SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 11/13/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0001291

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: DANIEL MOSHER, ET AL vs. DEFENDANT: 138 CYPRESS AVENUE, LLC A CALIFORNNIA LIMITED LIABILITY, ET AL	

NATURE OF PROCEEDINGS: MOTION – SUMMARY JUDGMENT

RULING

Sophia Kabler Cowley's (hereinafter, "Defendant" or "Defendant Cowley") Motion for Summary Judgment, or in the alternative Summary Adjudication, in favor of Defendant and against plaintiffs Daniel Mosher and Maeve Kennedy Mosher (collectively "Plaintiffs") is GRANTED as to the Fourth Cause of Action only. In all other respects, it is DENIED.

I. OBJECTIONS TO EVIDENCE

Plaintiffs' Objections to Evidence Submitted by Defendant Nos. 1-11 are OVERRULED.

Defendant's Objections to Evidence Submitted with Plaintiff's Opposition Nos. 1, 4, 7, 12, 15, 20, 23, and 31-35 are SUSTAINED. Objections Nos. 2, 3, 5, 6, 8-11, 13, 14, 16-19, 21, 22, 24-30, 36,and 37 are OVERRULED.

II. PROCEDURAL DEFECTS

The Court notes that some of Plaintiffs' Responses to Defendant's UMF ("PR to UMF") cite to the FAC and/or to the MSJ Opposition as their sole source of evidence. (See e.g., PR to UMF Nos. 14 and 15.) These facts are not properly disputed and are considered by the Court to be undisputed. (*Cassady v. Morgan, Lewis & Bockius LLP* (2006) 145 Cal.App.4th 220, 241, as modified (Dec. 21, 2006). Internal Citations Omitted. [A party cannot rely on its own pleadings as evidence to support or oppose a summary judgment motion]; See also California Rules of Court, rule 3.1350 [An opposing party who contends that a fact is disputed must state, on the right side of the page directly opposite the fact in dispute, the nature of the dispute and describe the evidence that supports the position that the fact is

controverted. Citation to the evidence in support of the position that a fact is controverted must include reference to the exhibit, title, page, and line numbers].)

III. BACKGROUND

This matter arises out of alleged construction defects at 138 Cypress Avenue, Kentfield, CA, 94941, a single-family home in Kentfield, California ("Subject Property").

On September 18, 2017, co-defendant 138 Cypress Avenue, LLC ("138 Cypress") filed their Articles of Incorporation with the State of California. (Defendant's Undisputed Material Fact ("UMF") No. 1.) Pursuant to the Operating Agreement, Defendant Cowley was appointed as the Managing-Member of the LLC, and was authorized to bind 138 Cypress in contracts, and act on its behalf. (UMF No. 2.) The purpose of 138 Cypress, as set forth in the operating agreement, was to "acquire, own, develop, manage, hold for investment, and sell the real property commonly known as 138 Cypress." (UMF No. 3.)

In or around October 2017, 138 Cypress purchased the Subject Property. (UMF No. 5.) After the purchase, 138 Cypress entered into a Services Agreement contract with KCS, Inc., ("KCS") to design and develop a single family home and surrounding landscaping and hardscaping on the Subject Property. (UMF No. 6).

Approximately 10 months later, 138 Cypress entered into a Standard Construction contract with licensed General Contractor Richard Beahan dba True Blue Builders ("True Blue Builders"), to build the Subject Property. (UMF No. 12.)

In August, 2019, while the property was still under construction, 138 Cypress entered into a purchase agreement with the Plaintiffs to sell the property. (UMF No. 16.) The owner of the home in the purchase agreement was listed as 138 Cypress. (UMF No. 17.) The New Construction Addendum to the Residential Purchase Agreement IV. IV listed KCS and Resident Designer Joe McGuire as the Architect, and True Blue Builders as the general contractor for the project. (UMF No. 18.)

Plaintiffs allege that, after purchasing the Subject Property, they discovered multiple latent defects with the design and construction of the subject property, which were unknown to them at the time of purchase. The defects and related property damage allegedly include defects with the ceilings, drywall, stucco, roofing, framing, retaining walls, privacy walls, plumbing, irrigation, drainage, electrical items, hardscaping, among other areas.

Plaintiffs filed their initial Complaint on November 2, 2023, against 138 Cypress, Cowley, True Blue Builders, Inc., and Richard Beahan. On February 26, 2024, Defendant Cowley filed an Answer to the Complaint, and a Cross-Complaint against Richard Beahan individually and dba True Blue Builders, Inc. On March 20, 2024, Cowley filed an Amended Cross-Complaint against Richard Beahan individually and dba True Blue Builders, Inc. On or about July 23, 2024, Plaintiffs filed a First Amended Complaint, ("FAC"), adding Daniel Mosher and Maeve Kennedy Mosher as Trustees of the Mosher-Kennedy Revocable Living Trust as additional Plaintiffs. The FAC is otherwise identical to the Complaint.

In their FAC, Plaintiffs allege causes of action for (1) Negligence; (2) Violation of Residential Building Standards; (3) Strict Liability; (4) Breach of Implied Warranty of Merchantability; (5) Breach of Express Warranties; (6) Breach of Contract; and (7) Breach of Contract-Third Party Beneficiary.

Presently before the Court is Defendant Crowley's Motion for Summary Judgment, or in the alternative Summary Adjudication, on the FAC.

IV. 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).)

V. DISCUSSION

Defendant's Motion is based on the argument that the contracts at issue were entered into by co-defendant 138 Cypress and signed by Defendant Cowley only in her capacity as the managing-member of 138 Cypress. Furthermore, Cowley asserts she did not own, sell, design, or construct the subject property, and was not a contractor, architect, supplier, or design professional. Cowley concludes she is entitled to judgment as a matter of law as to all causes of action.

In the alternative, Defendant requests summary adjudication on the following causes of actions and issues:

1. The First Cause of Action for Negligence fails as a matter of law against Defendant because the Right to Repair Act bars common law claims for negligence for alleged damages caused by construction defects within the scope of the Act.

2. The Second Cause of Action for Violation of Residential Building Standards – Civil Code section 896-897 fails as a matter of law against Defendant because she is not a builder, general contractor, subcontractor, material supplier, product manufacturer, or design professional.

3. The Third Cause of Action for Strict Liability fails as a matter of law as to Defendant because the Right to Repair Act bars common law claims for strict liability.

4. The Fourth Cause of Action for Breach of the Implied Warranty of Merchantability fails as a matter of law as to Defendant because it does not apply to residential homes, and she did not enter into any contracts in her individual capacity.

5. The Fifth Cause of Action for Breach of Express Warranties similarly fails as a matter of law as to Defendant because she did not enter into any contracts in her individual capacity.

6. The Sixth Cause of Action for Breach of Contract also fails as a matter of law as to Defendant because she did not enter into any contracts in her individual capacity.

7. The Seventh Cause of Action for Breach of Contract – Third Party Beneficiary fails for the same reasons, as Defendant was not a party to the contracts.

A. Summary Judgment – Basis for Individual Defendant's Liability

While managers of limited liability companies may not be held liable for the wrongful conduct of the companies merely because of the managers' status, they may nonetheless be held accountable for their personal participation in tortious or criminal conduct, even when performing their duties as manager. (See *People v. Pacific Landmark, LLC* (2005) 129 Cal.App.4th 1203, 1212-13 citing now repealed Corp. Code, §17158.)

Current corresponding Corporations Code section 17703.04 likewise states that a limited liability company's liabilities arising from tort or otherwise are solely the liability of the limited liability company. (Corp. Code, § 17703.04, subd. (a)(1).) They do not extend to a member or manager, except in limited circumstances. (Corp. Code, § 17703.04, subds. (a)(2), (b), (c).) Such circumstances applicable in this case include a member's participation in tortious conduct or under similar circumstances of a corporation shareholder. (*Id*.)

Since Corporation Code section 17703.04, subdivision (b) does extend liability under circumstances similar to corporations, the Court evaluated similar types of cases as applicable to corporations. Directors and officers of corporations may be personally liable under tort if they participate in the wrong or authorize or direct it to be done. (See *Michaelis v. Benavides* (1998) 61 Cal.App.4th 681, 684-686 ["Appellants' allegations here show that respondent did not merely make a corporate policy decision which was carried out by someone else. He personally participated in and directed the construction of appellants' patio and driveway. He personally bid for appellants' job and he personally negotiated with appellants for completion of the job. He personally made the decisions to use cheaper materials and construction methods which allegedly resulted in the patio's and driveway's structural inadequacies"].)

While the alter ego theory of liability is another ground for potential individual liability, it is not at issue in this case. Here, the FAC alleges only that "DEFENDANT SOPHIA KABLER COWELY, an individual, is a developer of real property who conducts business in Marin County, California. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANT SOPHIA KABLER COWELY was actively involved in the development, financing, design, construction and sale of the SUBJECT PROPERTY." (FAC, ¶ 3.) There are no alter ego allegations. The pleadings delimit the issues to be considered on a motion for summary judgment. (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1253, as modified on denial of reh'g (July 7, 2008). Internal citations omitted.) Thus, a defendant moving for summary judgment need address only the issues raised by the complaint; the plaintiff cannot bring up new, unpleaded issues in his or her opposing papers. (*Ibid*. Internal citations omitted.) Accordingly, the Court need not and does not consider the alter ego theory of liability in ruling on this Motion.

Here, the moving Defendant's showing was sufficient to meet her initial burden.

The burden therefore shifted to Plaintiffs to demonstrate the existence of triable issues of material fact. Plaintiffs have done so, demonstrating triable issues of material fact with respect to Defendant's personal participation. (See PR to UMF Nos. 8, 21, 22; see also Plaintiffs' Separate Statement of Additional Material Facts ("PAMF") Nos. 31-41.)

Summary Judgment as a whole is therefore DENIED. The Court next considers whether to grant Summary Adjudication of any cause of action.

B. Summary Adjudication

1. Issues 2 and 4 - First Cause of Action (Negligence) and Third Cause of Action (Strict Liability)

Defendant argues that the First and Third Causes of Action fail as a matter of law against Defendant because the Right to Repair Act bars common law claims for negligence and strict liability. (See Issues No. 2 and 4 in Separate Statement.)

Civil Code section 896 provides:

> "In any action seeking recovery of damages arising out of, or related to deficiencies in, the residential construction, design, specifications, surveying, planning, supervision, testing, or observation of construction, a builder, and to the extent set forth in Chapter 4 (commencing with Section 910), a general contractor, subcontractor, material supplier, individual product manufacturer, or design professional, shall, except as specifically set forth in this title, be liable for, and the claimant's claims or causes of action shall be limited to violation of, the following standards, except as specifically set forth in this title. This title applies to original construction intended to be sold as an individual dwelling unit…"

In Chapter 4, Civil Code section 936 provides:

> "Each and every provision of the other chapters of this title apply to general contractors, subcontractors, material suppliers, individual product manufacturers, and design professionals to the extent that the general contractors, subcontractors, material suppliers, individual product manufacturers, and design professionals caused, in whole or in part, a violation of a particular standard as the result of a negligent act or omission or a breach of contract."

As outlined by *Acqua Vista Homeowners Assn. v. MWI, Inc.* (2017) 7 Cal.App.5th 1129, 1144, "[s]ection 896 also states that *nonbuilders* will be liable to the '*extent set forth in Chapter 4*.' The first sentence of section 936, a provision in Chapter 4, sets forth a clear standard of liability applicable to a series of *nonbuilder* entities. Interpreting the final sentence of section 936 as providing that the negligence standard applicable to *statutory* claims against nonbuilders under the Act does not apply to certain *common law* claims (i.e., those 'claims for which strict liability would apply,' § 936), is entirely consistent with the statute's specification of a standard of liability for *builders* in section 896 (see § 896 ['In any action seeking recovery of damages arising out of, or related to [construction defects] ... *a builder* ... shall, except as specifically set forth in this title, be liable for, ... [a] violation of[ ] the following standards' (italics added)]) and *nonbuilders* in section 936. (See § 896 [stating that a nonbuilder is liable under the Act '*to the extent set forth in Chapter 4* [in section 936]' (italics added)].)"

Accordingly, the Act would operate to bar claims sounding in construction defect but brought as common law claims against a builder or covered non-builder.

Here, moving Defendant failed to meet her initial burden with respect to establishing whether she is a builder or a covered non-builder. The only fact cited to in support of Issues 2 and 4 is the reference to and incorporation of UMF No. 23 which provides "On November 2, 2023, Plaintiffs filed their Complaint for damages, alleging seven causes of action related solely to allegations of defects with the design and construction of the Subject Property, a single-family residence. These same allegations and causes of action were repeated in their First Amended Complaint, filed on July 23, 2024." (See UMF Nos. 24, 26.)

A defendant moving for summary judgment meets its burden of showing that there is no merit to a cause of action if that party has shown that there is a complete defense to that cause of action. (Code Civ. Proc., § 437c, subds. (o)(2), (p)(2).) Once the defendant has met that burden, the burden shifts to plaintiff to show that "a triable issue of one or more material facts exists as to that cause of action or a defense thereto." (Code of Civ. Proc., § 437c, subd. (p)(2); *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334-5, 356.) However, a responding plaintiff has no evidentiary burden unless the moving defendant has first met its initial burden. "Only after the moving defendant meets its initial burden does the burden shift to the plaintiff to demonstrate the existence of a triable issue." (*Binder v. Aetna Life Ins. Co*. (1999) 75 Cal.App.4th 832, 839–40. Internal citations omitted.)

The Court notes that Defendant's reliance on *McMillin Albany LLC v. Superior Ct.* (2018) 4 Cal.5th 241 for the proposition that the Right to Repair Act's "exclusivity turns on the claim and the damages, not the defendant's status" is misplaced. In that case, McMillin was the "developer and general contractor" of the purchased residential homes. (*Id.*, at p. 247.) The *McMillin* court held: "The Van Tassels voluntarily dismissed without prejudice their cause of action for violation of section 896's standards. Even so, the operative complaint includes claims resting on allegations that McMillin

defectively constructed the foundations, plumbing, roofs, electrical conduits, framing, flooring, and walls of plaintiffs' homes.

This suit remains an 'action seeking recovery of damages arising out of, or related to deficiencies in, the residential construction' of plaintiffs' homes (§ 896), and McMillin's liability under the Van Tassels' negligence and strict liability claims depends on the extent to which it violated the standards of sections 896 and 897. Thus, the Van Tassels were required to initiate the prelitigation procedures provided for in the Act. (*McMillin Albany LLC v. Superior Ct.* (2018) 4 Cal.5th 241, 258–59.)

In *McMillin* defendant's status as the developer or general contractor was undisputed. Therefore the claims seeking defect damages against the developer/general contractor were subject to the Act regardless of how they were pleaded. (Civ. Code, § 936.)

For these reasons, Summary Adjudication of Issues Nos. 2 and 4 is DENIED.

2. **Issue 3 - Second Cause of Action for Violation of Residential Building Standards – Civil Code Section 896-897**

Defendant argues that this cause of action fails as a matter of law against Defendant because she is not a builder, general contractor, subcontractor, material supplier, product manufacturer, or design professional, such that there are no triable issues of material fact and she is entitled to judgment as a matter of law.

In her Separate Statement Defendant cites one UMF in support of this issue, UMF No. 25, which "incorporates by reference Undisputed Facts no. 1-23." For the reasons stated above, the moving papers were sufficient to meet moving Defendant's initial burden on Summary Adjudication. The burden thereafter shifted to Plaintiffs to demonstrate triable issues of material fact exist.

Under Civil Code section 911(a), " 'builder' means any entity or individual, including, but not limited to a builder, developer, general contractor, contractor, or original seller, who, at the time of sale, was also in the business of selling residential units to the public for the property that is the subject of the homeowner's claim or was in the business of building, developing, or constructing residential units for public purchase for the property that is the subject of the homeowner's claim."

Because 138 Cypress could meet this standard (See UMF Nos. 3, 16) and because, as discussed above, questions of disputed material fact exist with respect to Defendant Cowley's potential personal liability for her own actions on behalf of the LLC, this cause of action also survives Summary Adjudication. (See PR to UMF Nos. 8, 21, 22; see also PAMF Nos. 31-41.)

3. **Issue 5 - Fourth Cause of Action (Breach of the Implied Warranty of Merchantability (Civil Code § 1792))**

Defendant argues this cause of action fails as a matter of law because it does not apply to residential homes, and she did not enter into any contracts in her individual capacity.

The Fourth cause of action alleges "Breach of Implied Warranty of Merchantability (Civil Code § 1792)." That section provides: "Unless disclaimed in the manner prescribed by this chapter, every sale of consumer goods that are sold at retail in this state shall be accompanied by the manufacturer's and the retail seller's implied warranty that the goods are merchantable. The retail seller shall have a right of indemnity against the manufacturer in the amount of any liability under this section."

The operative term is "consumer goods," which is defined in § 1791(a) as "any new product or part thereof that is used, bought, or leased for use primarily for personal, family, or household purposes, except for clothing and consumables," and also includes new and used assistive devices sold at retail. (Civ. Code, § 1791.) This does not include residential homes.

Accordingly, the Court finds that moving Defendant has met her burden to show she is entitled to Summary Adjudication of this cause of action. In response, Plaintiffs argue "[e]ven if the Court were to accept Cowley's statutory argument, it would not resolve all warranty theories if the pleadings and evidence support common law, contractual, or repair-related warranty obligations." (See Oppo. p. 18:4-6.) However, the FAC itself denotes the Fourth Cause of Action as one arising under Civil Code section 1792. That is all Defendant was required to address. Plaintiffs cannot now move the goalpost and raise theories which were not clearly pled in the FAC. The pleadings delimit the issues to be considered on a motion for summary judgment. (*Laabs, supra,* 163 Cal.App.4th at p. 1253. Internal citations omitted.) Thus, a defendant moving for summary judgment need address only the issues raised by the complaint; the plaintiff cannot bring up new, unpleaded issues in his or her opposing papers. (*Ibid*. Internal citations omitted.)

For these reasons, Summary Adjudication of the Fourth Cause of Action is GRANTED.

4. **Issues 6-8 - Fifth Cause of Action (Breach of Express Warranties), Sixth Cause of Action (Breach of Contract), Seventh Cause of Action (Breach of Contract – Third Party Beneficiary)**

Defendant argues that the Fifth, Sixth, and Seventh Causes of action fail as a matter of law because she did not enter into any contracts in her individual capacity and was not a party to the contracts.

As discussed above, since questions of disputed material fact exist with respect to Defendant Cowley's potential individual liability for her own acts on behalf of the LLC, these causes of action also survive Summary Adjudication. (See PR to UMF Nos. 8, 21, 22; see also PAMF Nos. 31-41.)

Parties must comply with Marin County Superior Court Local Rule 2.10(A)–(B). A party seeking oral argument must notify the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. on the court day before the hearing. Notice may be provided by telephone or in person; direct contact with counsel or the parties is not required. Absent timely notice to the Court and all parties, no oral argument will be permitted except by order. If no party properly requests oral argument, the tentative ruling becomes the order of the Court.

IT IS ORDERED Evidentiary hearings are in person in Department L. Routine appearances may be made by video using the link on the Court's website. When your case is called, turn on your camera and ensure the appearing party or lawyer is properly identified on screen.

FURTHER ORDERED Parties are responsible for maintaining a reliable connection and being available throughout the remote hearing. If a party's connection is inadequate, the Court may proceed in that party's absence. Participants determined to be driving during the hearing will be removed from the virtual courtroom. (Yes, this happens).

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 11/13/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0001650

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: SHAWNA SIMS vs. DEFENDANT: MARIN GENERAL HOSPITAL	

NATURE OF PROCEEDINGS: MOTION – OTHER: CLASS CERTIFICATION

RULING

Continued to 12/11/26.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 11/13/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0002128

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: BARBARA BYERS vs. DEFENDANT: GENERAL MOTORS, LLC	

NATURE OF PROCEEDINGS: MOTION – SUMMARY JUDGMENT

RULING

Defendant General Motors LLC's ("Defendant") motion for summary judgment, or, alternatively, summary adjudication is DENIED.

BACKGROUND

This is a lemon law action. The Second Amended Complaint ("SAC") alleges that in January 2017, Plaintiff Barbara Byers ("Plaintiff") entered into a warranty contract with Defendant pertaining to a vehicle manufactured or distributed by Defendant, a Certified Pre-Owned 2015 Cadillac Escalade. (SAC, ¶¶ 6-7 & Ex. A.) Plaintiff claims that during the warranty period, the vehicle presented with various nonconformities to the warranty, but Defendant failed to either replace it or make restitution. (*Id.* at ¶¶ 11, 14.)

The SAC asserts causes of action for violation of the Song-Beverly Consumer Warranty Act, Civil Code, section 1790 *et seq.*[1] The Court now considers Defendant's motion for summary judgment or, alternatively, summary adjudication.

LEGAL STANDARD

Any party may move for summary judgment. (Code of Civ. Proc, § 437c, subd. (a); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) The motion "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c); *Aguilar*, *supra*, 25 Cal.4th 826, 843.) Similarly, a party may move for summary adjudication as to a cause of action, an affirmative defense, a claim for damages, or an issue of duty. (Code Civ. Proc., § 437c, subd. (f)(1).) "A motion for summary adjudication . . . shall proceed in all procedural respects as a

[1] The SAC's fraudulent inducement claim was dismissed at the demurrer stage.

motion for summary judgment." (Code Civ. Proc., § 437c, subd. (f)(2).) The object of the summary judgment procedure is "to cut through the parties' pleadings" to determine whether a trial is necessary to resolve the dispute. (*Aguilar*, *supra*, 25 Cal.4th 826, 843.)

The "party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact." (*Aguilar*, *supra*, 25 Cal.4th 826, 850; see Evid. Code, § 110.) "A prima facie showing is one that is sufficient to support the position of the party in question." (*Aguilar*, *supra*, 25 Cal.4th 826, 851.) When the moving party is a defendant, the initial burden entails showing "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, subd. (p)(2).) Once the moving party has met its initial burden, the burden shifts to the opposing party 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, subds. (p)(1)-(2).) "There is a genuine issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar*, *supra*, 25 Cal.4th 826, 845.)

DISCUSSION

Plaintiff's Evidentiary Objections

No. 1: Sustained for lack of personal knowledge. (Evid. Code, § 702.)

> The declarant himself characterizes his testimony as being based on the content of the sale contract, not his personal knowledge of the circumstances of the purchase of the vehicle. (Jensen Dec., ¶ 5.) That the declarant does not have personal knowledge of the transaction is bolstered by his attestations that his employer, Defendant, was not a party to the transaction, and even if it had been, he was not employed by Defendant until three years after the transaction occurred. (*Id.* at ¶¶ 3, 5.)

No. 2: Overruled.

> This is not an objection to evidence, but to a typographical error in Defendant's separate statement.

Motion for Summary Judgment

The Song-Beverly Act extends a cause of action to any buyer of consumer goods who is damaged by a failure to comply with any of its obligations. (Civ. Code, § 1794, subd. (a).) The term "buyer" is defined to mean "any individual who buys consumer goods from a person engaged in the business of manufacturing, distributing, or selling consumer goods at retail." (Civ. Code, § 1791, subd. (a).)

Defendant's motion for summary judgment and, alternatively, summary adjudication rests on its contention that Plaintiff was not a "buyer" of the vehicle. Defendant argues that the sale contract

lists Thomas P. Byers as the buyer and does not list Plaintiff as a buyer or co-buyer. (UMF No. 3.)

The statutory definition of "buyer" is not helpful to the task of defining who does and who does not have standing under the Song-Beverly Act. (*Islas v. Ford Motor Company* (C.D. Cal. Jul. 29, 2019, Civ. A. No. EDCV 18-2221-GW(SPx)) 2019 WL 10855294, *5.[2]) The Central District of California has rejected the view that this definition is limited to the party with rights under the sale contract for the vehicle, observing that the vague statutory definition "clearly does not contain any reference to a contract or any contract-based rights." (*Ibid.*) In *Islas*, the federal district court denied a motion to dismiss a Song-Beverly Act claim on the basis that the plaintiff was not a "buyer" because his name was not on the sales contract. (*Id.* at pp. *2, 5.) The court ruled that it would treat "buyers" as including "nonbuyer users" or "*de facto* purchasers/buyers" until such time as the California Legislature chose to "exclude Song-Beverly coverage" for such people "by amending or clarifying the definition of 'buyer[,]'" and suggested that the Legislature "may have intended" the statute to cover such people all along given "the statute's lack of specificity." (*Id.* at p. *5; accord *Ussery v. Mercedes-Benz USA LLC* (Nov. 25, 2024, Civ. A. No. 2:23-cv-00952-DAD-SCR) 2024 WL 4882856, *6 [permitting Song-Beverly Act claim by person not named in the sale contract to proceed on same reasoning].) *Islas* reasoned that the Song-Beverly Act " 'is a remedial measure intended for the protection of consumers and should be given a construction consistent with that purpose.' " (*Islas*, *supra*, 2019 WL 10855294, *5 [quoting *Brand v. Hyundai Motor America* (2014) 226 Cal.App.4th 1538, 1545]; *Ussery*, *supra*, 2024 WL 4882856, *6.)

In *Towns v. Hyundai Motor America* (2025) 117 Cal.App.5th 958, plaintiff Towns brought Song-Beverly Act claims against Hyundai relating to a 2017 Hyundai Elantra. (117 Cal.App.5th 958, 962-963.) He later sought leave to amend the complaint to add his wife as a plaintiff on the Song-Beverly Act claims. (*Id.* at p. 963.) In opposition, Hyundai argued that Towns' wife had no standing to sue under the Song-Beverly Act because the only person who signed the sale contract was Towns himself, so his wife was not a "buyer." (*Ibid.*) The trial court ruled that Towns' wife was not a buyer, but was nevertheless permitted to sue under the Song-Beverly Act under *Patel v. Mercedes-Benz USA, LLC* (2019) 43 Cal.App.5th 1007, which the trial court interpreted to mean that a non-buyer could sue under the Act. (*Id.* at pp. 963-964, 968.) After the trial court ultimately entered a judgment in favor of Towns' wife, Hyundai appealed.

The Second District ruled that the trial court had misinterpreted *Patel*, that that case "does not authorize a non-buyer to bring suit under the [Song-Beverly] Act[,]" (*Towns, supra*, 117 Cal.App.5th 958, 968) and that, the trial court having concluded that Towns' wife was not a "buyer," it was improper for that court to permit her to sue under the Act. (*Id.* at p. 970.) The Second District expressly noted that the question of whether Towns' wife in fact qualified as a "buyer" of the vehicle was not before it on appeal: "[Plaintiffs] opted . . . to argue that [Towns' wife] Johnson didn't need to be a buyer. As a result, the record is not sufficiently developed to review a challenge to the court's finding that Johnson wasn't a buyer, even if such a challenge had been squarely made. Had the issue been squarely joined below, more evidence presented,

[2] Unpublished California state court opinions may not be cited or relied upon, but this rule does not apply to federal court opinions. (Cal. Rule of Court, rule 8.1115(a); *Lebrilla v. Farmers Group, Inc.* (2004) 119 Cal.App.4th 1070, 1077.)

and a record fully developed, the trial court might have reached a different result—and so might we." (*Ibid.*)

Against this background, *Towns*' observation that "the language of the Act contains no references to a category of 'de facto buyers,' . . . and [Plaintiffs] cite no California authority to support the creation of such a category" (*id.* at p. 969) is dicta and is not controlling. (See *Areso v. Carmax, Inc.* (2011) 195 Cal.App.4th 996, 1005-1006.) *Towns* did not, as Defendant says, "hold[] that [Towns'] wife was not a 'buyer' under Song-Beverly and thus lacked standing to sue . . . , regardless of whether she was [the] primary driver of [the] vehicle and made payments for [the] vehicle." (Reply, p. 2.)

Defendant has not met its initial burden and the motion is DENIED. Plaintiff my proceed as the "buyer" of this vehicle although the sale contract for the car lists the buyer as Thomas P. Byers.

The court does not rule on the request for judicial notice.

Parties must comply with Marin County Superior Court Local Rule 2.10(A)–(B). A party seeking oral argument must notify the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. on the court day before the hearing. Notice may be provided by telephone or in person; direct contact with counsel or the parties is not required. Absent timely notice to the Court and all parties, no oral argument will be permitted except by order. If no party properly requests oral argument, the tentative ruling becomes the order of the Court..

IT IS ORDERED Evidentiary hearings are in person in Department L. Routine appearances may be made by video using the link on the Court's website. When your case is called, turn on your camera and ensure the appearing party or lawyer is properly identified on screen.

FURTHER ORDERED Parties are responsible for maintaining a reliable connection and being available throughout the remote hearing. If a party's connection is inadequate, the Court may proceed in that party's absence. Participants determined to be driving during the hearing will be removed from the virtual courtroom. (Yes, this happens).

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 11/13/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0002829

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: BENNETT INDUSTRIES, INC. DBA TGS ELEVATE vs. DEFENDANT: HHEMP. CO	

NATURE OF PROCEEDINGS: MOTION – AMEND JUDGMENT

RULING

Plaintiff Bennett Industries, Inc. dba TGS Elevate filed a motion to amend the Judgment entered on August 5, 2024, in Case No. CV0002829 to correct the name of the judgment debtor from "Hhemp.co" to "H H Harvest Co., an Oregon corporation." Since obtaining the Judgment, TGS learned that Hhemp.co is the fictitious business name of H H Harvest Co. Plaintiff argues that the motion is to conform the record to the true identity of the corporation that incurred the debt, was served, and defaulted..

Defendant has not filed a response, nor was an opposition to the motion for approval filed. The failure to oppose is considered consent to the granting of the motion. (Cal. Rules of Court, rule 8.54(c); Local Rule Marin, Civil 2.8G.1.) The Court may consider the moving papers well taken and refuse to consider any later filed papers or allow oral argument by counsel at the hearing (Rule of Court 3.1300(d); *Sexton v. Sup Ct*. (1997) 58 Cal.App.4th 1403, 1410m (the purpose is to prevent introduction of legal theories without notice to opposing counsel and the court.)) Plaintiff's motion is therefore GRANTED in its entirety.

Plaintiff to lodge the order.

Parties must comply with Marin County Superior Court Local Rule 2.10(A)–(B). A party seeking oral argument must notify the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. on the court day before the hearing. Notice may be provided by telephone or in person; direct contact with counsel or the parties is not required. Absent timely notice to the Court and all parties, no oral argument will be permitted except by order. If no party properly requests oral argument, the tentative ruling becomes the order of the Court..

IT IS ORDERED Evidentiary hearings are in person in Department L. Routine appearances may be made by video using the link on the Court's website. When your case is called, turn on your camera and ensure the appearing party or lawyer is properly identified on screen.

FURTHER ORDERED Parties are responsible for maintaining a reliable connection and being available throughout the remote hearing. If a party's connection is inadequate, the Court may proceed in that party's absence. Participants determined to be driving during the hearing will be removed from the virtual courtroom. (Yes, this happens).

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 11/13/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0003228

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: DONNA SANTANA, ET AL vs. DEFENDANT: TIMOTHY ALLEN BROWN, ET AL	

NATURE OF PROCEEDINGS: MOTION – COMPEL – DISCOVERY FACILITATOR PROGRAM

RULING

Plaintiff Donna Santana filed a motion to compel subpoenaed documents on August 20, 2026. Plaintiff served a Deposition Subpoena for Production of Business Records on nonparty Pacific Realty Exchange, Inc. ("PRE"), an entity that Plaintiff argues facilitated the Section 1031 exchange transactions at the center of this action. Plaintiff argues that PRE was personally served on July 9, 2026, and was commanded to produce responsive business records by July 27, 2026. The Subpoena requests production of records responsive to 33 enumerated categories, concerning PRE's qualified intermediary services, escrow and title services, and the Section 1031 exchange transactions involving Plaintiffs and the real properties at issue in this action.

Eric Meckly, Esq., was appointed Discovery Facilitator and volunteered his time to assist the parties in resolving the disputes raised in Plaintiff's motion. Plaintiff alleges that Defendant did not engage with the Discovery Facilitator. Plaintiff further reports that, despite repeated correspondence regarding the discovery dispute, neither PRE nor its counsel responded to her inquiries regarding the motion until October 30, 2026, when the Discovery Facilitator advised Plaintiff that documents responsive to the subpoena would be produced.

Plaintiff request statutory sanctions because the defendant was recalcitrant and refused to meet and confer, with the requested documents produced only after the motion at bar was filed.

Defendant has not filed a response, nor was an opposition to the motion for approval filed. The failure to oppose is considered consent to the granting of the motion. (Cal. Rules of Court, rule 8.54(c); Local Rule Marin, Civil 2.8G.1.) The Court may consider the moving papers well taken and refuse to consider any later filed papers or allow oral argument by counsel at the hearing (Rule of Court 3.1300(d); *Sexton v. Sup Ct.* (1997) 58 Cal.App.4th 1403, 1410m (the purpose is to

prevent introduction of legal theories without notice to opposing counsel and the court.)) Plaintiff's motion is therefore GRANTED in its entirety.

Plaintiff's request for sanctions is GRANTED in the amount of $2,959.89, which does not include additional compensable appearance time on November 13, 2026, if any.

Plaintiff to lodge the order.

Parties must comply with Marin County Superior Court Local Rule 2.10(A)–(B). A party seeking oral argument must notify the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. on the court day before the hearing. Notice may be provided by telephone or in person; direct contact with counsel or the parties is not required. Absent timely notice to the Court and all parties, no oral argument will be permitted except by order. If no party properly requests oral argument, the tentative ruling becomes the order of the Court..

IT IS ORDERED Evidentiary hearings are in person in Department L. Routine appearances may be made by video using the link on the Court's website. When your case is called, turn on your camera and ensure the appearing party or lawyer is properly identified on screen.

FURTHER ORDERED Parties are responsible for maintaining a reliable connection and being available throughout the remote hearing. If a party's connection is inadequate, the Court may proceed in that party's absence. Participants determined to be driving during the hearing will be removed from the virtual courtroom. (Yes, this happens).

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 11/13/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0004949

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: BELVEDERE LAGOON LLC vs. DEFENDANT: HACHMAN CONSTRUCTION INC., ET AL	

NATURE OF PROCEEDINGS: MOTION – AMEND

RULING

Cross-Complainant Hackman Construction, Inc. ("Hackman") filed a motion for leave to amend and file a first amended complaint. The proposed amended pleadings:

1. adds cross-defendants Platinum Waves Electric, Native Sheet Metal, Inc., Anthony Steven Ledesma individually and doing business as Ledesma Tile & Stone, Sinclair Fire Protection Inc., German Ledezma individually and doing business as L & S Plumbing and ROES 6 – 25 as Subcontractor Cross Defendants;
2. adds causes of action for implied equitable indemnity [Sixth Cause of Action], comparative indemnity [Seventh Cause of Action], comparative negligence [Eighth Cause of Action], and contribution [Ninth Cause of Action]; and,
3. requests compensatory damages in an amount to be determined according, and for a judicial determination adjudicating the indemnity obligations of the subcontractor defendants to Hachman.

Defendant-Cross-Complainant seeks leave to amend to combine the indemnity claims involving the additional parties with the existing action. This would permit a single trial on all issues, conserving judicial resources and reducing the risk of inconsistent results from two trials.

California courts liberally construe provisions permitting amendment of pleadings so that cases may be decided on their merits. CCP sections 473(a)(1) and 576 are similar in that they authorize the Court, in furtherance of justice and on such terms as may be proper, to allow a party to amend any pleading. The proposed amendment arises from the same operative facts concerning Defendants' alleged conduct and interference with the construction project involving the contractor and subcontractors. The moving party acknowledges that adding parties will likely

delay trial and asks the Court to weigh that against the interest of judicial economy in resolving the issues in one jury trial rather than two.

Plaintiff Belvedere objects to the proposed amended cross-complaint, arguing that the new claims—alleged to have arisen in December 2024—were omitted from the cross-complaint filed in February 2025. Plaintiff's principal argument is that adding five parties will delay the case by up to one year. Plaintiff also contends that discovery will expand and new counsel will appear, complicating future resolution efforts.

Plaintiff further asserts that it will be required to respond to additional rounds of construction form interrogatories, special interrogatories, document requests, and requests for admission, as well as additional depositions and inspections. Plaintiff notes that even coordinated discovery requires attorney review, client participation, document collection, and verification. Plaintiff also argues that newly joined parties will have their own interests to investigate and cannot be expected to adopt HCI's prior litigation decisions.

In reply, Defendant argues that the existing trial date of August 13, 2026, will not be jeopardized.

The court agrees and finds good cause to permit the amended pleading to be filed. It is in the interests of justice to permit the Defendant Hackman leave to file the first amended cross-complaint.

Parties must comply with Marin County Superior Court Local Rule 2.10(A)–(B). A party seeking oral argument must notify the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. on the court day before the hearing. Notice may be provided by telephone or in person; direct contact with counsel or the parties is not required. Absent timely notice to the Court and all parties, no oral argument will be permitted except by order. If no party properly requests oral argument, the tentative ruling becomes the order of the Court..

IT IS ORDERED Evidentiary hearings are in person in Department L. Routine appearances may be made by video using the link on the Court's website. When your case is called, turn on your camera and ensure the appearing party or lawyer is properly identified on screen.

FURTHER ORDERED Parties are responsible for maintaining a reliable connection and being available throughout the remote hearing. If a party's connection is inadequate, the Court may proceed in that party's absence. Participants determined to be driving during the hearing will be removed from the virtual courtroom. (Yes, this happens).

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 11/13/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0008573

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: HOMETAP HEI FUND II SPV I, A DELAWARE STATUTORY TRUST vs. DEFENDANT: CANDICE CAIN O'DENVER, ET AL	

NATURE OF PROCEEDINGS: DEMURRER

RULING

Defendant Stefano Schiavi filed a demurrer on August 14, 2026, to the First Amended complaint against the first, second and third causes of action. Plaintiff operates a lending business that provides Home Equity Investments ("HEI") and other financing products to property owners. Defendant argues that Plaintiff investigate the title holder to confirm whether Defendant Candice O'Denver actually held title to the subject property before entering into the agreements at issue. Defendant argues that the Marin County Recorder's Office lists the title under Candice Cain O'Denver Trust.

Plaintiff does not respond to the demurrer. The failure to oppose is considered consent to the granting of the motion. (Cal. Rules of Court, rule 8.54(c); Local Rule Marin, Civil 2.8G.1.) The Court may consider the moving papers well taken and refuse to consider any later filed papers or allow oral argument by counsel at the hearing (Rule of Court 3.1300(d); *Sexton v. Sup Ct*. (1997) 58 Cal.App.4th 1403, 1410 [the purpose is to prevent introduction of legal theories without notice to opposing counsel and the court.].)

Therefore, the request for an order dismissing Plaintiff's first, second, and third causes of action of Plaintiff's First Amended Complaint ("FAC") in favor of Defendant Schiavi and against Plaintiff Hometap HEI Fund II SPV I is granted. The demurrer is SUSTAINED,

Parties must comply with Marin County Superior Court Local Rule 2.10(A)–(B). A party seeking oral argument must notify the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. on the court day before the hearing. Notice may be provided by telephone or in person; direct contact with counsel or the parties is not required. Absent timely notice to the Court and all parties, no oral argument will be permitted except by order. If no party properly requests oral argument, the tentative ruling becomes the order of the Court..

IT IS ORDERED Evidentiary hearings are in person in Department L. Routine appearances may be made by video using the link on the Court's website. When your case is called, turn on your camera and ensure the appearing party or lawyer is properly identified on screen.

FURTHER ORDERED Parties are responsible for maintaining a reliable connection and being available throughout the remote hearing. If a party's connection is inadequate, the Court may proceed in that party's absence. Participants determined to be driving during the hearing will be removed from the virtual courtroom. (Yes, this happens).

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 11/13/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0009323

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: EDWIN MARTINEZ, ET AL vs. DEFENDANT: TESLA, INC., A TEXAS CORPORATION	

NATURE OF PROCEEDINGS: 1) MOTION - COMPEL - DISCOVERY FACILITATOR PROGRAM
2) MOTION - COMPEL ANSWERS TO INTERROGATORIES - DISCOVERY FACILITATOR PROGRAM
3) MOTION - COMPEL ANSWERS TO INTERROGATORIES - DISCOVERY FACILITATOR PROGRAM
4) MOTION - ADMISSIONS - DISCOVERY FACILITATOR PROGRAM

RULING

Plaintiff Edwin Martinez filed the following discovery motions: Compel Admissions filed on August 21, 2026; Compel Answers to Interrogatories on August 21, 2026; Compel Answers to Form Interrogatories on August 21, 2026; and Compel Production of Documents on August 21, 2026

on Pursuant to Marin County Rule, Civil 2.13B, on October 5, 2026, Nancy McCarthy, Esq. was appointed to preside as Discovery Facilitator for Plaintiff's motions. The Court has not received a Declaration of Non-Resolution from either party, in particular *the moving party*, within five court days prior to the hearing on the motion, as required by MCR Civ 2.13H.

The Court reminds the parties that compliance with MCR Civ 2.13H not only includes the timely filing of the Declaration of Non-Resolution by each party five court days prior to the hearing, but also requires that "[t]he Declaration shall not exceed three pages and ***shall briefly summarize the remaining disputed issues and each party's contentions***." (MCR Civ 2.13H(1), emphasis added.)

The Court concludes that this discovery matter has been or is being resolved by the facilitator. The motion is therefore ordered **OFF CALENDAR**. (MCR Civ 2.13H(2).)

Parties must comply with Marin County Superior Court Local Rule 2.10(A)–(B). A party seeking oral argument must notify the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. on the court day before the hearing. Notice may be provided by telephone or in person; direct contact with counsel or the parties is not required. Absent timely notice to the Court and all parties, no oral argument will be permitted except by order. If no party properly requests oral argument, the tentative ruling becomes the order of the Court..

IT IS ORDERED Evidentiary hearings are in person in Department L. Routine appearances may be made by video using the link on the Court's website. When your case is called, turn on your camera and ensure the appearing party or lawyer is properly identified on screen.

FURTHER ORDERED Parties are responsible for maintaining a reliable connection and being available throughout the remote hearing. If a party's connection is inadequate, the Court may proceed in that party's absence. Participants determined to be driving during the hearing will be removed from the virtual courtroom. (Yes, this happens).

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 11/13/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0009805

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: DARYL ANTHONY BEULAH vs. DEFENDANT: STATE OF CA, CALIFORNIA DEPT. OF CORRECTIONS AND REHABILITATION	

NATURE OF PROCEEDINGS: 1) MOTION – LEAVE TO AMEND COMPLAINT
2) DEMURRER
3) MOTION – LEAVE SUPPLEMENTAL BRIEFING

RULING

This matter was called on October 16, 2026, and continued to November 13, 2026, after Plaintiff Darly Anthony Beulah indicated his motion for leave to amend the complaint filed on August 18, 2026, was filed as an opposition to Defendant's demurrer. Defendant California Department of Corrections filed a Demurrer on August 7, 2026, to the complaint filed Plaintiff. The notice accompanying the filing indicates that the Plaintiff was served by mail.

Plaintiff subsequently filed a motion seeking leave to amend his complaint by dismissing Defendant and substituting two currently unnamed and unserved parties. Defendant advises the court that it does not oppose Plaintiff's motion, as Plaintiff is entitled to amend his Complaint prior to a hearing on demurrer. Code Civ. Proc. section 472.

Defendant does not oppose Plaintiff's motion for leave to amend and asks for supplemental briefing on Defendant's motion for demurrer to address the amended complaint.

Plaintiff proceeds *in pro per*, and the court finds good cause to GRANT Defendant's request. The hearing on Defendant's demurrer is continued to January 8, 2026, at 1:30 pm in this department.

Parties must comply with Marin County Superior Court Local Rule 2.10(A)–(B). A party seeking oral argument must notify the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. on the court day before the hearing. Notice may be provided by telephone or in person; direct contact with counsel or the parties is not required. Absent timely notice to the

Court and all parties, no oral argument will be permitted except by order. If no party properly requests oral argument, the tentative ruling becomes the order of the Court..

IT IS ORDERED Evidentiary hearings are in person in Department L. Routine appearances may be made by video using the link on the Court's website. When your case is called, turn on your camera and ensure the appearing party or lawyer is properly identified on screen.

FURTHER ORDERED Parties are responsible for maintaining a reliable connection and being available throughout the remote hearing. If a party's connection is inadequate, the Court may proceed in that party's absence. Participants determined to be driving during the hearing will be removed from the virtual courtroom. (Yes, this happens).

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 11/13/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0010022

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

PLAINTIFF: MICHAEL BOROKHOVICH vs. DEFENDANT: VOLKSWAGEN A.G., A MULTINATIONAL CORPORATION, ET AL	

NATURE OF PROCEEDINGS: 1) MOTION – SET ASIDE/VACATE
2) MOTION - QUASH

RULING

Plaintiff Michael Borokhovich ("Plaintiff") motion for relief under Code of Civil Procedure ("CCP") § 473(b) seeks to vacate or set aside the Order granting the motion to quash, and reset the motion to quash hearing is MOOT.

Specially appearing Defendant Volkswagen AG's ("Volkswagen AG") Motion to Quash Service of Summons is GRANTED. Plaintiff's operative First Amended Complaint is DISMISSED as to Volkswagen AG.

Allegations & Procedural Background

This dispute arises out of a leased 2025 Volkswagen ID.4 ("Subject Vehicle"). On May 7, 2026, Plaintiff filed this action and filed on August 10, 2026, his operative First Amended Complaint ("FAC") alleging six (6) causes of action: 1) Violation of the Song-Beverly Act – Breach of Express Warranty; 2) Violation of the Song-Beverly Act – Breach of Implied Warranty; 3) Violation of the Song-Beverly Act – Civil Code § 1793.2(a)(3); 4) Business & Professions Code § 17200; 5) Fraud by Omission; and 6) Negligent Repair.

On July 24, 2026, the court granted specially appearing Defendant Volkswagen AG's unopposed motion to quash service of summons and complaint for lack of jurisdiction without prejudice. On August 7, 2026, the Court signed an order dismissing Volkswagen AG with prejudice, but the order was never entered. On August 12, 2026, Plaintiff appeared *ex parte* for relief under Code of Civil Procedure section 473(b) arguing he did not respond to the motion to quash due to improper service. Specifically, that the motion was sent directly to counsel's email rather than the law firm's dedicated e-mail service account and as a result the motion was not calendared for opposition. The *ex parte* was denied.

On August 21, 2026, the Court ordered Defendant to amend the August 7, 2026, order to indicate without prejudice. The Court also set the hearing on the instant motion for relief under CCP § 473(b).

Currently before the Court are two motions:

- Plaintiff's motion for relief under CCP § 473(b) seeking an order to vacate or set aside the Order granting the motion to quash and resetting the motion to quash hearing; and,
- Specially appearing Volkswagen AG's motion under CCP § 418.10 for an order quashing service of summons and dismissing the claims against it for lack of personal jurisdiction.

Discussion

I. Plaintiff's Motion for Relief under Code of Civil Procedure section 473(b)

Plaintiff seeks an order to vacate or set aside the Order granting the unopposed motion to quash and resetting the motion to quash hearing so that Plaintiff may file an opposition. As specially appearing Volkswagen AG has filed a second motion to quash, on the same grounds as the first, and Plaintiff has opposed the motion on the merits, the Court finds Plaintiff's motion to be MOOT.

II. Specially appearing Volkswagen AG's Motion to Quash

CCP § 418.10, subdivision (a) provides that a defendant may serve and file a notice of motion "[t]o quash service of summons on the ground of lack of jurisdiction of the court over him or her." Once a defendant files a motion to quash challenging jurisdiction under section 418.10, plaintiff has the burden of proof of demonstrating that sufficient minimum contacts exist between defendant and the forum state to justify imposition of personal jurisdiction. (*Mihlon v. Superior Court* (1985) 169 Cal.App.3d 703, 710.) Plaintiff must do so by a preponderance of the evidence. (*Ziller Electronics Lab GmbH v. Superior Court* (1988) 206 Cal.App.3d 1222, 1232.) Moreover, plaintiff must do so by competent evidence; unverified pleadings are insufficient (*Mihlon, supra,* 169 Cal.App.3d at 710), as are hearsay declarations (*Floveyor Int'l, Ltd. v. Superior Court* (1997) 59 Cal.App.4th 789, 796).

California has the broadest kind of "long arm" statute, allowing courts to "exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States." (Code Civ. Proc., § 410.10.) Due process allows a state court to exercise personal jurisdiction over a nonresident defendant who has "minimum contacts" with the forum state: a relationship between the nonresident and the forum state which is such that the exercise of jurisdiction does not offend "traditional notions of fair play and substantial justice." (*International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316.)

Such personal jurisdiction may be general or specific. General jurisdiction arises when a defendant maintains "continuous and systematic" contacts with the forum state even when the cause of action has no relation to those contacts. (*Helicopteros Nacionales de Colombia, S.A. v. Hall* (1984) 466 U.S. 408, 414.) In contrast, even where general jurisdiction does not exist, a

nonresident defendant may still be subject to specific jurisdiction if the controversy is related to or arises out of defendant's contacts with the forum state. (*Id.*)

There is a 3-part test to determine whether specific jurisdiction exists: (1) "defendant has purposefully availed himself or herself of forum benefits;" (2) "the controversy is related to or 'arises out of a defendant's contacts with the forum;" and (3) "[o]nce it has been decided that a defendant purposefully established minimum contacts within the forum State, these contacts may be considered in light of other factors to determine whether the assertion of personal jurisdiction would comport with 'fair play and substantial justice.'" (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 446-448 [internal citations omitted].)

Plaintiff concedes that general jurisdiction does not apply since the opposition is silent on this point. Instead, Plaintiff argues specific jurisdiction exists under a steam-of-commerce theory.

"Purposeful availment exists whenever the defendant purposefully and voluntarily directs its activities toward the forum state in an effort to obtain a benefit from that state." (*Snowney v. Harrah's Entertainment, Inc.* (2002) 35 Cal.4th 1054, 1067.) Whether the controversy "is related to or arises out of defendants' contacts with California" is satisfied if there is a substantial nexus or connection between the defendants' forum activities and the plaintiff's claim." (*Id.* at 1068.)

"When a corporation 'purposefully avails itself of the privilege of conducting activities within the forum State,' [citation], it has clear notice that it is subject to suit there, and can act to alleviate the risk of burdensome litigation by procuring insurance, passing the expected costs on to customers, or, if the risks are too great, severing its connection with the State. Hence, if the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from the efforts of the manufacturer or distributor to serve directly or indirectly, the market for its product in other States, it is not unreasonable to subject it to suit in one of those States if its allegedly defective merchandise has there been the source of injury to its owner or to others.

The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State." (*World-Wide Volkswagen Corp. v. Woods*on (1980) 444 U.S. 286, 297-298; see also *L.W. v. Audi AG* (2025) 108 Cal.App.5th 95, 108-109 [explaining the stream-of-commerce theory in a products liability personal injury case].)

"'[M]ere foreseeability that a product may enter a foreign state is insufficient to establish minimum contacts with a forum state. An inquiry into a foreign defendant's purposeful availment of the forum state's benefits must find more than merely entering a product into the stream of commerce with knowledge the product might enter the forum state.'" (*L.W., supra*, 108 Cal.App.5th at p. 112, quoting *Bombardier Recreational Products, Inc. v. Dow Chemical Canada ULC* (2013) 216 Cal.App.4th 591, 602; see also *J. Mclntyre Machinery, Ltd. v. Nicastro* (2011) 564 U.S. 873, 886 ["the stream-of-commerce metaphor cannot supersede either the mandate of the Due Process Clause or the limits on judicial authority that Clause ensures"].) However, "the United States Supreme Court has not agreed on exactly what more besides foreseeability must be shown." (*L.W., supra*, 108 Cal.App.5th at p. 112.)

Here, Plaintiff submits a declaration of counsel relying on excerpts of an uncertified deposition transcript of Volkswagen Group of America, Inc.'s ("VWGoA") person most knowledgeable in an Alameda County Superior Court case and Volkswagen AG's annual report. He argues this evidence shows Volkswagen AG admits it designs and manufactures Volkswagen vehicles and exports them to defendant VWGoA, who is the exclusive importer of Volkswagen vehicles in the United States.

Plaintiff's counsel also declares that the annual report states Volkswagen Group delivered 576,922 vehicles to customers in the U.S. during 2025 and Volkswagen Group Components, operating "under the umbrella of Volkswagen AG," employs approximately 58,000 people involved in developing and manufacturing vehicle components, and manufactures major vehicle systems. Plaintiff argues this evidence establishes Volkswagen AG placed the subject vehicle into the U.S. market, which reached a California consumer and was supported through Volkswagen's authorized California dealership network. Plaintiff contends, under these circumstances, Volkswagen AG could reasonably anticipate being hailed into a California court in an action arising from alleged defects in that vehicle.

Concerning relatedness, Plaintiff merely recites the complaint's causes of action and points out that it specifically alleges Volkswagen AG manufactured a defective vehicle and components and intentionally concealed the defects from the Plaintiff and California consumers.

Plaintiff established purposeful availment, but he has not established relatedness. Plaintiff's Song-Beverly Act causes of action relate to alleged failures arising under the warranties accompanying the Subject Vehicle at the time of acquisition (FAC, ¶¶ 66-95), and functions as a vehicle for contractual damages. (See *Kwan v. Mercedes-Benz of North America, Inc.* (1994) 23 Cal.App.4th 174, 188 [The clear mandate of section 1794…is that compensatory damages recoverable for breach of the Act are those available to a buyer for a seller's breach of a sales contract."].) Volkswagen AG's evidence establishes that it "does not issue or administer warranties to consumers for Volkswagen vehicles sold or leased in the United States." (Declaration of Benjamin Piep ("Piep Decl."), ¶ 13.) Nor does Volkswagen AG have "authority nor control over VWGoA's decisions regarding administrating warranty claims submitted by authorized Volkswagen dealers in the United States." (*Id*.) Because the evidence shows Volkswagen AG had no involvement with the warranty, there is no basis for it to foresee being sued in California over that matter. Plaintiff's remaining causes of action against Volkswagen AG concerning failure to disclose the defect in the Subject Vehicle. (See generally, FAC.) Volkswagen AG's evidence establishes that it has no control over what vehicles are sold in California and does not advertise, market, or sell vehicles in California. (Piep Decl., ¶¶ 6, 8-9.)

The stream of commerce cases Plaintiff relies upon are products liability cases that involve some sort of personal injury. (See *World-Wide Volkswagen Corp., supra*, 444 U.S. 286 [car accident resulting in injury]; *J. Mclntyre Machinery, Ltd., supra*, 564 U.S. 873 [personal injury involving metal shearing machine]; *Vons Companies, Inc., supra*, 14 Cal.4th 434 [food safety causing E. coli outbreak]; *Ford Motor Company v. Montana Eighth Judicial District Court* (2021) 592 U.S. 351, [car accident resulting in death]; *L.W., supra*, 108 Cal.App.5th 95 [personal injury caused by defective vehicle].) That is not the case here. Plaintiff does not allege personal injury caused by the alleged defects in the subject vehicle. Instead, Plaintiff only alleges economic damages.

The facts alleged in this action relate to his lease of and warranty for the Subject Vehicle, which Volkswagen AG does not issue, administer or control. (Piep Decl., ¶13.)

Since Plaintiff has failed to meet his burden, Volkswagen AG does not need to establish that exercise of jurisdiction would be unreasonable.

Accordingly, the Motion to Quash is GRANTED. Plaintiff's FAC complaint is DISMISSED without prejudice as to Specially Appearing Defendant Volkswagen AG.

Parties must comply with Marin County Superior Court Local Rule 2.10(A)–(B). A party seeking oral argument must notify the Court at (415) 444-7046 and all opposing parties by 4:00 p.m. on the court day before the hearing. Notice may be provided by telephone or in person; direct contact with counsel or the parties is not required. Absent timely notice to the Court and all parties, no oral argument will be permitted except by order. If no party properly requests oral argument, the tentative ruling becomes the order of the Court..

IT IS ORDERED Evidentiary hearings are in person in Department L. Routine appearances may be made by video using the link on the Court's website. When your case is called, turn on your camera and ensure the appearing party or lawyer is properly identified on screen.

FURTHER ORDERED Parties are responsible for maintaining a reliable connection and being available throughout the remote hearing. If a party's connection is inadequate, the Court may proceed in that party's absence. Participants determined to be driving during the hearing will be removed from the virtual courtroom. (Yes, this happens).

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 11/13/26 TIME: 1:30 P.M. DEPT: L CASE NO: CV0011595

PRESIDING: HON. MARK A. TALAMANTES

REPORTER: CLERK: M. GIL

IN THE MATTER OF: JAN MILLER	

NATURE OF PROCEEDINGS: PETITION - OTHER: CONFIRM CONTRACTUAL ARBITRATION AWARD

RULING

The Petition to Confirm the Arbitration Award is GRANTED.

BACKGROUND

This matter stems from an Arbitration governed by the Contractors State Licensing Board ("CSLB") after a dispute arose during work on petitioner Jan Miller's ("Miller") driveway and garage floor.

Claims for Arbitration:

> In July 2026, Miller submitted her CSLB complaint to arbitration alleging two issues. 1. "Poor workmanship – Cracks are still visible/discoloration," and 2. "Epoxy Spilled on driveway – will not come off." Miller sought $13,200 in damages.
>
> Respondent Carlos Muguruza, doing business as The Clever Home Metal Products ("Muguruza") responded with his own arbitration submission, countering "Dismissal of complaint as the issue has already been addressed, negotiated and agreed upon."

The Arbitration occurred on August 18, 2026 with Darren Burge acting as the Arbitrator. The Arbitration Award was made on August 27, 2026, in favor of Miller, awarding her $13,200 in damages. The Arbitrator ruled on two issues, stating "Complainant is awarded the reasonable cost to remove epoxy stain and replace concrete at Driveway" and awarding $13,200. With respect to the garage floor, the Arbitrator awarded $0, stating "Complainant's claim for cost to repair epoxy flooring in Garage is denied; a financial injury was not established as Respondent provided Complainant with a discount for this item." Thereafter, Muguruza applied to correct the

Arbitration Award. By letter dated September 22, 2026, the Arbitration Administrator notified the parties that the Arbitrator had denied the application and that the August 27, 2026, Award of $13,200 remained unchanged.

Miller then filed the initial Petition to Confirm the Award which marked the commencement of this action on October 14, 2026. Muguruza filed a counter Petition to Vacate the Award on October 23, 2026. On November 6, 2026, Muguruza filed an Amended Petition correcting his failure to sign the original Petition to Vacate.

LEGAL STANDARD

Any party to an arbitration in which an award has been made may petition to confirm, correct, or vacate it. The petition must name all parties to the arbitration as respondents. (Code Civ. Proc., § 1285.) A respondent may answer a petition to confirm with a response seeking dismissal, confirmation, correction, or vacatur. (*Valencia v. Mendoza* (2024) 103 Cal.App.5th 427, 443.) Once a petition or response is duly served and filed, section 1286 requires confirmation of the award as made unless the court corrects it, vacates it, or dismisses the proceeding. (Code Civ. Proc., § 1286.) Courts describe this as leaving the trial court only four choices. (*Soni v. SimpleLayers, Inc*. (2019) 42 Cal.App.5th 1071, 1085.) If a petition to vacate or correct fails, the court must therefore confirm the award rather than simply deny the petition. (*Panoche Energy Ctr., LLC v. Pac. Gas & Elec. Co.* (2016) 1 Cal.App.5th 68, 109-110.)

An arbitrator's decision is not generally reviewable for errors of fact or law, whether or not the error appears on the face of the award and causes substantial injustice. (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 5, 6, 10-11.) Finality is a core term of the parties' bargain, and courts do not review the arbitrator's reasoning or the sufficiency of the evidence. (*Ibid.)*

Code of Civil Procedure section 1286.2 requires vacatur if the court determines that any of six grounds exists:

- The award was procured by corruption, fraud, or other undue means.
- An arbitrator was corrupt.
- A party's rights were substantially prejudiced by a neutral arbitrator's misconduct.
- The arbitrators exceeded their powers and the award cannot be corrected without affecting the merits.
- A party's rights were substantially prejudiced by a refusal to postpone the hearing for sufficient cause, a refusal to hear material evidence, or other conduct contrary to the Act.
- The arbitrator failed to disclose within the required time a known ground for disqualification, or was subject to disqualification under section 1281.91 and failed to step aside on timely demand.

A judge may only vacate an entire arbitration award, not merely some portion of the award, even when the basis for vacating affects only one aspect of the award. (*VA-TWO, LLC v. Impact Development Group, LLC* (2020) 48 Cal.App.5th 985, 998.)

DISCUSSION

As stated above, Miller seeks to confirm the Arbitration Award. In response, Muguruza requests that the Court vacate the Award. In support his Petition to Vacate, Muguruza argues that "[t]here is a mistake of law overlooking that Ms. Miller agreed to a discounted price for the job to account for the spilled epoxy. The arbitrator ignored such evidence, and then denied me the chance to present it, evidencing clear bias and discrimination. He awarded an unreasonable $13,200 for a new driveway, which has no relation with the $300 cost to power-wash the shoe-sized Spot. This would effectively put me on a financial hardship, risking my means to provide to my family."

The question before this Court whether Muguruza met his burden of establishing a statutory ground for vacatur and prejudice. (*Royal All. Assocs., Inc. v. Liebhaber* (2016) 2 Cal.App.5th 1092, 1106.) Of his above arguments, the potential statutory grounds for vacatur that "the misconduct of a neutral arbitrator substantially prejudiced petitioner's rights" and "the arbitrator unfairly refused to postpone hearing or to hear evidence useful to settle the dispute" concern whether arbitrator prevented him from introducing evidence that the parties agreed to a discounted job price in light of the spilled epoxy.

Muguruza's Petition to Vacate does not state how or when the Arbitrator allegedly prevented him from introducing evidence. Further CSLB provisions require that before closing the hearing, the arbitrator must specifically ask the parties whether they have further proofs or witnesses. On negative replies, the arbitrator declares the hearing closed and minutes are recorded. (Bus. & Prof. Code, § 7085.5, subd. (m).) The Petition to Vacate makes no allegations that the arbitrator skipped the inquiry or that the Arbitrator inquired but refused to permit evidence after Muguruza gave an affirmative reply.

Miller's Opposition acknowledges that the Arbitrator explained the hearing procedure, namely that Miller would speak, then Muguruza would speak, and finally Miller would reply. (See Miller Decl., ¶ 4.) Miller further states that as she finished her final turn (the reply), Muguruza mentioned power washing and was reminded about the speaking order, and not permitted to continue. (*Id.*, ¶ 7.)

The speaking order is within the Arbitrator's power to control the Arbitration process, unless Muguruza was denied an equal opportunity to be heard or the arbitrator failed to make the required closing inquiry (or act on an affirmative response). (Bus. & Prof. Code, § 7085.5, subds. (i), (m).) The Petition to Vacate also fails to explain whether he attempted to introduce evidence related to the agreed upon discount during his speaking time and whether that attempt was denied by the Arbitrator. (*Bacall v. Shumway* (2021) 61 Cal.App.5th 950, 962-4 [A party who had an earlier opportunity to present a matter and did not use it was not denied opportunity to be heard].)

Muguruza's late filed Reply attempts to address some of these deficiencies. However, points raised for the first time in a reply brief will ordinarily not be considered, because such consideration would deprive the respondent of an opportunity to counter them. (See, e.g., *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537.) Here, Muguruza's failure to introduce these issues in his Petition precluded Miller from raising any arguments in opposition thereto. For this reason, the Court will not consider new evidence raised in the Reply.

Muguruza failed to meet his burden of establishing a statutory ground justifying vacatur. Accordingly, the Petition to Confirm the Arbitration Award is GRANTED.

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