that GM is engaged in the business of designing, manufacturing, constructing, assembling, marketing, distributing, and selling automobiles and other motor vehicles and motor vehicle components in Marin County, California. (FAC, ¶ 4.) Plaintiff further alleges that he purchased the Subject Vehicle which was manufactured and or distributed by GM at Novato Chevrolet in Novato, CA (GM's authorized dealer). (*Id.*, ¶ 6.) Plaintiff then alleges that GM had exclusive knowledge (not available to consumers) that its 8-speed transmissions, like the one installed in the Subject Vehicle, were defective and prone to various problems, including, but not limited to hard or harsh shifts, jerking, lurching, hesitation on acceleration, surging and/or inability to control the vehicle's speed, acceleration, or deceleration. (*Id.*, ¶¶ 60-64.)

Despite this being aware of this defect, GM advertised their 8-speed transmissions as having "world-class performance" rivaling top performance vehicles, lightning-fast and smooth shifting, along with improved fuel efficiency, among other representations. (*Id.*, ¶ 65.) GM's own press release dated January 13, 2014, introduced the new 8-speed transmission as being "tuned for world-class shift-response times," and "deliver[ing] shift performance that rivals the dual-clutch/semi-automatic transmissions found in many supercars – but with the smoothness and refinement that comes with a conventional automatic fitted with a torque converter." (*Ibid.*) The FAC goes on to allege that prior to Plaintiff's purchase of the Subject Vehicle, GM was

internally referring the 8-speed transmission as a "neck snapper", GM engineers even considered stopping production in 2015 (but did not), and in 2016, President Johan de Nysschen acknowledged customer frustration surrounding the transmission defect internally and meeting with its authorized repair facility. (*Id.* ¶ 66.) Plaintiff alleges that GM continued to conceal the transmission defect from consumers, including in its marketing materials, and that he considered GM's advertisement, and/or other marketing materials prior to purchasing Subject Vehicle and that he relied on those advertisements in making his purchase. (*Id.*, ¶¶ 65, 66, 69.) Plaintiff further alleges that he would not have purchased the Subject Vehicle if he had been made aware of the defects with the 8-speed transmission and that Defendant intended to induce him to purchase the Subject Vehicle by concealing the defect. (*Id.*, ¶¶ 65, 69, 75.) Finally, Plaintiff alleges that he was harmed by the concealment. (*Id.*, ¶ 78.)

Although moving Defendant attempts to argue that the FAC fails to state facts with sufficient specificity, for example to support Plaintiff's allegation that GM intended to defraud Plaintiff, the Court finds the facts are adequately pled under a fraud standard. The FAC alleges GM had ongoing knowledge of the transmission defect, of the specific problems it caused (harsh shifts, jerking, lurching), and that a repair would not be designed due to cost issues. (FAC, ¶ 63-68.) Nonetheless, it was still advertising those same transmissions as having "world-class performance" rivaling top performance vehicles, lightning-fast and smooth shifting, etc. (*Id.*, ¶ 65.) The FAC further alleges that Defendant intended to induce him to purchase the Subject Vehicle by concealing the defect. (*Id.*, ¶¶ 65, 69, 75.)

This is sufficient to state a cause of action at this stage in the pleadings.
The cause of action is also not barred on its face by the statute of limitations. The FAC alleges that the statute of limitations was tolled under various theories and provides factual allegations supporting each one. (*Id.*, ¶¶ 24-39; See FAC generally.) With respect to the fifth cause of action specifically, the FAC alleges that the concealment was ongoing. (*Id.*, ¶ 38.) For these reasons, the Court finds that while the FAC *may* be barred by the statute of limitations, it is not absolutely barred on the face of the complaint. (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1232 [In order for the bar to be raised by demurrer, the defect must clearly and affirmatively appear on the face of the complaint; it is not enough that the complaint shows that the action may be barred].) Nor is the cause of action necessarily barred by the Economic Loss Rule. Economic loss consists of "damages for inadequate value, costs of repair and replacement of the defective product or consequent loss of profits—without any claim of personal injury or damages to other property...." (*Robinson Helicopter Co. v. Dana Corp., supra,* 34 Cal.4th at p. 988. Internal citations omitted.) Simply stated, the Economic Loss Rule provides: "[W]here a purchaser's expectations in a sale are frustrated because the product he bought is not working properly, his remedy is said to be in contract alone, for he has suffered only 'economic' losses." (*Ibid.*) The Economic Loss Rule requires a purchaser to recover in contract for purely economic loss due to disappointed expectations, unless he can demonstrate harm above and beyond a broken contractual promise. (*Ibid.*) The Economic Loss Rule does not act as an absolute bar to tort recovery in every case in which the parties have a contractual relationship. (*Rattagan v. Uber Techs., Inc.* (2024) 17 Cal.5th 1, 23.) Courts generally permit tort suits if the defendant allegedly violated a duty rooted in tort principles that is independent of the parties' contractual rights. (*Id.*) Here, the tortious conduct alleged is separate from the breach itself. The first has to do with pre-sale advertisements and allegedly fraudulent concealment to induce Plaintiff to purchase and the

latter is based on failure to repair the Subject Vehicle after a reasonable number of repair attempts, replace the Vehicle, or make restitution to Plaintiff.
For these reasons, the Demurrer to the fifth cause of action is overruled.

Legal Standard – Motion to Strike

On noticed motion, the Court may strike out "any irrelevant, false, or improper matter inserted in any pleading," and "all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court." (Code Civ. Proc., § 436.) The basis for granting the motion to strike must appear on the face of the challenged pleading or else be judicially noticeable. (*Id.*, § 437, subd. (a).) When the defect that justifies striking a complaint is capable of cure, the court should allow leave to amend. (*Perlman v. Municipal Court* (1979) 99 Cal.App.3d 568, 575.)

Discussion – Motion to Strike

GM moves to strike the demand "[f]or punitive damages" in the Prayer for Relief. (FAC, Prayer ¶ g. at p. 16:1.) GM argues the punitive damages claim must be stricken because (1) Plaintiff has not pled a viable fraud claim or any other cause of action that can support a claim for punitive damages and (2) has failed to plead facts sufficient to support a claim for punitive damages.

Punitive damages may be imposed where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice. (Civ. Code, § 3294, subd. (a).) "Malice" is conduct intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on with a willful and conscious disregard of the rights or safety of others. (Civ. Code § 3294, subd. (c)(1).) An award of punitive damages requires "despicable conduct," meaning behavior that is "vile," "base," or contemptible" and that would be "looked down upon and despised by ordinary decent people," in addition to willful and conscious disregard for the rights and safety of others. (*College Hospital, Inc. v. Superior Court* (1994) 8 Cal.4th 704, 725.) "'Punitive damages are proper only when the tortious conduct rises to levels of extreme indifference to the plaintiff's rights, a level which decent citizens should not have to tolerate.' [Citation.]" (*Lackner v. North* (2006) 135 Cal.App.4th 1188, 1210.)

A motion to strike punitive damages is properly granted where a plaintiff does not state a prima facie claim for punitive damages, including facts showing that defendant is guilty of oppression, fraud or malice. (*Turman v. Turning Point of Cent. California, Inc.* (2010) 191 Cal.App.4th 53, 63.)

For the reasons stated above, the demurrer to the fraud cause of action was overruled. As stated therein, the FAC adequately pleads facts alleging fraud-concealment by GM. Facts are pled that, if true, could justify an award of punitive damages. (FAC, ¶¶ 61-76.)

Although Plaintiff *may* be precluded from recovering both punitive damages and Song-Beverly Act statutory penalties, this is not always the case, and it would be inappropriate to reach that determination at this stage in the proceedings. (See *Anderson v. Ford Motor Co.* (2022) 74 Cal.App.5th 946, 962- [affirming trial court order holding that buyers were not precluded from recovering both statutory penalties under Song-Beverly Act and punitive damages].)

The Motion to Strike is denied.

Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for January, 2025 is as follows:
https://www.zoomgov.com/j/1602925171?pwd=NUdsaVlabHNrNjZGZjFsVjVSTUVqQT09
Meeting ID: 160 292 5171
Passcode: 868745

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marin.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/21/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0004025

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

PLAINTIFF: SHAMEEL Y NARAIN ET AL vs. DEFENDANT: AMERICAN HONDA MOTOR CO, INC, ET LA	

NATURE OF PROCEEDINGS: 1) MOTION – STRIKE
2) DEMURRER

RULING

The unopposed demurrer of Defendant American Honda to the second, third and fifth causes of action in the Complaint of Plaintiffs Shameel Y Narain and Praneel Narain is **SUSTAINED with leave to amend**. Plaintiffs failed to file an opposition or response to the demurrer and this failure may be deemed a consent to the granting of the motion. (Cal. Rules of Court, rule 8.54, subd. (c).) The failure to oppose a motion may also lead to the presumption that [plaintiff] has no meritorious arguments. (See *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal. App. 3d 481, 489, disapproved of by *Garcia v. McCutchen* (1997) 16 Cal.4th 469, on other grounds.) Defendant's demurrer is sustained on this basis.

In light of the ruling on demurrer, Defendant's motion to strike is moot. Where a whole cause of action is the proper subject of a pleading challenge, the court should sustain a demurrer to the cause of action rather than grant a motion to strike. (*Quiroz v. Seventh Ave. Center* (2006) 140 Cal.App.4th 1256, 1281.)

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for January, 2025 is as follows:
https://www.zoomgov.com/j/1602925171?pwd=NUdsaVlabHNrNjZGZjFsVjVSTUVqQT09
Meeting ID: 160 292 5171
Passcode: 868745

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marin.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/21/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0004151

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

PLAINTIFF: THE PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: SILVEIRA PROPERTIES II, LLC ET AL	

NATURE OF PROCEEDINGS: MOTION – OTHER – FOR ORDER FOR POSSESSION

RULING

The unopposed motion of Plaintiff People of the State of California for an order of possession is **GRANTED**. (Code Civ. Proc., § 1255.410.) Absent objection, the Court intends to sign the proposed order submitted by Plaintiff.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for January, 2025 is as follows:
https://www.zoomgov.com/j/1602925171?pwd=NUdsaVlabHNrNjZGZjFsVjVSTUVqQT09
Meeting ID: 160 292 5171
Passcode: 868745

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marin.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 01/21/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0004188

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK: RON BAKER

PLAINTIFF: CITY OF LARKSPUR vs. DEFENDANT: ROSE LANE MASTER ASSOCIATION	

NATURE OF PROCEEDINGS: MOTION – OTHER – ORDER FOR POSSESSION

RULING

The unopposed motion of Plaintiff City of Larkspur for an order of possession is **GRANTED**. (Code Civ. Proc., § 1255.410.) Plaintiff to submit a proposed order to the Court for signature.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

The Zoom appearance information for January, 2025 is as follows:
https://www.zoomgov.com/j/1602925171?pwd=NUdsaVlabHNrNjZGZjFsVjVSTUVqQT09
Meeting ID: 160 292 5171
Passcode: 868745

If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: https://www.marin.courts.ca.gov