TENTATIVE RULINGS

DEPT C28

Judge Thomas S. McConville

April 14, 2025 at 2:00 p.m.

Court Reporters: Official court reporters (i.e., court reporters employed by the Court) are **NOT** typically provided for law and motion matters in this department. If a party desires a record of a law and motion proceeding, it will be the party's responsibility to provide a court reporter. Parties must comply with the Court's policy on the use of privately retained court reporters which can be found at:

- Civil Court Reporter Pooling; and

- For additional information, please see the court's website at Court Reporter Interpreter Services for additional information regarding the availability of court reporters.

Tentative rulings: The court endeavors to post tentative rulings on the court's website in the morning, prior to the afternoon hearing. However, ongoing proceedings such as jury trials may prevent posting by that time. Tentative rulings may not be posted in every case. Please do not call the department for tentative rulings if tentative rulings have not been posted. The court will not entertain a request to continue a hearing or the filing of further documents once a tentative ruling has been posted.

Submitting on tentative rulings: If all counsel intend to submit on the tentative ruling and do not desire oral argument, please advise the Courtroom Clerk or Courtroom Attendant by calling (657) 622-5228. Please do not call the department unless all parties submit on the tentative ruling. If all sides submit on the tentative ruling and so advise the court, the tentative ruling shall become the court's final ruling and the prevailing party shall give notice of the ruling and prepare an order for the court's signature if appropriate under Cal. R. Ct. 3.1312.

Non-appearances: If nobody appears for the hearing and the court has not been notified that all parties submit on the tentative ruling, the court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The Court also might make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

Appearances: Department C28 conducts non-evidentiary proceedings, such as law and motion hearings, remotely by Zoom videoconference pursuant to Code of Civil Procedure section 367.75 and Orange County Local Rule 375. Any party or attorney, however, may appear in person by coming to Department C28 at the Central Justice Center, located at 700 Civic Center Drive West in Santa Ana, California. All counsel and self-represented parties appearing in-person must check in with the courtroom clerk or courtroom attendant before the designated hearing time.

All counsel and self-represented parties appearing remotely must check-in online through the court's civil video appearance website at **https://www.occourts.org/media-relations/civil.html** before the designated hearing time. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Participants will initially be directed to a virtual waiting room pending the start of their specific video hearing. Check-in instructions and instructional video are available at **https://www.occourts.org/media-relations/aci.html**. The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" and "Guidelines for Remote Appearances" also are available at **https://www.occourts.org/media-relations/aci.html**. Those procedures and guidelines will be strictly enforced.

Public Access: The courtroom remains open for all evidentiary and non-evidentiary proceedings. Members of the media or public may obtain access to law and motion hearings in this department by either coming to the department at the designated hearing time or contacting the courtroom clerk at (657) 622-5228 to obtain login information. For remote appearances by the media or public, please contact the courtroom clerk 24 hours in advance so as not to interrupt the hearings.

Arguments: The court will allow arguments on the pending motions up to 10 minutes per side, but those arguments must not repeat arguments previously made in each parties' applicable briefs.

No filming, broadcasting, photography, or electronic recording is permitted of the video session pursuant to California Rules of Court, rule 1.150 and Orange County Superior Court rule 180.

#	Case Name	Tentative
50.	Hacker v. Crestavilla TRS, LLC 2024-01409932	Defendants, CRESTAVILLA TRS, LLC and KSL CRESTAVILLA MANAGER, LLC's petition to compel arbitration and stay action is DENIED. A party moving to compel contractual arbitration bears the burden of proving the existence of a valid arbitration agreement by a preponderance of the evidence. *Garcia v. Stoneledge Furniture LLC* (2024) 102 Cal.App.5th 41. This can be met by presenting prima facie evidence of a written agreement to arbitrate the controversy. *Gamboa v. Northeast Community Clinic* (2021) 72 Cal.App.5th 15. The arbitration clause at issue is part of the Resident Agreement. (Decl. of Ajello ¶ 2.) The language of the arbitration clause states: Therefore, by signing below, and in consideration of the parties' mutual agreement to arbitrate, the parties agree that if informal resolution is not possible, any and all claims or disputes arising from or related to this Agreement or to your rights, obligations, care, or services at the Community shall be resolved by submission to neutral, binding arbitration in accordance with the Federal Arbitration Act. This agreement to arbitrate applies regardless of whether the claim is made against us, you, or any other individual or entity, and it includes, without limitation, personal injury and wrongful death claims. If the Federal Arbitration Act does not permit arbitration in accordance with this Arbitration Clause, then the matter shall be arbitrated in accordance with State law. (Exhibit A to Decl. of Ajello.) The Resident Agreement also states it is governed by California Law. (Id.) Defendants argue that the Federal Arbitration Act (FAA) controls, which requires the court to compel arbitration and stay this action. Defendants support their argument by asserting that plaintiff Laurie Luschei's individual claims must be arbitrated as Luschei signed the arbitration clause, and the language of the arbitration clause includes such claims. Defendants are mistaken on all counts.

		First, Luschei's signature on the arbitration clause was in her capacity as a representative of plaintiff Sheila Hacker. Defendants present no evidence that Luschei signed in her individual capacity. As such, as a stranger to the arbitration clause, Luschei cannot be compelled to arbitrate. *Maxwell v. Atria Management Co., LLC* (2024) 105 Cal. App. 5th 230, 245. Luschei's wrongful death claim is personal and lies independent of the survivor claims Luschei pursues on behalf of Hacker. Further, the arbitration clause compels the *parties* to the agreement to arbitrate. Luschei is not a party to the agreement. In a situation like this, when a case involves claims by a party that is not bound by the arbitration clause, the court looks to C.C.P § 1281.2(c) to determine how to proceed. *Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal. 4th 376. In other words, the FAA doesn't preempt the procedural requirements found in California law when the arbitration clause is worded like the clause in this case. *Id.* at 393; *Maxwell* 105 Cal. App. 5th at 248-249. Pursuant to C.C.P. 1281.2(c), the court has discretion to refuse to enforce an arbitration agreement if a party to the arbitration agreement is also a party to a pending court action with a third party arising out of the same transaction or series of related transactions, and there is a possibility of conflicting rulings on a common issue of law or fact. Here, all the allegations in the complaint center around the care and treatment of plaintiff Hacker. The court finds that there is a possibility of conflicting rulings if Luschei's claim for wrongful death were to proceed separately from the remaining claims. *Maxwell* at 247-248; *Daniels v. Sunrise Senior Living, Inc.* (2013) 212 Cal. App 4th 674, 686 ("Indeed, if the survivor claims are ordered to arbitration but Daniel's wrongful death claim was not, there is a possibility of inconsistent rulings on the claims given that they are [] based on the allegation that Barcenas received inadequate care at Sunrise.") Based on the above, the court exercises its discretion and refuses to enforce the arbitration agreement. Defendants petition to compel arbitration is denied. The court continues the case management conference to July 21, 2025 at 9:00 a.m. in Department C28.

		Defendants shall give notice.
51.	Ameris Bank v. Solid Post Holdings, LLC 2024-01420372	Defendant Michael De Paola's motion for leave to file cross-complaint and first amended answer is GRANTED. (Code Civ. Proc. ["CCP"], §§ 426.30, subd. (a); 426.50; 428.10, subd. (b); 428.50, subd. (b); 473, subd. (a)(1).) **1. Cross-Complaint** Defendant De Paola's cross-complaint as against Plaintiff Ameris Bank dba Balboa Capital is compulsory because it arises out of the same transaction or occurrence as Plaintiff's claims. (CCP §§ 426.10, subd. (c); 426.30, subd. (a).) Although Defendant De Paola did not file the cross-complaint at the time he filed his answer to Plaintiff's complaint, it is appropriate to grant leave to file now given that notice has been provided to Plaintiff, and Defendant De Paola did not act in bad faith. (CCP § 426.50.) Plaintiff does not dispute this. Instead, Plaintiff argues that one of two causes of action in Defendant De Paola's cross-complaint is legally insufficient. That is not the relevant test under CCP section 426.50. Defendant De Paola's cross-complaint as against Defendant Solid Post Holdings, LLC and third party Russell Luke Stefanko is permissive because it also arises out of the same transaction or occurrence as Plaintiff's claims and involves a claim in the same controversy or subject as Plaintiff's claims. (CCP § 428.10, subd. (b).) A permissive cross-complaint may be filed at any time before the court has set a date for trial. (CCP § 428.50(b).) Here, no trial date has been set yet. Plaintiff's opposition does not address this permissive cross-complaint. **2. First Amended Answer** As for Defendant De Paola's motion for leave to file his proposed first amended answer, denial would be highly prejudicial as it would deprive Defendant De Paola the opportunity to assert relevant defenses to Plaintiff's claims. (*Hulsey v. Koehler* (1990) 218 Cal.App.3d 1150, 1159; *Morgan v. Super. Ct.* (1959) 172 Cal.App.2d 527, 530.) In contrast, there is no prejudice to Plaintiff as this case has not yet been set for trial, and the parties have ample time to take discovery regarding the new defenses added by the first amended answer. (*Hulsey* 218 Cal.App.3d at 1159; see also *Magpali v. Farmers Group, Inc.* (1996)

		48 Cal.App.4th 471, 488.) Plaintiff's opposition also does not address the first amended answer. Defendant De Paola is ORDERED to separately file the cross-complaint with the court within three days and serve all parties in accordance with CCP section 428.60. The cross-complaint must be filed as a separate document to ensure it is properly indexed in the record. Defendant De Paola is also ORDERED to separately file the first amended answer with the court within three days and serve all parties in this case within 30 days. The first amended answer must be filed as a separate document to ensure it is properly indexed in the record. The court vacates the trial date of February 9, 2026. The court continues the case management conference to June 30, 2025 at 9:00 a.m. in Department C28. Moving party shall give notice.
52.	Daichendt v. Aviation Consultants, Inc. 2023-01306989	Defendant Aviation Consultants, Inc.'s Motion to Bifurcate is GRANTED. (Code Civ. Proc. §1048, subd. (b).) Moving Party has shown that a separate trial of Plaintiff's fifth, sixth, and seventh causes of action for declaratory relief would "be conducive to expedition and economy." (See, e.g. ROA No. 467 ("Klein Decl.") at ¶¶ 7-12; ROA No. 471 ("Borgsmiller Decl.") at ¶¶ 1-5.) Namely, the issue of which version of the ACIOC operating agreement governs the dispute and how the provisions of the operative operating agreement should be interpreted with respect to the alleged change of control in Defendant Aviation Consultants, Inc. will obviate the need for an extended trial of many issues in Plaintiff's remaining causes of action. Thus, Moving Defendant's request for a separate trial of the declaratory relief causes of action promotes "expedition and economy" and is therefore warranted under Code Civ. Proc. §1048, subd. (b). The parties shall meet and confer regarding a proposed trial date for the bifurcated causes of action prior to the case management conference. Moving Party shall give notice.
53.	Gregory v. Moore	The motion for judgment on the pleadings ("MJOP") against Plaintiffs' third cause of action for products

	2024-01395517	liability, brought by Defendants Betty Moore, individually and as Trustee of the Betty Hunter Moore Trust, and Betty Hunter Moore Trust, dba Long Beach Investments, erroneously sued and served herein as Long Beach Investments, LLC, a California Limited Liability Company, is GRANTED as to Plaintiffs' breach of implied warranty claim and breach of express warranty claim (all found within Count Three—Breach of Warranty of Plaintiffs' third cause of action), but is otherwise DENIED. Plaintiffs Diana Gregory and Danielle Vasquez shall have 10 days leave to file a first amended complaint. Count One—Strict Liability. Defendants contend that Plaintiffs have not pled sufficient facts to support a cause of action for strict products liability against Defendants as a landlord, citing *Peterson v. Superior Court* (1995) 10 Cal.4th 1185. But here, Plaintiffs checked the relevant box in paragraph Prod. L-4 on Judicial Council form PLD-PI-001(5) to allege that Defendants "manufactured or assembled the product." This is not a "contradictory" allegation by Plaintiffs as Defendants could in theory be both a landlord and a manufacturer. On an MJOP, the court must accept as true the factual allegations of the complaint "however odd or improbable" they may be. (*Thomas v. Regents of University of Cal.* (2023) 97 Cal.App.5th 587, 611.) An MJOP "must be denied where there are material factual issues that require evidentiary resolution." (*Southern Cal. Edison Co. v. City of Victorville* (2013) 217 Cal.App.4th 218, 227.) Count Two—Negligence. Defendants' briefs do not contend that this count of the third cause of action fails. Count Three—Breach of Warranty. Although Judicial Council form PLD-PL-001(5) combines into a single "[c]ount" claims for breach of implied warranty and express warranty, these are separate claims governed by different sections of the Commercial Code (i.e., sections 2313, 2314, and 2315) with different elements that must be alleged and proved. Accordingly, the court treats Plaintiffs' claims for breach of implied and express warranties as separate causes of action for purposes of deciding this motion. (*Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 262 [courts "are not limited by the labels and structure used in the pleading"].)

		Implied Warranty Claim There are two types of implied warranties: merchantability and fitness. Both require that Plaintiffs be purchasers of the product. (See CACI 1231, 1232; see also Comm. Code §§ 2314, 2315.) Plaintiffs specifically did not check the box on form PLD-PI-001(5) to allege that they are "purchasers of the product" in paragraph Prod. L-3. Thus, Plaintiffs have not alleged facts sufficient to support either type of implied warranty claim. Express Warranty Claim The elements for breach of an express warranty are (1) defendant made a statement of fact or promise to plaintiff about a product, or gave plaintiff a description of the product, or gave plaintiff a sample or model of the product; (2) the product did not perform as stated or promised, or did not meet the quality of the description, sample, or model; (3) plaintiff took reasonable steps to notify defendant within a reasonable time that the product was not as represented; (4) defendant failed to repair the product as required by the warranty; (5) plaintiff was harmed; and (6) the failure of the product to be as represented was a substantial factor in causing plaintiff's harm. (CACI 1230; see also Comm. Code, § 2313.) "In order to plead a cause of action for breach of express warranty, one must allege the exact terms of the warranty . . . ." (*Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 142.) Here, Plaintiffs did not allege "the exact terms of the warranty." Although Plaintiffs used Judicial Council form PLD-PI-001(5) to allege this cause of action, Judicial Council form complaints are not "invulnerable" to a demurrer or motion for judgment on the pleadings. (See *People ex rel. Dept. of Transportation v. Superior Court* (1992) 5 Cal.App.4th 1480, 1482.) "In some cases, merely checking a box on a Judicial Council form complaint will be sufficient. In other cases, such as this one, where specific allegations need be alleged, the form complaint is like a partially completed painting. It is up to the pleader to add the details that complete the picture. The form complaint here, standing alone, is no more immune to demurrer than any other complaint that fails to meet essential

		pleading requirements to state a cause of action." (*Id.* at p. 1486.) Defendants shall give notice.
54.	Geng v. Che 2020-01161695	Defendant Shandong Oriental Ocean Group Co. Ltd.'s demurrer to the Third Amended Complaint [TAC] is SUSTAINED in part, with leave to amend, and OVERRULED in part. (Code Civ. Proc., § 340.10, subds. (d), (e), (f).) First, the TAC is not so uncertain that defendant cannot reasonably determine what issues must be admitted or denied, or what counts or claims are directed against him or her. (Code Civ. Proc., § 430.10, subd. (f); *Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616.) Also, moving party has not requested judicial notice of any prior pleadings in connection with its "sham" pleading argument. (*Owens v. Kings Supermarket* (1988) 198 Cal.App.3d 379, 384.) Even if it had, the TAC is not a "sham" as defendant does not assert a challenge to Geng's claim. 1st cause of action: breach of contract. The demurrer to this cause of action is SUSTAINED, with leave to amend, as to plaintiff David Hsiu, and OVERRULED as to plaintiff Xuan Geng. This cause of action fails to state sufficient facts as to plaintiff David Hsiu. (Code Civ. Proc., § 340.10, subd. (e); see also *Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821 [elements].) While the body of the TAC alleges he was a party to the written loan agreement, this is contradicted by the loan agreement attached as Ex. 1 to the TAC, showing that plaintiff Xuan Geng and moving party are the only parties to the written contract. (*Holland v. Morse Diesel Intern., Inc.* (2001) 86 Cal.App.4th 1443, 1447 ["If facts appearing in the exhibits contradict those alleged, the facts in the exhibits take precedence"].) The TAC does not allege any other facts showing how David Hsiu is a party to the agreement, or overcoming the contrary facts shown in Ex. 1 to the TAC. The remainder of the demurrer to this cause of action is OVERRULED. No defect or misjoinder of parties is apparent from the face of the TAC. (Code Civ. Proc., § 430.10, subd. (d).) While this cause of action currently fails to state sufficient facts as to plaintiff

		David Hsiu, he may still be a proper plaintiff, as one who could assert rights and/or claim interests in the same transaction and/or controversy which is the subject of the action. (Code Civ. Proc., § 378, subd. (a).) Conversely, no such interest is claimed by plaintiffs' son (*Id*.), or former defendant Chamroen Chetty (Code Civ. Proc., § 379, subd. (a).) 2nd C/A: common count – open book account; 3rd cause of action: common count – account stated; 4th cause of action: common count – for money lent, had and received. The demurrer to these causes of action is SUSTAINED, with leave to amend, on grounds of failure to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 340.10, subd. (e).) Quasi-contract claims, such as the common counts alleged here, fail in the face of an express contract governing the same subject matter. (*Eloquence Corporation v. Home Consignment Center* (2020) 49 Cal.App.5th 655, 665 ["moneys due under an express contract cannot be recovered in an action on an 'open book account' in the absence of a contrary agreement between the parties;" internal citations omitted]; *Moore v. Bartholomae Corp.* (1945) 69 Cal.App.2d 474, 477 ["The law is established in California that a debt which is predicated upon the breach of the terms of an express contract cannot be the basis of an account stated"]; *Jalali v. Root* (2003) 109 Cal.App.4th 1768, 1783 ["'quasi-contract' claim for money had and received fails when considered under classic contract doctrine … '[u]ntil an express contract is avoided,' there cannot be an implied contract, which is 'essential to an action on a common count;'" internal citations omitted].) Plaintiffs have not alleged facts showing that these common counts are alleged in the alternative to their breach of contract cause of action. (See *Klein v. Chevron U.S.A., Inc.* (2012) 202 Cal.App.4th 1342, 1389-1390 ["Although a plaintiff may plead inconsistent claims that allege both the existence of an enforceable agreement and the absence of an enforceable agreement, that is not what occurred here … plaintiffs' breach of contract claim pleaded the existence of an enforceable agreement and their unjust enrichment claim did not deny the existence or enforceability of that agreement"].)

		Plaintiffs are granted 15 days leave to file an amended complaint. Moving party shall give notice.
55.	SAN22, LLC v. Ghassemieh 2023-01342781	Defendant Majid Ghassemieh's motion to set aside default and default judgment is DENIED. Majid Ghassemieh (hereinafter, Majid) has brought this motion on his own behalf and also on behalf of the Estate of Shelli Ghassemieh. First, to the extent Majid has brought this motion on behalf of the Estate of Shelli Ghassemieh—it is denied as Majid is a self-represented litigant. "[A] conservator, executor, or personal representative of a decedent's estate who is unlicensed to practice law cannot appear in propria persona on behalf of the estate in matters outside the probate proceedings." (*Hansen v. Hansen* (2003) 114 Cal.App.4th 618, 619, 621.) Next, even if the court were to consider the merits of the claim on behalf of the Estate of Shelli Ghassemieh, the motion (and that of Majid) is also denied as untimely. Majid has brought motion under the discretionary provision of Code of Civil Procedure section 473, subdivision (b) (section 473(b)). (See Mtn. P&As at p. 5; M. Ghassemieh Decl., in passim.) A motion for relief under the discretionary relief provision of section 473(b) must be made "within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken." (Code Civ. Proc., § 473, subd. (b).) Because the default and default judgment are separate procedures, a party must seek discretionary relief within six months of *each* of these procedures—i.e., if a party wants to set aside its *default*, the motion must be brought within six months of the entry of default. If the party only wants to set aside the default *judgment* (e.g., because it exceeds the amount demanded in the complaint), the motion need only be filed within six months of the entry of judgment. This six-month time limitation is jurisdictional; the court has no power to grant relief under section 473 once the time has lapsed. (*Austin v. Los Angeles Unified School Dist*. (2016) 244 Cal.App.4th 918, 928 (*Austin*).)

		Thus, where a motion under the discretionary relief provision is filed less than six months after entry of the default judgment, but more than six months after entry of its default—the court must deny the motion because it cannot set aside the default and allow the defendant to answer. And "because it [can]not set aside the default, it also [can]not set aside the default judgment ... because that would be 'an idle act.' " (*Pulte Homes Corp. v. Williams Mechanical, Inc.* (2016) 2 Cal.App.5th 267, 273 (*Pulte Homes*).) " ' "... If the judgment were vacated, it would be the duty of the court immediately to render another judgment of like effect, and the defendants, still being in default, could not be heard in opposition thereto. ..." ' [Citations.]" (*Ibid*.) Here, Majid filed this motion on 9/13/24, less than six months after the entry of default judgment on 5/14/24, but more than six months after the entry of the defendants' defaults on 11/3/23 and 11/9/23. (ROA Nos. 14, 16.) The motion is therefore untimely and must be denied. (See Code Civ. Proc., § 473, subd. (b); *Austin, supra,* 244 Cal.App.4th at p. 928; *Pulte Homes, supra,* 2 Cal.App.5th at p. 273.) The court declines to rule on plaintiff's evidentiary objections as they are not material to the determination of this motion. Plaintiff shall give notice.
56.	Martinez v. Ford Motor Company 2023-01365862	Defendant Ford Motor Company's demurrer to the First Amended Complaint of Plaintiff David Martinez is SUSTAINED. (Code Civ. Proc. §430.10, subd. (e).) Plaintiffs shall have 21 days to file a Second Amended Complaint. **<u>Sixth Cause of Action (Fraudulent Concealment)</u>** To plead a cause of action for fraudulent concealment, the plaintiff must allege facts demonstrating, "(1) concealment or suppression of a material fact; (2) by a defendant with a duty to disclose the fact to the plaintiff; (3) the defendant intended to defraud the plaintiff by intentionally concealing or suppressing the fact; (4) the plaintiff was unaware of the fact and would not have acted as he or she did if he or she had known of the concealed or suppressed fact; and (5) plaintiff sustained damage as a result of the concealment or suppression of the fact. [Citation.]"

		(*Hambrick v. Healthcare Partners Med. Grp., Inc.* (2015) 238 Cal.App.4th 124, 162.) "There are four circumstances in which nondisclosure or concealment may constitute actionable fraud: (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations but also suppresses some material facts." (*LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 336 (cleaned up).) With respect to a relationship imposing a duty to disclose, Plaintiff does not adequately allege the existence of a transactional relationship. (See *Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1, 40.) In *Rattagan*, the court ruled a duty to disclose arises in 5 circumstances: "(1) it is imposed by statute; (2) the defendant is acting as plaintiff's fiduciary or is in some other confidential relationship with plaintiff that imposes a disclosure duty under the circumstances; (3) the material facts are known or accessible only to defendant, and defendant knows those facts are not known or reasonably discoverable by plaintiff (i.e., exclusive knowledge); (4) the defendant makes representations but fails to disclose other facts that materially qualify the facts disclosed or render the disclosure misleading (i.e., partial concealment); or (5) defendant actively conceals discovery of material fact from plaintiff (i.e., active concealment)." (*Ibid.*) "Circumstances (3), (4), and (5) presuppose a preexisting relationship between the parties, such as 'between seller and buyer, employer and prospective employee, doctor and patient, or parties entering into any kind of contractual agreement. [Citation.] All of these relationships are created by transactions between parties from which a duty to disclose facts material to the transaction arises under certain circumstances.' [Citation.] 'Such a transaction must necessarily arise from direct dealings between the plaintiff and the defendant; it cannot arise between the defendant and the public at large.' [Citation.]" (*Ibid*.)

		Plaintiff argues that the Complaint alleges similar fraud allegations as those found sufficient in *Dhital v. Nissan North America, Inc.* (2022) 84 Cal. App. 5th 828. However, the court in *Dhital*, relied upon the allegations that the plaintiffs "bought the car from a Nissan dealership, that Nissan backed the car with an express warranty, and that Nissan's authorized dealerships are its agents for purposes of the sale of Nissan vehicles to consumers." (*Dhital, supra*, 84 Cal.App.5th 828, 844.).) Plaintiffs do not make allegations that the dealership they purchased the Subject Vehicle from is an agent of Defendant for purpose of sale of the Subject Vehicle to consumers. The allegation of an agency relationship between the dealership and manufacturer was a dispositive factor in overruling the demurrer in *Dhital*. Since no such allegation is present here, no transactional relationship is alleged, and therefore the FAC does not adequately a cause of action for fraud by concealment. **Leave to Amend** The Court notes that Plaintiff has already been granted leave to amend the complaint to remedy these same defects. However, there is still a reasonable possibility that another opportunity to amend the complaint could result in a viable cause of action. Additionally, since demurrer has been sustained because of a lack of detail in the pleading, leave to amend is warranted. (See *City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 747.) Defendant shall give notice.
57.	Said v. Kia America, Inc. 2024-01402528	Plaintiff Mark A. Said's motion to compel further responses to his first set of requests for production is DENIED. Plaintiff has failed to properly notice the motion "within 45 days of the service of the verified response … or on or before any specific later date to which the demanding party and the responding party have agreed in writing" (Code Civ. Proc., § 2031.310, subd. (c)), and has further failed to demonstrate good cause for the discovery sought by the subject demands. (*Id.*, § 2031.310, subd. (b)(1).)

		Specifically, plaintiff and defendant Kia America, Inc. agreed in writing to extend the 45-day deadline for this motion to 11/12/24. (Dayal Decl. at Ex. C [10/28/24 emails between Jordan Pratty and Munish Dayal, "confirming that [plaintiff] ha[s] until November 12, 2024 as an extension of time to file a motion to compel"].) Plaintiff, however, served and filed only an incomplete set of moving papers by 11/12/24. (See ROA Nos. 17, 23.) Plaintiff's notice of motion and moving papers expressly rely in part on a "Separate Statement filed herewith," but the motion was not accompanied by a separate statement at the time it was served and filed on 11/12/24. (Ntc. of Mtn., p. 2; see Mtn. P&As at pp. 5-6 ["As set forth in the accompanying Separate Statement, Defendant's responses to Requests for Production are in violation of Code of Civil Procedure § 2031.210, and 2031.280(a)"]; see also ROA No. 21 [separate statement, attached proof of service].) Instead, plaintiff did not serve his separate statement in support of this motion until 11/14/24 at 8:00 p.m., two days after the deadline to bring the motion had passed. (ROA No. 21.) Serving a motion to compel further responses to discovery "without the supporting papers identified therein render[s] the motion untimely." (*Weinstein v. Blumberg* (2018) 25 Cal.App.5th 316, 321.) When a discovery motion is untimely a showing of "[p]rejudice is not required; discovery deadlines are mandatory and we have treated them as jurisdictional...." (*Weinstein v. Blumberg, supra,* 25 Cal.App.5th at p. 322, fn. 3; see *Vidal Sassoon, Inc. v. Sup. Ct. (Halpern)* (1983) 147 Cal.App.3d 681, 685 [the court acts in excess of jurisdiction by considering an untimely motion to compel further response].) Furthermore, even if the motion was timely, plaintiff has also failed to set forth specific facts showing good cause justifying the discovery sought by the subject requests. (See Code Civ. Proc., § 2031.310, subd. (b)(1); *Glenfed Develop. Corp. v. Superior Court*

		(1997) 53 Cal.App.4th 1113, 1117 [good cause]; *Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, 224 [good cause must be supported by factual evidence by way of declarations setting forth specific facts justifying each category of materials sought to be produced; arguments made in the moving papers or in a separate statement are insufficient to satisfy this requirement]; see also Dayal Decl., in passim.) Moving party shall give notice.
58.		
59.	Reclaimed Woods of the World, Inc. v. Sunset Moulding Co. 2024-01410496	Plaintiff Reclaimed Woods of the World, Inc.'s motion for trial preference is GRANTED. (Code Civ. Proc., § 36, subd. (a); Flynn Decl., ¶¶ 1-5, 7, 8, 11.) Trial in this matter is set for August 4, 2025 at 9:30 a.m. in Department C28. The parties are ORDERED to comply with the court's standing order regarding trials, as well as Local Rule 317. Moving party shall give notice.
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