SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 09/19/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV2103297

PRESIDING: HON. ANDREW E. SWEET

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: HADAR WEITZMAN LAW CORP., ET AL vs. DEFENDANT: LOCKSMITH EMERGENCY SOLUTIONS INC., ET AL	

NATURE OF PROCEEDINGS: MOTION – SET ASIDE/VACATE

RULING

This matter is continued to October 3, 2025, at 1:30 p.m. in Department E.

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 September 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1615162449?pwd=e5SqeATq2HOsxxD7Fhrl3Q7qPFgFZa.1
Meeting ID: 161 516 2449
Passcode: 073961

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: 09/19/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV2200854

PRESIDING: HON. ANDREW E. SWEET

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: LILIA GARCIA-BROWER vs. DEFENDANT: ACV ARGO TIBURON, LP, ET AL	

NATURE OF PROCEEDINGS: MOTION – STAY

RULING

On May 30, 2025, the Court granted Defendants and Cross-Defendants Bynum and Associates Corporation and James Bynum (collectively "Bynum") discovery motions and awarded monetary sanction against Steve Teijeiro ("Teijeiro").

Teijeiro's unopposed Motion to Stay the monetary sanctions is granted until further order of 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 September 2025 is as follows:
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 09/19/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV2204312

PRESIDING: HON. ANDREW E. SWEET

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: LIPOSOME FORMULATIONS INC. vs. DEFENDANT: GIGIA L. KOLOUCH, ET AL	

NATURE OF PROCEEDINGS: DEMURRER

RULING

Defendants' demurrer to the Sixth, Seventh, Eighth, Ninth and Tenth Causes of Action, as to both Plaintiffs, is sustained with leave to amend.

Allegations in Plaintiffs' Third Amended Complaint

Plaintiffs Liposome Formulations, Inc. ("Liposome") and William Heriot ("Heriot") allege that Liposome was the former tenant of two adjoining commercial condominiums in Novato, owned by Defendants. Heriot holds the rights to several patents that Liposome has used in its research, development and manufacture of osteoarthritis drugs and supplements. Liposome completed an extensive build-out which included the installation of substantial laboratory equipment. When Plaintiffs discovered unpermitted and unsafe conditions at the property, Defendants attempted to sever Liposome's tenancy by serving 30-day notices to quit and filing unlawful detainer actions. On July 27, 2023, Liposome entered into a Settlement Agreement with Defendants Gigia L. Kolouch and Lisa Bjorn, as co-trustees of the Bjorn Living Trust U/D/T/ 12/18/90 (the "Bjorn Defendants"), with respect to one of the units, Unit 13. The City of Novato red tagged Unit 14, owned by Defendant Barbara A. Husak in her capacity as trustee (the "Husak Defendants"), deeming it unsafe for occupancy. Because Plaintiffs could not go into Unit 14, they had nowhere to put their property remaining in Unit 13 before August 23, 2023, the initial date to vacate Unit 13 under the Settlement Agreement. On November 2, 2023, the day before Plaintiffs planned to auction their property, the Bjorn Defendants seized possession of Unit 13. On or around February 17, 2024, Plaintiffs discovered that all documents in Unit 13 had been destroyed. When Liposome returned possession of Unit 14, it was unable to take its property due to the red tag. While Plaintiffs were able to retrieve some property from Unit 14, the Husak Defendants destroyed almost all of Liposome's manufacturing and process equipment and appropriated the remaining furniture and counters for themselves.

Plaintiffs assert causes of action for promissory estoppel, negligent misrepresentation, retaliatory eviction, breach of the covenant of quiet enjoyment, unjust enrichment, conversion, trespass to chattels, intentional interference with prospective economic advantage, intentional interference with contract, and civil conspiracy.

Procedural Deficiency

The Court draws the Bjorn Defendants' attention to Local Rule 2.8(C)2, which requires attachment of the operative pleading as an exhibit to the demurrer.

Standard

"The function of a demurrer is to test the sufficiency of the complaint as a matter of law, and it raises only a question of law." (*Holiday Matinee, Inc. v. Rambus, Inc.* (2004) 118 Cal.App.4th 1413, 1420.) A complaint "ordinarily is sufficient if it alleges ultimate rather than evidentiary facts" (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550), 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. (*Doheny Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099 [citation and internal quotations omitted].) Legal conclusions are insufficient. (*Id.* at 1098–1099; *Doe,* 42 Cal.4th at 551, fn. 5.) The court "assume[s] the truth of the allegations in the complaint, but do[es] not assume the truth of contentions, deductions, or conclusions of law." (*California Logistics, Inc. v. State of California* (2008) 161 Cal.App.4th 242, 247.)

Request for Judicial Notice

The Court grants the Bjorn Defendants' request for judicial notice of the Settlement Agreement as this agreement is referenced in the Third Amended Complaint. (See *City of Warren Police & Fire Retirement System v. Natera Inc.* (2020) 46 Cal.App.5th 946, 950; *Salvaty v. Falcon Cable Television* (1985) 165 Cal.App.3d 798 n. 1.)

Discussion

The Bjorn Defendants demur to the Sixth through Tenth Causes of Action.

Timeliness

Plaintiffs argue that the demurrer is untimely because it was filed over 32 days after the Bjorn Defendants were served with the Third Amended Complaint. As the issues have been fully briefed and no party would be prejudiced if the Court ruled on the demurrer, the Court exercises its discretion and considers the demurrer. (See *Jackson v. Doe* (2011) 192 Cal.App.4th 742, 749 ["the trial court had discretion to consider defendant's untimely demurrer"].)[1]

[1] The Court sustained the last demurrer, to the Second Amended Complaint, as Plaintiffs did not oppose the demurrer. (See Local Rule 2.8G(1) ["A failure to file an opposition to a motion may be deemed consent to the granting of such a motion . . . ."] [citing California Rule of Court 8.54(c) and *Herzberg v. County of Plumas* (2005) 133 Cal.App.4th 1, 20].)

Liposome's Claims

The Bjorn Defendants argue that the Sixth Cause of Action for conversion, the Seventh Cause of Action for trespass to chattels, the Eighth Cause of Action for intentional interference with prospective economic advantage, and the Ninth Cause of Action for intentional interference with contractual relations, are barred – as to Plaintiff Liposome - under the parties' Settlement Agreement. As a factual basis for each of these causes of action, Liposome alleges that the Bjorn Defendants wrongfully took and/or disposed of its property. Liposome does not dispute that its causes of action are based on this factual premise but instead argues that these claims are not barred by the terms of the Settlement Agreement.

The specific language of the Settlement Agreement upon which the Bjorn Defendants rely states the following:

> ¶3a: "[Liposome] shall voluntarily surrender[s], vacate[s], and restore[s] possession of the premises to plaintiff on or before 2 p.m. on August 23, 2023. Failure by [Liposome] to surrender, vacate and restore possession to plaintiff shall constitute a default under this agreement. 'Surrender, vacate, and restore possession' means physically vacating the premises, removing all personal belongings from the premises, returning all keys and door openers to the premises to [the Bjorn Defendants] or [their] designated agent, leaving no one in possession of the premises or making a claim of right to possession of the premises."
>
> ¶3c: "[Liposome] shall remove all personal property and trade fixtures from the premises. Any personal property or trade fixtures left at the premises beyond the agreed upon surrender, vacate and restore date shall be deemed abandoned by defendants, and [the Bjorn Defendants] may dispose of such abandoned personal property in any manner [they] deem appropriate."
>
> ¶4: "In the event of breach of this agreement, [Liposome] shall voluntarily surrender, vacate, and restore possession of the premises to Plaintiff immediately. 'Surrender, vacate, and restore possession' means physically vacating the premises, removing all personal belongings from the premises, returning all keys and garage door openers to the premises to [the Bjorn Defendants] or [their] designated agent, leaving no one in possession of the premises or making a claim of right to possession of the premises. Any personal property or trade fixtures left at the premises beyond the agreed upon surrender, vacate and restore date shall be deemed abandoned by defendants, and plaintiff may dispose of such abandoned personal property."
>
> ¶14: "The Bjorn Defendants and their agents will not be liable for any damage or injury to [Liposome], or any, other person, or to

> any property, occurring on the Property, or in common areas that occurs on or after July 27, 2023. [Liposome] and its agents, agree to hold [the Bjorn Defendants] harmless from any claim for damages, no matter how caused, except for injury or damages caused by willful misconduct of [the Bjorn Defendants], their agents or employees."

The Bjorn Defendants argue that Liposome's breach of the Settlement Agreement is apparent on the face of the Third Amended Complaint, as Liposome alleges that it did not vacate the property by the agreed-upon date of August 23, 2023. Rather, its property remained at the premises through the beginning of November 2023. (TAC, ¶¶54, 56, 58.) Accordingly, the Bjorn Defendants argue, Liposome cannot base any claim on the Bjorn Defendants' possession or disposal of Liposome's property because the Bjorn Defendants were expressly allowed to do so under the Settlement Agreement. In its Opposition, Liposome argues that the Bjorn Defendants can be liable under paragraph 14, i.e., for any "injury or damages caused by willful misconduct" of Defendants. Liposome contends that it scheduled an auction of its property for November 2, 2023 and that the Bjorn Defendants interfered with this auction by seizing the premises before the auction could occur.

The demurrer to the Sixth through Ninth Causes of Action is sustained. Liposome concedes in its Third Amended Complaint that it did not vacate the premises until after the agreed-upon date. Under the Settlement Agreement, Liposome authorized the Bjorn Defendants to do what they wanted with the property remaining in the premises if Liposome did not move out by that date. Liposome cannot avoid this result simply by claiming that the Bjorn Defendants engaged in "willful misconduct" in the manner in which they exercised their rights under the agreement. The property was deemed abandoned after August 23, 2023 and at that point the Bjorn Defendants were entitled to dispose of it in any manner they deemed appropriate.

In their Tenth Cause of Action for civil conspiracy, Plaintiffs allege that the Bjorn Defendants and the Husak Defendants formed and operated a conspiracy to harm Plaintiffs by taking possession of and/or disposing of Plaintiffs' property in the two units and conditioning Plaintiffs' retrieval of the property on a global settlement regarding the purchase of the two units on terms the Plaintiffs deemed unfair, issuing an incorrect or improper Notice of Right to Reclaim Abandoned Property with respect to the property in Unit 14, and using the property left in Unit 14 to market the units for sale.

"[C]onspiracy is not a cause of action, but a legal doctrine that imposes liability on persons who, although not actually committing a tort themselves, share with the immediate tortfeasors a common plan or design in its perpetration." (*I-CA Enterprises. Inc. v. Palram Americas, Inc.* (2015) 235 Cal.App.4th 257, 271-272 [citations and internal quotations omitted].) "The elements of a civil conspiracy are: (1) formation and operation of the conspiracy and (2) damage resulting to plaintiff (3) from an act done in furtherance of the common design." (*Id.* at n. 2 [citation and internal quotations omitted].)

The Bjorn Defendants demur to the Tenth Cause of Action on the ground that civil conspiracy is not an independent cause of action but is rather a form of vicarious liability. The Bjorn Defendants also argue that Plaintiffs fail to allege that they had any actual knowledge of the

Husak Defendants' actions with respect to the property in Unit 14 or that they had any agreement to cooperate with the Husak Defendants.

The demurrer to the Tenth Cause of Action is sustained. Civil conspiracy is not an independent cause of action. Moreover, the allegations regarding conspiracy are disjointed and do not describe any "act done in furtherance of [a] common design". There are no facts alleged showing a concerted effort to commit any specific tort(s) against Plaintiffs. Moreover, the Bjorn Defendants' own conduct was authorized by the Settlement Agreement, and there are insufficient allegations that the Bjorn Defendants were aware of, or agreed to, any wrongful conduct engaged in by the Husak Defendants.

Heriot's Claims

The Court also sustains the demurrer to Heliot's causes of action.

Heriot does not state a conversion or trespass to chattels cause of action because under the Settlement Agreement, the Bjorn Defendants' possession and/or disposition of the property in Unit 13 was not wrongful. In paragraph 5 of the agreement, Liposome represented that it was the sole occupant of the property and that the unit had not been rented or assigned to any third party. Conversion is the wrongful exercise of dominion over the property of another. (*Welco Electronics, Inc. v. Mora* (2014) 223 Cal.App.4th 202, 208.) Trespass to chattels is similar to conversion, requiring an intentional act interfering with one's right to possession. (*Berry v. Frazier* (2023) 90 Cal.App.5th 1258, 1271.) Because the Bjorn Defendants were authorized to take possession of the property in Unit 13 under the terms of the Settlement Agreement, their possession and/or disposition of the property was not a wrongful conversion. The demurrer to the Sixth and Seventh Cause of Action is therefore sustained.

The elements of a claim for intentional interference with prospective economic advantage are (1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant. (*Sugarman v. Brown* (2021) 73 Cal.App.5th 152.) In the Eighth Cause of Action for intentional interference with prospective economic advantage, Plaintiffs generally allege that the Bjorn Defendants knew or should have known of Plaintiffs' existing business relationships with their customers and Plaintiffs' interest in onboarding new and existing customers. However, no actual facts are alleged to support this conclusory allegation. Plaintiffs state only that the Bjorn Defendants knew or should have known about the fact that Plaintiffs had customers "[a]s commercial landlords". This allegation is insufficient. Further, while Plaintiffs allege that "[t]here is . . . a substantial probability that Mr. Heriot's intellectual property was poised to become a major player in the pharmaceutical and nutritional supplement space", there is no allegation of any actual economic relationship with a third party or that that the Bjorn Defendants knew or should have known about that relationship. The demurrer to the Eighth Cause of Action is sustained.

The elements of a claim for intentional interference with contractual relations are (1) the existence of a valid contract between the plaintiff and a third party; (2) the defendant's

knowledge of that contract; (3) the defendant's intentional acts designed to induce a breach or disruption of the contractual relationship; (4) actual breach or disruption of the contractual relationship; and (5) resulting damage. (*Reeves v. Hanlon* (2004) 33 Cal.4th 1140, 1148.) In the Ninth Cause of Action for intentional interference with contractual relations, Plaintiffs allege that Heriot had an ongoing royalty agreement with Liposome concerning the use of IP that Heriot owns and Plaintiffs had contractual relations with their customers, and that the Bjorn Defendants knew or should have known of these contractual relations as "[a]s commercial landlords." As noted above, this allegation is insufficient to allege the requisite knowledge. As also noted above, Plaintiffs do not allege that Heriot himself had any contractual relations with customers. The demurrer to the Ninth Cause of Action is sustained.[2]

The demurrer to Heriot's Tenth Cause of Action is sustained for the reasons discussed above.

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.

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[2] Liposome also fails to allege sufficient facts to support the interference causes of action, which is an additional basis for sustaining the demurrer as to Liposome.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 09/19/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV2300744

PRESIDING: HON. ANDREW E. SWEET

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: DANIEL RAUCHLE vs. DEFENDANT: CALIFORNIA AUTOMOBILE INSURANCE COMPANY, ET AL	

NATURE OF PROCEEDINGS: MOTION – SUMMARY JUDGMENT

RULING

Defendant and Cross-Complainant California Automobile Insurance Company's (erroneously sued as Mercury Insurance Company) (hereinafter "CAIC" or "Defendant") Motion for Summary Judgment, or in the alternative Summary Adjudication, is DENIED.

BACKGROUND

Moving Defendant asserts as follows:

This case arises from a fire loss during which Plaintiff/Cross-Defendant Daniel Rauchle's ("Plaintiff") home sustained extensive damages. Plaintiff reported the claim to his homeowners insurance company, CAIC. CAIC ultimately paid Plaintiff over $1,674,826.70 for repairs to the home and related expenses such as loss of use and damage to personal property. Plaintiff, however, alleges that CAIC's payment was insufficient, that CAIC acted in bad faith, and that CAIC improperly issued insufficient limits of the policy.

CAIC brings this Motion for Summary Judgment on grounds that based on undisputed material facts, Plaintiff cannot prevail on each of his causes of actions.

Defendant also asserts that Plaintiff included a material misrepresentation in his insurance application, that he had not been non-renewed for a similar policy within three (3) years prior to the submission of the application. In reality, Plaintiff had been non-renewed because his prior homeowners insurance carrier no longer wanted to insure homes in a forest. CAIC would not have insured Plaintiff's home had Plaintiff truthfully disclosed that he had previously been non-renewed. As a result, Defendant is entitled to a Motion for Summary Judgement Based on the Affirmative Defense of Rescission and Reformation.

Finally, CAIC contends that it should be entitled Summary Adjudication of its Causes of Action for Rescission, Reformation, and Intentional Misrepresentation in its Cross-Complaint.

REQUESTS FOR JUDICIAL NOTICE

Defendant's Request for Judicial Notice Nos. 1-6 are GRANTED. (Evid. Code, § 452, subds. (d), (h).)

OBJECTIONS TO EVIDENCE

Defendant's Objections to the Declaration of Plaintiff Daniel Rauchle Nos. 1-17 are OVERRULED.

Defendant's Objections to the Declaration of Daina Dillabough Nos. 1-20 are OVERRULED.

Defendant's Objections to the Declaration of William Wallace Nos. 1-3 are OVERRULED.

DEFECTS IN OPPOSITION SEPARATE STATEMENT

Plaintiff's Objections to Evidence are contained solely in the opposition separate statement in violation of California Rules of Court rule 3.1354(b), which requires evidentiary objections to be separately served and filed and "must not be restated or reargued in the separate statement." As such, the court shall not consider or rule on Plaintiff's improper objections. (*Hodjat v. State Farm Mut. Auto. Ins. Co.* (2012) 211 Cal.App.4th 1, 9 [upholding the trial court's refusal to rule on objections contained solely in the separate statement].)

DEFECTS IN "REPLY SEPARATE STATEMENT"

Code of Civil Procedure section 437c, has no provision for a reply separate statement. (*Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 252.) This is an improper attempt to circumvent reply page limits. The Court has disregarded the "Reply Separate Statement."

LEGAL STANDARD

A party may move for summary judgment "if it is contended that the action has no merit or that there is no defense to the action or proceeding." (Code Civ. Proc., § 437c, subd. (a)(1).) "[I]f 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," the moving party will be entitled to summary judgment. (*Adler v. Manor Healthcare Corp.* (1992) 7 Cal.App.4th 1110, 1119.)

The moving party bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact, and if the party does so, the burden shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850; accord Code Civ. Proc., § 437c,

subd. (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." (*Ibid.*) "If the plaintiff cannot do so, summary judgment should be granted." (*Avivi v. Centro Medico Urgente Med. Ctr.* (2008) 159 Cal.App.4th 463, 467, as modified (Jan. 24, 2008).)

"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." (*Ibid.*; see also Code Civ. Proc., § 437c, subd. (c).)

DISCUSSION

This Motion is made pursuant to Code of Civil Procedure section 437c on the grounds that there are no triable issues of material fact as to the claims asserted in the Complaint and CAIC is entitled to judgment as a matter of law. In addition and or alternatively, Cross Defendant has no defense against the causes of actions in CAIC's Cross-Complaint and CAIC is entitled to judgment as a matter of law. Alternatively, if for any reason Summary Judgment may not be had, Defendant requests Summary Adjudication as follows:

1. Plaintiff's First Cause of Action for Breach of Contract is without merit;
2. Plaintiff's Second Cause of Action for Breach of the Covenant of Good Faith and Fair Dealing is without merit;
3. Plaintiff's Second Cause of Action for Breach of the Covenant of Good Faith and Fair Dealing is barred by the "genuine dispute" doctrine;
4. Plaintiff's Third Cause of Action for Reformation of Contract is without merit;
5. Plaintiff's claim is barred by Defendant's Affirmative Defense of Rescission;
6. Plaintiff's claim is barred by Defendant's Affirmative Defense of Reformation;
7. Plaintiff's claim for punitive damages against Defendant is without merit;
8. Cross-Defendant has no affirmative defense to the First Cause of Action of CAIC's Cross-Complaint for intentional misrepresentation (fraud and deceit);
9. Cross-Defendant has no affirmative defense to the Second Cause of Action of CAIC's Cross-Complaint for Reformation; and
10. Cross-Defendant has no affirmative defense to the Third Cause of Action of CAIC's Cross-Complaint for Rescission.

First Cause of Action for Breach of Contract and Second Cause of Action for Breach of the Covenant of Good Faith and Fair Dealing

The elements of a cause of action for breach of contract are: " '(1) the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to plaintiff.' " (*Coles v. Glaser* (2016) 2 Cal.App.5th 384, 391, internal citations omitted.)

All contracts impose upon each party an implied duty of good faith and fair dealing as part of its performance and its enforcement. (*Foley v. Interactive Data Corporation* (1988) 47 Cal.3d 654, 683.) Under the implied covenant, each contracting party must "refrain from doing anything to injure the right of the other to receive the agreement's benefits." (*Jordan v. Allstate Ins. Co.*

(2007) 148 Cal.App.4th 1062, 1072.) In sum, the implied covenant "fills in" gaps in contracts in order to effectuate the intentions of parties or protect their reasonable expectations. (Ibid.) Consequently, a breach of the covenant of good faith and fair dealing is treated as a breach of the underlying contract. (*Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1393.)

The elements of a claim for breach of the implied covenant are: (1) the existence of a contract; (2) that plaintiff did all, or substantially all, of the significant things the contract required; (3) that the conditions required for the defendant's performance had occurred; (4) that defendant unfairly interfered with plaintiff's right to receive the benefits of the contract; and (5) that plaintiff was harmed by defendant's conduct. (*Carma Developers, Inc. v. Marathon Development Calif., Inc.* (1992) 2 Cal.4th 342, 371-375.)

To establish an insurer's "bad faith", the insured must show that the insurer has (1) withheld benefits due under the policy, and (2) that such withholding was "unreasonable" or "without proper cause." (*Major v. Western Home Ins. Co.* (2009) 169 Cal.App.4th 1197, 1209, as modified on denial of reh'g (Jan. 30, 2009); citing *Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 573-574.) The withholding of benefits may consist of the denial of benefits due or paying less than due; and/or unreasonably delaying payments due. (*Ibid.*) As a close corollary of that principle, it has been said that "an insurer denying or delaying the payment of policy benefits due to the existence of a genuine dispute with its insured as to the existence of coverage liability or the amount of the insured's coverage claim is not liable in bad faith even though it might be liable for breach of contract. (*Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 723, as modified (Dec. 19, 2007).)

Here, Plaintiff contends that CAIC engaged in the following conduct in breach of the Policy: (a) failing to reasonably handle benefit payments owed to him under the contract; (b) delaying payments lawfully owed to him; (c) failing to reasonably, promptly and completely investigate his claim; and (d) artificially steering his claim to repair rather than replacement, and to O & L coverage to limit the benefits payable for his loss. CAIC disagrees and argues its conduct was in good faith, protected by the genuine dispute doctrine, and that no additional benefits are due to Plaintiff. Triable questions of material fact exist as to all these issues. (See Plaintiff's Response to Defendant's Material Facts ("PRMF") Nos. 4, 11, 15, 27, 35, 46 and Plaintiff's Additional Material Facts ("PAMF") Nos. 57-83.)

For these reasons, the Motion for Summary Judgment as a whole is DENIED, as is the request for Summary Adjudication of the First and Second Causes of Action in the Complaint.

Third Cause of Action for Reformation of Contract

When, through fraud or a mutual mistake of the parties, or a mistake of one party, which the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved, so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons, in good faith and for value. (Civ. Code, § 3399.) In this case, Plaintiff seeks reformation of the Policy to afford sufficient coverage at the time of the loss. Plaintiff alleges that CAIC undertook the duty to evaluate the property prior to the inception of the Policy, and that Plaintiff had a reasonable

expectation based upon this undertaking that CAIC was properly insuring his property. Triable questions of material fact exist as to these issues. (See PRMF Nos. 4, 11, 15, 27, 35, 46; PAMF Nos. 47-58.)

Summary Adjudication of the Third Cause of Action is DENIED.

Defendant's Affirmative Defense of Rescission

Insurance Code section 359 provides that "[i]f a representation is false in a material point, whether affirmative or promissory, the injured party is entitled to rescind the contract from the time the representation becomes false." Insurance Code section 331 provides that "Concealment, whether intentional or unintentional, entitles the injured party to rescind insurance."

Defendant seeks recission on the grounds that Plaintiff testified at his deposition that his prior homeowners' insurance carrier did not renew his policy, whereas he previously represented to Defendant he had not been non-renewed.

Defendant contends that Plaintiff's attempt to retroactively change testimony regarding substantive omissions in his homeowners' insurance application should be disregarded. (Citing *Leasman v. Beech Aircraft Corp.* (1975) 48 Cal.App.3d 376, 382; *Gray v. Reeves* (1977) 76 Cal. App. 3d 567, 573.) *Leasman* and *Gray* are distinguishable however. In both cases, the testimony at issue was not changed until well after the errata deadline had passed, and in one case, not until the motion for summary judgment had been filed and testifying party sought to avoid summary judgment.

In this case, Plaintiff changed his deposition testimony within 30 days of being notified the transcript was available to review pursuant to Code of Civil Procedure section 2025.520, subdivision (b). Thus, Plaintiff argues that his correction from stating that he was non-renewed to clarifying that he was not non-renewed, and simply was given a choice between two companies to insure his home, is legally permissible and must be considered as an evidentiary matter by the trier of fact.

The Court agrees. This is not a clear-cut case of the deponent attempting to later change his testimony to avoid summary judgment. Disputes of material fact preclude summary adjudication on this issue. (See PRMF Nos. 46; PAMF Nos. 84-97.)

Summary Adjudication of the Recission Affirmative Defense is DENIED.

Defendant's Affirmative Defense of Reformation

Defendant has not briefed any argument in support of summary adjudication on its affirmative defense of reformation. Accordingly, Defendant has not met its initial burden and summary adjudication must be DENIED. To the extent Defendant seeks to rely on the same arguments made in support of its Affirmative Defense for Recission, the Motion is also denied on those grounds. (See above.)

Plaintiff's Claim for Punitive Damages

Defendant contends that in the insurance context, claims for punitive damages may only be recovered after an insured has prevailed upon a claim of "bad faith", and even then requiring a showing, by clear and convincing evidence, that the conduct was engaged in with malice, oppression, fraud, etc. In this case, Defendant concludes that because summary adjudication of the Bad Faith Cause of Action succeeds, so too must summary adjudication of the claim for Punitive Damages.

This, however, ignores the fact that the Court denied summary adjudication of the claim for Bad Faith. Because that cause of actions survives, the claim for punitive damages is not automatically extinguished as Defendant suggests. Summary Adjudication of the claim for Punitive Damages is DENIED.

Cross-Complaint's First Cause of Action for Intentional Misrepresentation (Fraud and Deceit)

CAIC argues that the elements of fraud that give rise to a tort action for deceit are: a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or scienter); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage. (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 974, as modified (July 30, 1997).) Since Cross-Defendant made a material misrepresentation on his application for insurance, relied upon by CAIC to its detriment, CAIC concludes that it is entitled to Summary Adjudication of this cause of action.

However, as discussed above, the existence of the material misrepresentation is a disputed factual issue. (See PRMF Nos. 46; PAMF Nos. 84-97.) Therefore, Summary Adjudication is DENIED.

Cross-Complaint's Second Cause of Action (Reformation) and Third Cause of Action (Rescission)

For the reasons discussed above where the Court addressed the Reformation and Rescission Affirmative Defenses, the motion for Summary Adjudication of the Cross-Complaint's Second and Third Causes of Action 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 September 2025 is as follows:

https://marin-courts-ca-gov.zoomgov.com/j/1615162449?pwd=e5SqeATq2HOsxxD7Fhrl3Q7qPFgFZa.1
Meeting ID: 161 516 2449
Passcode: 073961

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: 09/19/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV2301537

PRESIDING: HON. ANDREW E. SWEET

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: PHAEDRANA NOOHRA	
vs.	
DEFENDANT: TAMARA WILLAT, ET AL	

NATURE OF PROCEEDINGS: 1) MOTION – COMPEL – DISCOVERY FACILITATOR PROGRAM

RULING

Defendant Tamara Willat's ("Defendant") motion for an order compelling Plaintiff Phaedrana Noohra a.k.a Phaedrana Jones's ("Plaintiff") to provide further responses to Defendant's Requests for Admission, Set One, Nos. 1-61, and the corresponding Form Interrogatories, Set One, No. 17.1 is GRANTED. Defendant is ordered to serve further verified responses within 30 days. Defendant's request for monetary sanctions in the reasonable reduced amount of $3,716.10 is GRANTED.

PROCEDURAL DEFECTS

Plaintiff has consistently filed excessively long documents with this Court. Plaintiff filed a 11 page "Notice of Opposition and Opposition" as well as an unauthorized 21 page "Memorandum of Points and Authorities" in support of her opposition. Plaintiff also filed an unauthorized Declaration on September 16, 2025, that the court will disregard. This is an improper run around on the page limits imposed by California Rules of Court rule 3.1113(d) [no opening or responding memorandum may exceed 15 pages]. Plaintiff SHALL strictly comply with all page limits moving forward.

The Court notes that a Declaration of Non-Resolution was not filed at least five (5) court days prior to the scheduled hearing date, as required by Local Rule 2.13, subdivision (H). However, in reply, Defendant adequately describes the second Informal Discovery Conference ("IDC") and the facilitators instructions to Plaintiff to provide responses. Therefore, the Court will hear the matter on the merits.

BACKGROUND

Defendant contends that the applicable facts are as follows: On or about November 14, 2020, Defendant orally agreed to rent a room in her home at 314 Via Recodo in Mill Valley

("property") to Plaintiff for $1,850 per month. Plaintiff and Defendant resided in the property together.

In or around February of 2021, Plaintiff stopped paying Defendant rent. Plaintiff served a Notice of Termination on Plaintiff. The Notice was given pursuant to Civil Code section 1946.5, which states that the hiring of a room by a lodger on a periodic basis within a dwelling unit occupied by the owner may be terminated by either party giving written notice to the other of his or her intention to terminate the hiring, at least as long before the expiration of the term of the hiring as specified in Section 1946. The Notice of Termination expired on May 21, 2021. On May 22, 2021, Defendant locked Plaintiff out of the property.

Plaintiff alleges that she was a tenant and not a lodger, that the Notice of Termination was therefore insufficient to terminate her right to remain at the subject property, and all of Defendant's subsequent actions in removing her from the property were unlawful. On May 23, 2023, Plaintiff filed this action alleging numerous causes of action stemming from the underlying rental arrangement and termination.

On February 14, 2025, Defendant served Plaintiff with Requests for Admissions, Set One, Nos. 1-61 and Form Interrogatories, Set One, No. 17.1. Plaintiff served responses on March 30, 2025 and April 1, 2025. After engaging in meet and confer efforts, Defendant proposed the parties attempt to resolve the issues with an IDC. The parties were unable to resolve the issues. Currently before the Court is a motion to compel further responses and request for sanctions.

LEGAL STANDARD

A motion to compel lies where the party to whom the interrogatories were directed gave responses deemed improper by the propounding party; e.g., objections, or evasive or incomplete answers. (Code Civ. Proc. § 2030.300; see *Best Products, Inc. v. Sup. Ct.* (2004) 119 Cal.App.4th 1181.)

Moreover, where responses to requests for admissions have been timely served but are deemed deficient by the requesting party (e.g., because of objections or evasive responses), that party may move for an order compelling a further response. (Code Civ. Proc. § 2033.290; see *Wimberly v. Derby Cycle Corp.* (1997) 56 Cal.App.4th 618, 636.)

The motion to compel must be accompanied by a declaration stating facts showing a "reasonable and good faith attempt" to resolve informally the issues presented by the motion before filing the motion. (Code Civ. Proc. §§ 2016.040, 2030.300(b)(1), 2033.290(b)(1).) The motion must also be accompanied by a separate document setting forth all the information necessary to understand each discovery request and all the responses to it that are at issue, unless the court permits the moving party to submit a concise outline of the matters in dispute. (Cal. Rules of Court, Rule 3.1345(c).)

ANALYSIS

Requests for Admissions, Set One, Nos. 1-61

The responses to requests for admissions must contain either an answer or an objection to the particular request. (Code Civ. Proc., § 2033.210(b).) Each answer "shall be *as complete and straightforward* as the information reasonably available to the responding party permits." (Code Civ. Proc., § 2033.220(a) (emphasis added).) Thus, absent an objection, the response must contain one of the following: an admission; a denial; or a statement claiming inability to admit or deny. (Code Civ. Proc., § 2033.220(b).)

Therefore, answers to requests for admissions must be "as complete and straightforward" as the information available reasonably permits and must "[a]dmit so much of the matter involved in the request as is true … or as reasonably and clearly qualified by the responding party." (Code Civ. Proc., § 2033.220(a), (b)(1) [emphasis added].) Alternatively, the responding party may "deny so much of the matter involved in the request as is untrue." (Code Civ. Proc., § 2033.220(b)(2).) In lieu of admitting or denying the admission, a party may respond by claiming inability (lack of sufficient information) to admit or deny the matter stated in the request. (Code Civ. Proc., § 2033.220(c).) But a party responding in this manner must also state that a reasonable inquiry was made to obtain sufficient information: i.e., "a reasonable inquiry concerning the matter in the particular request has been made, and that the information known or readily obtainable is insufficient to enable that party to admit the matter." (Code Civ. Proc., § 2033.220(c).) A denial of all or any portion of the request must be unequivocal. (*AFSCME v. Metropolitan Water Dist. of Southern California* (2005) 126 Cal.App.4th 247, 268.)

Here, Plaintiff's responses to each of the Requests for Admissions are not Code compliant as they do not contain an admission; a denial; or a statement claiming inability to admit or deny. Moreover, to the extent Plaintiff indicates she served five versions of amended responses, the Court does not have evidence of same. The responses at issue are not "an admission; a denial; or a statement claiming inability to admit or deny" and to the extent they refer to her complaint or responses to Form Interrogatories, this is improper as the response must be "complete and straightforward." (Code Civ. Proc., § 2033.220(a).) The Court grants the motion as to the Requests for Admissions, Set One and orders Plaintiff to serve verified further responses within 30 days.

Form Interrogatories, Set One, No. 17.1

"Each answer in a response to interrogatories shall be as complete and straightforward as the information reasonably available to the permits." (C.C.P., § 2030.220(a).) It is not proper to answer by stating, "See my deposition" or "See the complaint herein." If the question requires reference to some other document, it should be identified and its contents summarized so that the answer by itself is fully responsive to the interrogatory. (*Deyo v. Kilbourne* (1978) 84 CA3d 771, 783-784.) In a motion for an order compelling further response to interrogatories, the burden is on the responding party to justify any objection or failure to answer the interrogatories fully. (*Fairmont Ins. Co. v. Sup. Ct.* (2000) 22 Cal.4th 245, 255.)

Defendant propounded only Form Interrogatories, Set One, No. 17.1 regarding response to each request for admission served with the interrogatories that was not an unqualified admission, to identify the number, the facts, the names, addresses and telephone numbers of persons with knowledge of the facts and identity of any documents supporting the request. In response to each, Plaintiff states: "Plaintiff responded and with particular detail to every one of Defendants

sixty-one [61] requests for admission served with the herein interrogatories – or, with references to the Complaint if the required answer to a question had already been filed." It is clear to the Court that this repeated response is not complete, straightforward or full and complete in and of itself as contemplated by the Code. The Court grants the motion as to Form Interrogatories, Set One, No. 17.1 and orders Plaintiff to serve verified further responses within 30 days.

Sanctions

The final issue is Defendant's request for monetary sanctions. If the motion to compel is granted and the moving party properly asks for monetary sanctions, the court "shall" order the party to whom the discovery was directed to pay the propounding party's reasonable expenses, including attorney fees, in enforcing discovery "unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc., § 2023.030(a).) Here, Defendant seeks sanctions in the amount of $9,166.38 for 14.8 hours preparing the motion to compel at $619.35 per hour. The court is authorized to award as sanctions the moving party's reasonable expenses including attorney fees on the motion to compel. "Reasonable expenses" include the time moving party's counsel spent in research and preparation of the motion and court time in connection with the motion. (See *Ghanooni v. Super Shuttle of Los Angeles* (1993) 20 Cal.App.4th 256, 262.) Defendant was required to file a motion to compel to obtain proper responses, however the Court finds the amount requested is not reasonable for preparing a motion under these circumstances. Therefore, the Court grants the request for sanctions in the reasonable reduced amount of $3,716.10 (6 hours at $619.35 per hour).

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.

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Meeting ID: 161 516 2449
Passcode: 073961

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 09/19/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0001538

PRESIDING: HON. ANDREW E. SWEET

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: JOCELYN KELLER vs. DEFENDANT: BANK OF MARIN, A CALIFORNIA CORPORATION, ET AL	

NATURE OF PROCEEDINGS: MOTION – OTHER

RULING

Jocelyn Keller's ("Plaintiff") unopposed Motion for Preliminary Approval of Class Action Settlement is granted. The Court intends to sign the Proposed Order that Plaintiff submitted on June 12, 2025.

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 September 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1615162449?pwd=e5SqeATq2HOsxxD7Fhrl3Q7qPFgFZa.1
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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 09/19/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0002210

PRESIDING: HON. ANDREW E. SWEET

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: LESTER PETRACCA vs. DEFENDANT: ELISABETH THIERIOT, ET AL	

NATURE OF PROCEEDINGS: 1) MOTION – DISMISS
2) DEMURRER
3) MOTION – SET ASIDE/VACATE
4) MOTION – COMPEL
5) MOTION – COMPEL - DISCOVERY FACILITATOR PROGRAM

RULING

Defendants Elisabeth Thieriot's (individually) demurrer to Plaintiff Lester Petracca's ("Plaintiff") First Amended Complaint ("FAC") is OVERRULED. Defendants' Motion to Dismiss Complaint and Compel Return of Real Property, Motion to Compel Disclosure of Real Party in Interest and Request for Judicial Notice of Material Conflict, and Motion to Vacate Tentative Ruling are DENIED. Plaintiff's Motion to Compel Deposition is GRANTED and sanctions are awarded, **subject to Plaintiff's providing additional information at the hearing on this motion** as described in this tentative ruling. (Code Civ. Proc., § 2025.450, subds. (a), (g)(1).) The request for a protective order embedded in Defendants' opposition to Plaintiff's Motion to Compel Deposition is DENIED.

BACKGROUND

This is a breach of contract case. Plaintiff brings this suit against Thieriot (individually and in her capacity as trustee) and Lions Gate Corporation, for which Thieriot is allegedly the president and sole shareholder. (FAC, ¶ 3.) The FAC alleges that Plaintiff began making business loans to Defendants in 2016 and eventually loaned them a total of $2,925,000. (*Id.* at ¶ 12.) The parties documented their agreement in an Amended and Restated Promissory Note ("Third Thieriot Note") dated November 10, 2022. (*Ibid.*) The Third Thieriot Note provided that Defendants would pay Plaintiff the full $2,925,000 owed on or before April 15, 2023. (*Id.* at ¶¶ 13-14.) Plaintiff further alleges that through four separate security agreements, Thieriot granted Plaintiff security interests in various property to secure the debt. (*Id.* at ¶¶ 17-20.) The collateral includes

a pair of diamond earrings, a promissory note in favor of Thieriot for $1,451,612.90, a 16.68-carat diamond engagement ring, and a 1986 blonde mahogany Steinway piano. (*Ibid.*)

According to the FAC, Defendants have not made any payment on the Third Thieriot Note, and the debt is in default. (FAC, ¶ 15.) Plaintiff asserts causes of action for breach of contract (the Third Thieriot Note) and foreclosure of the four security agreements.

PROCEDURAL MATTERS

Defendant has neither requested nor received leave to file briefing exceeding the page limits, so Defendant's briefs – both the moving briefs for the motions filed and their opposition to Plaintiff's motion – were limited to 15 pages. (Cal. Rules of Court, rule 3.1113(d), (e).) A brief that exceeds the page limit "must be filed and considered in the same manner as a late-filed paper." (Cal. Rules of Court, rule 3.1113(g).) A court has broad discretion to refuse to consider papers served and filed late absent a court order finding good cause for the late submission. (*Mackey v. Board of Trustees of California State University* (2019) 31 Cal.App.5th 640, 657; see also Cal. Rules of Court, rule 3.1300(d).) It follows that a court has similar discretion to refuse to consider briefing that impermissibly exceeds the applicable page limit. (See Cal. Rules of Court, rule 3.1113(g).) The Court considers only the first 15 pages of briefing Defendant filed in support of and in opposition to the various motions at issue at this hearing. In addition, the Court has disregarded Defendant's unauthorized 80 page "Reply" that was filed on September 16, 2026.

Additionally, the Court does not rule on Plaintiff's omnibus request for judicial notice, as the court record at issue was not material to the resolution of any of these motions.

DEFENDANTS' DEMURRER TO FAC

Legal Standard

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 (including those in any exhibit attached to 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; *Mead v. Sanwa Bank California* (1998) 61 Cal.App.4th 561, 567-568.) A complaint must be liberally construed and all reasonable inferences must be drawn in favor of its allegations. (*Teva Pharmaceuticals USA, Inc. v. Superior Court* (2013) 217 Cal.App.4th 96, 102; see also Code. Civ. Proc., § 452.) 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.)

Discussion

The Court disregards the "DECLARATION OF ELISABETH THIERIOT IN SUPPORT OF DEMURRER TO FIRST AMENDED COMPLAINT." A party is not permitted to introduce evidence in connection with a demurrer. (See Code Civ. Proc., § 437, subd. (a); *Donabedian, supra*, 116 Cal.App.4th 968, 994.)

Purported Lack of Merit

Defendant's assertion that the debt was paid in full and so has been discharged are irrelevant at this stage. On a demurrer, the Court accepts the facts alleged in the complaint as true and asks whether those facts amount to a cause of action. (*Dell E. Webb Corp.*, *supra*, 123 Cal.App.3d 593, 604.) The FAC alleges that Defendant never paid any part of the debt and it remains due and owing today (¶ 24), so that is what the Court is required to accept as true for purposes of this motion.

Failure to State a Claim

"[T]he elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff." (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821.) Plaintiff has alleged the existence of the Third Thieriot Note and the four security agreements (FAC, ¶¶ 12, 17-20); that Plaintiff performed as required (*id.* at ¶ 23); that Defendant failed to repay the debt, entitling Plaintiff to recover under all four contracts (*id.* at ¶¶ 16, 27); and that Plaintiff was damaged as a result (*id.* at ¶ 25). He has sufficiently alleged both causes of action for breach of contract.

Defendant further argue that the FAC does not allege the existence of any contract between the parties that would support Plaintiff's two causes of action. The FAC alleges the existence of the Third Thieriot Note and the four security agreements and attaches all five as exhibits, so this point is not well taken.

Standing/Capacity

Defendant argues that Plaintiff lacks standing or capacity to sue. The claim that Plaintiff "is not the real party in interest" because "no valid . . . legal entitlement to enforce the alleged obligation is pled" is clearly meritless. The FAC pleads that Plaintiff is entitled to collect the debt, with interest, from Defendant under the Third Thieriot Note and to recover the collateral identified in the four security agreements under those agreements. (FAC, ¶¶ 21-28.)

The idea that Plaintiff lacks standing because he "has not demonstrated that Defendant is a real party in interest" (Defendant's Moving Papers, p. 2) simply does not make sense. In lawsuits, it is the *plaintiff* that must be a real party in interest, not the defendant. (Code Civ. Proc., § 367.)

Whether certain defendants were or were not parties to the contracts at issue (Defendant's Moving Papers, p. 3) has nothing to do with Plaintiff's standing or capacity to sue those defendants.

The claim that "Plaintiff lacks standing to assert claims on behalf of Lions Gate Corporation or the Elisabeth Thieriot Revocable Trust" does not make sense. Plaintiff is not asserting claims on behalf of those parties. Plaintiff is asserting claims *against* Lions Gate Corporation and *against* Thieriot in her capacity as trustee of the trust.

Misjoinder

Defendant demurs based on misjoinder of parties. By "misjoinder," Defendant mean that Plaintiff has sued parties Defendant claim are not in fact parties to the contracts at issue – namely, Lions Gate Corporation and the Trust. (Defendants' Moving Papers, p. 4.) The FAC does, in fact, allege that Lions Gate Corporation is a party to the Third Thieriot Note. (See FAC, Ex. A [defining "Borrower" to include Lions Gate Corporation].) Plaintiff has not sued the Trust and could not, as trusts cannot be sued under California law. (*Portico Management Group, LLC v. Harrison* (201) 202 Cal.App.4th 464, 473.) Instead, he has sued Thieriot in her capacity as trustee in an effort to reach the trust assets to satisfy a judgment against her in her individual capacity. (See *Galdjie v. Darwish* (2003) 113 Cal.App.4th 1331, 1349.)

Judicial Estoppel

The doctrine of judicial estoppel bars a litigant from asserting a position in a legal proceeding that contradicts one they previously took in an earlier proceeding. (*Jackson v. County of Los Angeles* (1997) 60 Cal.App.4th 171, 181.) It applies where "(1) the same party has taken two positions; (2) the positions were taken in judicial or quasi-judicial administrative proceedings; (3) the party was successful in asserting the first position (i.e., the tribunal adopted the position or accepted it as true); (4) the two positions are totally inconsistent; and (5) the first position was not taken as a result of ignorance, fraud, or mistake." (*Id.* at p. 183.) The party invoking judicial estoppel has the burden of establishing all of these elements. (See *In re Marriage of Leff* (2012) 208 Cal.App.4th 1137, 1149, fn. 8.)

Defendant argues that the entire FAC is barred by the doctrine of judicial estoppel because the Court has previously determined in at least two other cases (CIV1603741 and CIV2000536) that the loan at issue was "fraudulent," so Plaintiff cannot contend otherwise in this proceeding. (p. 13.) The doctrine of judicial estoppel does not prevent a litigant from asserting a position that contradicts a prior ruling of the court. It prevents a litigant from asserting a position that contradicts *a position the litigant asserted* in a different proceeding. (See *Jackson*, *supra*, 60 Cal.App.4th 171, 183.) Also, Defendant has not sought judicial notice of any material that could support this argument, so the Court could not reach it at the demurrer stage even if Defendant had supported it with argument and citation to authority (they did not). (See *Donabedian*, *supra*, 116 Cal.App.4th 968, 994 [scope of court's review on demurrer].)

Uncertainty

"[D]emurrers for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond." (*Mahan v. Charles W. Chan Ins. Agency, Inc.* (2017) 14 Cal.App.5th 841, 848, fn. 3.) The FAC's allegations are crystal clear.

One Action Rule

Defendant invokes Code of Civil Procedure, section 726. (Defendant's Moving Papers, p. 8.) This statute applies to actions "for the recovery of any debt or the enforcement of any right secured by a mortgage on real property or an estate for years therein[.]" (Code Civ. Proc., § 726, subd. (a).) For purposes of this demurrer, the Court must accept as true that Defendants' alleged debt was secured by collateral other than real property, making this statute inapplicable. (*Del E. Webb Corp.*, *supra*, 123 Cal.App.3d 593, 604; FAC, ¶¶ 17-20.)

Miscellaneous

Defendant's remaining arguments are either so incomprehensible that the Court cannot address them, raise issues outside the scope of the Court's review on a demurrer, or are inadequately supported by argument and citation to authority. (See *Jones v. Superior Court* (1994) 26 Cal.App.4th 92, 99 ["Issues do not have a life of their own: if they are not raised or supported by argument or citation to authority, [the court] consider[s] the issues waived."].)
The demurrer is overruled in full.

PLAINTIFF'S MOTION TO COMPEL DEPOSITION

Legal Standard

"If, after service of a deposition notice, a party to the action . . . , without having served a valid objection . . . fails to appear for examination . . . , the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document, electronically stored information, or tangible thing described in the deposition notice." (Code Civ. Proc., § 2025.450, subd. (a).) Such motion must be accompanied by a meet and confer declaration. (Code Civ. Proc., § 2025.450, subd. (b)(2).) It must also "set forth specific facts showing good cause justifying the production for inspection of any document, electronically stored information, or tangible thing described in the deposition notice." (Code Civ. Proc., § 2025.450, subd. (b)(1).)

If the motion is granted, the court "shall" impose a monetary sanction "in favor of the party who noticed the deposition and against the deponent or the party with whom the deponent is affiliated, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust." (Code Civ. Proc., § 2025.450, subd. (g)(1).)

Discussion

Merits

Plaintiff's counsel served Thieriot with a notice of deposition setting her deposition for July 22, 2025 on July 1, 2025. (Haevernick Dec., ¶ 15 & Ex. 12.) On the day before her deposition was to take place, Thieriot served Plaintiff with her objections to the deposition notice. (*Id.* at ¶ 17 & Ex. 14.) She did not appear for her deposition as noticed. (*Id.* at ¶ 19.)

Thieriot's objections to the deposition notice, and the Court's assessment of their merits, are as follows:

Notice fails to provide sufficient time for preparation – Code of Civil Procedure, section 2025.270, subdivision (a) provides that "[a]n oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice." Thieriot was served with the notice setting her deposition for July 22, 2025 on July 1, 2025. (Haevernick Dec., ¶ 15 & Ex. 12.) She was allotted more time to prepare than she was entitled to under the Code of Civil Procedure.

Deposition was scheduled without any meet and confer or discussion of mutually agreeable dates, as required by Code of Civil Procedure, section 2023.010, subdivision (i) – Plaintiff's evidence reflects extensive efforts by his counsel to work with Thieriot to find a mutually agreeable deposition date. (Haevernick Dec., ¶¶ 2-14; Exs. 3-11.) She cannot choose not to cooperate with meet and confer efforts and then complain that they did not happen.

Defendant had a motion (the "Amended Motion to Vacate") pending at the time, and her deposition should not proceed until the motion was resolved – Defendant has not cited any authority for her claim that Plaintiff's taking her deposition while she has a motion pending is legally impermissible or violates any of her rights.

Plaintiff has engaged in abuse of the discovery process of his own – Even if true (and the Court does not decide whether it is), this is irrelevant. Defendant has not cited any authority for the idea that a party's own abuse of the discovery process excuses their opponent from discovery obligations.

The motion is GRANTED.

Sanctions

The Court having granted the motion, an award of sanctions is required. (Code Civ. 2025.450, subd. (g)(1); see also Code Civ. Proc., § 2023.030, subd. (a) [monetary sanction consists of "the reasonable expenses, including attorney's fees, incurred by anyone as a result" of the discovery misconduct].) Plaintiff's request for $11,690 is based on a total of 19.2 hours drafting, reviewing, and editing the motion, plus an estimated 7 hours working on the reply and preparing to appear in court. (Haevernick Dec., ¶ 23.) 19.2 hours is excessive given the straightforward nature of Thieriot's conduct. The Court will discount the time spent to 10 hours. Plaintiff has not provided evidence of the amount of time *actually* spent on the reply or preparing for hearing, so the Court will not award fees for those tasks.

Plaintiff has not provided evidence of his attorneys' hourly rates and must present such evidence **at the hearing on this motion** if the Court is to award sanctions.

Defendant's opposition contains a request for a protective order under Code of Civil Procedure, section 2025.420 (protective orders to avoid "annoyance, embarrassment, . . . oppression, . . . undue burden or expense" in the course of a deposition). Defendant has not demonstrated good cause for a protective order to issue. (See Code Civ. Proc., § 2025.420, subd. (b).) She also has not submitted a meet and confer declaration (see Code Civ. Proc., §§ 2025.420, subd. (a);

2016.040) and did not file her combined opposition and moving brief within a sufficient time to use the hearing on this motion as a hearing on her request for a protective order (see Code Civ. Proc., § 1005, subd. (b)). Her motion for a protective order is denied.

THIERIOT'S MOTION TO DISMISS COMPLAINT AND COMPEL THE RETURN OF REAL PROPERTY

Through this motion, Thieriot seeks dismissal of the complaint in full under Federal Rule of Civil Procedure 12(b)(6). That rule does not apply in this state court proceeding. Additionally, Thieriot contends that Plaintiff is in possession of certain collateral rightfully belonging to Thieriot and requests the Court to order Plaintiff to return it. Thieriot has not cited any authority permitting the Court to order such relief on a motion. This motion is denied.

THIERIOT'S MOTION TO VACATE TENTATIVE RULING

Thieriot seeks an order vacating "a tentative ruling issued and adopted without notice" to Thieriot. She claims the tentative ruling was "available to Plaintiff but not to Defendant[.]" The Court understands her to refer to the July 18, 2025 order permitting Plaintiff to file the FAC, subsequently adopted as the Court's final ruling on Plaintiff's motion for leave to amend on August 1, 2025. Although the motion purports to be one for vacation of that order, Thieriot's moving papers are almost entirely devoted to the same merits arguments she improperly made in her demurrer (debt already satisfied in full, defendants not parties to the contracts, etc.) Thieriot has not mounted any cognizable argument that the order at issue is "void" within the meaning of Code of Civil Procedure, section 473, subdivision (d). If she wanted the Court to reconsider its July 18 order, she should have filed a motion for reconsideration under Code of Civil Procedure, section 1008 within the statutory time limit to do so. Motion denied.

THIERIOT'S MOTION TO COMPEL DISCLOSURE OF REAL PARTY IN INTEREST AND FOR JUDICIAL NOTICE

Thieriot requests an order "compel[ling] Plaintiff to disclose the true real party in interest in this action[.]" She cites no authority in support of this request. The motion is denied.

Thieriot also requests that the Court take judicial notice of "material conflicts affecting the Court's jurisdiction and the integrity of these proceedings." This is not among the proper subjects for judicial notice enumerated in Evidence Code, section 452. This request is denied.

In his opposition, Plaintiff requests sanctions for Defendant's filing an unsuccessful motion to compel and doing so without first meeting and conferring. The statutes Plaintiff relies on apply to discovery motions, and Defendant's motion is not a discovery motion. There is no authority presented for imposing monetary sanctions in connection with this motion.

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 September 2025 is as follows:
https://marin-courts-ca-gov.zoomgov.com/j/1615162449?pwd=e5SqeATq2HOsxxD7Fhrl3Q7qPFgFZa.1
Meeting ID: 161 516 2449
Passcode: 073961

If you are unable to join by video, you may join by telephone by calling* 1-669-254-5252 *and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: marin.courts.ca.gov

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 09/19/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0004467

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: SARA CHEZKIAN vs. DEFENDANT: DANIEL L. DAMATO	

NATURE OF PROCEEDINGS: MOTION – COMPEL - DISCOVERY FACILITATOR PROGRAM

RULING

The parties having failed to file an update statement regarding any unresolved issues, the Court deems this matter resolved and dropped from calendar.

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.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 09/19/25 TIME: 1:30 P.M. DEPT: E CASE NO: CV0006569

PRESIDING: HON. ANDREW SWEET

REPORTER: CLERK: G. STRATFORD

PLAINTIFF: MELISSA DOS SANTOS ARAUJO, ET AL vs. DEFENDANT: VOLKSWAGEN GROUP OF AMERICA, INC. A CORPORATION, ET AL	

NATURE OF PROCEEDINGS: 1) DEMURRER
2) DEMURRER

RULING

Defendants' demurrers are sustained with leave to amend.

Allegations in Plaintiffs' Complaint

Plaintiffs allege that they acquired a 2022 Volkswagen ID 4 on July 27, 2022 and that the vehicle is defective, malfunctions and/or has nonconformities. Plaintiffs' first two causes of action are for violations of the Song-Beverly Consumer Warranty Act ("Act") against both Volkswagen Group of America, Inc. ("Volkswagen") and Dirito Brothers Walnut Creek, Inc. dba Dirito Brothers Walnut Creek Volkswagen ("WCV"). Plaintiff's Third Cause of Action for violation of Business & Professions Code Section 17200 is asserted against both defendants and alleges that defendants' conduct is unlawful, unfair and fraudulent. Plaintiff's Fourth Cause of Action for negligent repair is against WCV only.

Standard

"The function of a demurrer is to test the sufficiency of the complaint as a matter of law, and it raises only a question of law." (*Holiday Matinee, Inc. v. Rambus, Inc.* (2004) 118 Cal.App.4th 1413, 1420.) A complaint "ordinarily is sufficient if it alleges ultimate rather than evidentiary facts" (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550), 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. (*Doheny Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099 [citation and internal quotations omitted].) Legal conclusions are insufficient. (*Id.* at 1098–1099; *Doe,* 42 Cal.4th at 551, fn. 5.) The court "assume[s] the truth of the allegations in

the complaint, but do[es] not assume the truth of contentions, deductions, or conclusions of law." (*California Logistics, Inc. v. State of California* (2008) 161 Cal.App.4th 242, 247.)

Volkswagen's Demurrer

Volkswagen demurs to the Third Cause of Action on the ground that the Complaint fails to allege any facts supporting a cause of action under Business & Professions Code Section 17200. Volkswagen is correct. Plaintiffs do not allege any actual facts underlying their claims. They allege, at most, that they acquired a vehicle and that the vehicle had defects, malfunctions and/or nonconformities. Plaintiffs do not identify what those defects, malfunctions and/or nonconformities are, or how Volkswagen engaged in any unlawful, unfair or fraudulent conduct. The demurrer to the Third Cause of Action is sustained on this basis.

The Court does not sustain the demurrer on Volkswagen's additional ground, i.e., that a plaintiff cannot assert a cause of action under Section 17200 where other adequate remedies exist. The law allows for a plaintiff to bring a Section 17200 claim despite having other available remedies. (See *State of California v. Altus Finance* (2005) 36 Cal.4th 1284, 1303; Bus. & Prof. Code §§ 17205 ["Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state"]; 17534.5 [same].)

WCV's Demurrer

WCV's demurrer to the Third Cause of Action is sustained for the reasons discussed above.

WCV also demurs to the Fourth Cause of Action for negligent repair, arguing that Plaintiffs fail to allege sufficient facts to state a cause of action and that it is barred by the economic loss rule.

The Court sustains the demurrer to the Fourth Cause of Action on the ground that Plaintiffs do not allege adequate facts to support this cause of action. While Plaintiffs generally allege duty, breach, causation and damages (Complaint, ¶¶53-56), there are no actual facts alleged to support these allegations. Plaintiffs do not allege, for example, what specific problems they were experiencing with the vehicle, how or when the negligent repairs occurred, and the type of repairs allegedly made by WCV. The Court also sustains the demurrer on the ground that this cause of action is barred by the economic loss doctrine. (See *Sacramento Regional Transit Dist. v. Grumman Flxible* (1984) 158 Cal.App.3d 289, 298.)

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.

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