TENTATIVE RULINGS
LAW & MOTION CALENDAR
Wednesday, May 8, 2024, 3:00 p.m.
Courtroom 16 –Hon. Patrick M. Broderick
3035 Cleveland Avenue, Suite 200, Santa Rosa

TO JOIN "ZOOM" ONLINE,
Courtroom 16
Meeting ID: 161-460-6380
Passcode: 840359
https://sonomacourt-org.zoomgov.com/j/1614606380?pwd=NUdpOEZ0RGxnVjBzNnN6dHZ6c0ZQZz09

TO JOIN "ZOOM" BY PHONE,
By Phone (same meeting ID and password as listed above):
(669) 254-5252 US (San Jose)

The following tentative rulings will become the ruling of the Court unless a party desires to be heard. If you desire to appear and present oral argument as to any motion, YOU MUST notify the Court by telephone at **(707) 521-6729**, and all other opposing parties of your intent to appear by 4:00 p.m. the court day immediately before the day of the hearing.
Parties in motions for claims of exemption are exempt from this requirement.

PLEASE NOTE: The Court WILL NOT provide a court reporter for this calendar. If there are any concerns, please contact the Court at the number provided above.

1. **23CV0037, Keller v Catholic Charities of the Diocese of Santa Rosa**

This matter is on calendar for the motion of Defendant Catholic Charities of the Diocese of Santa Rosa ("Defendant") for an order to stay further proceedings pursuant to this court's exclusive concurrent jurisdiction and the judicial doctrine of comity pending final judgment in related and previously-filed action pending in this court: *Rangal v. Catholic Charities of the Diocese of Santa Rosa*, case no. SCV-273876 ("Rangal 1") and *Rangal v. Catholic Charities of the Diocese of Santa Rosa*, case no. 23CV00786 ("Rangal 2"). **The motion is DENIED.**

1. Rule of Concurrent Exclusive Jurisdiction

The rule of concurrent exclusive jurisdiction provides that when two superior courts have concurrent jurisdiction over the subject matter and all parties involved in litigation, the first to assume jurisdiction has exclusive and continuing jurisdiction over the subject matter and all parties involved until such time as all necessarily related matters have been resolved. (*People ex rel. Garamendi v. American Autoplan, Inc.* (1993) 20 Cal.App.4th 760, 769-770.) The rule is based upon the public policies of avoiding conflicts that might arise between courts if they were free to make contradictory decisions or awards relating to the same controversy, and by preventing vexatious litigation and multiplicity of suits. (*Id.*, at 770.) Priority of jurisdiction resides in the tribunal where process is first served. (*Ibid*.)

The rule of exclusive concurrent jurisdiction is similar to the common law plea in abatement now codified at Code of Civil Procedure section 430.10, subdivision (c). (*Ibid*.) Under the statutory plea in abatement, "[t]he pendency of another earlier action growing out of the same transaction and between the same parties is a ground for abatement of the second action." (*Ibid*.) statutory plea in abatement requires that the prior pending action be "between the same parties on the same cause of action." (*Ibid*.)

Unlike the statutory plea in abatement, the rule of exclusive concurrent jurisdiction does not require absolute identity of parties, causes of action or remedies sought in the initial and subsequent actions. (*Ibid*.) If the court exercising original jurisdiction has the power to bring before it all the necessary parties, the fact that the parties in the second action are not identical does not preclude application of the rule. (*Ibid*.) Moreover, the remedies sought in the separate actions need not be precisely the same so long as the court exercising original jurisdiction has the power to litigate all the issues and grant all the relief to which any of the parties might be entitled under the pleadings. (*Ibid*.)

Where abatement is required, the second action should be stayed, not dismissed. (*Id.* at 771.) Mandatory actions of the trial court should be raised by demurrer or answer; discretionary actions should be raised by appropriate motion. (*Ibid*.) Abatement is required only where multiple actions are pending in courts of the same state. (*Simmons v. Superior Court* (1950) 96 Cal.App.2d 119, 123.) Here, Rangal 1 and Rangal 2 are in the same court as this action. Therefore, the rule of concurrent exclusive jurisdiction is inapplicable.

2. Doctrine of Comity

The principle of comity exists between courts in different states or state and federal courts. (See *Simmons v. Superior Court in and for Los Angeles County* (1950) 96 Cal.App.2d 119, 124.) Where the actions are pending in courts of different states, the determination whether to stay the later-filed action is discretionary, not mandatory, and should be raised by motion, not demurrer. (*Ibid*.) Here, the doctrine of comity does not apply as the actions are not pending in different states.

3. Conclusion and Order

The motion is DENIED.

Plaintiffs' counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

2. <u>23CV01923, Destein v Jackson Family Wines, Inc</u>

This matter is on calendar for the demurrer of Defendant Jackson Family Waines, Inc. f.k.a. Kendall-Jackson Wine Estates, Ltd., f.k.a. Kendall-Jackson Winery, Ltd. ("Tenant" or "Defendant") to the First Amended Complaint ("FAC") filed by Plaintiffs Joseph A. Destein ("Destein"), the Joseph Destein Family Trust ("Trust"), and Burdell Management Limited ("Burdell") (all together "Landlord"). **The demurrer is OVERRULED.**

In their FAC, Plaintiffs allege that Destein is part owner of real property located at 6500 Jamison Road in Santa Rosa consisting of 32.75 acres of property ("the Property"). Burdell owns a 6.5% tenant in common interest in the Property. Plaintiffs allege that on September 28, 1993, Tenant entered into a lease agreement for approximately 100 acres of land, including the Property ("the Lease"). Tenant originally entered into the Lease with Ronald Wollmer and Pamela Margaret Wollmer, Trustees of the Ronald Wollmer and Pamela Wollmer Family Trust. On or about October 6, 1998, Destein became the successor in interest to the Wollmers as to the Property. On March 8, 2002, Destein and Tenant executed Amendment No. 1 to Vineyard Land Lease ("Amended Lease"). The Amended Lease provided the annual rental payment would be $300 per acre, that Tenant would provide one ton of fruit to Destein in addition to a grower's discount on the wine contained in the Lease. The Amended Lease also provided that at its termination, Destein would assume ownership of all mature vines and the trellis system. Landlord alleges that, despite the provisions in the Amended Lease and without seeking approval, Tenant removed the vines and trellis system. Landlord alleges causes of action for breach of contract and damages for waste.

1. UD Complaint

Defendant argues that this action is barred as a result of Landlord's unlawful detainer action that was dismissed with prejudice. An unlawful detainer action is the allegation that a landlord has the right to regain possession of real property. There are no unlawful detainer allegations in the instant action; Landlord in this action alleges the right to damages as a result of Defendant's alleged breach of contract. Therefore, the two actions do not contain the "same claim" or "same injury" and the dismissal of the UD action does not bar this action.

2. "Reversionary Interest"

Defendant argues that Landlord's claim for a "reversionary interest" fails to state a claim. Defendant's argument is misplaced. Landlord's FAC alleges that Defendant required Landlord's permission prior to making or removing improvements on the Subject Property.

Paragraph 8(a) of the original lease states, in part: "At any time and from time to time during the Term, subject to Landlord's prior written consent, which consent shall not be unreasonably withheld, Tenant may, at Tenant's expense, drill wells, erect fences, and construct or otherwise make improvements on the Leased Property and alter, reconstruct, or add to the improvements in whole or in party, provided that Tenant shall first obtain all governmental permits and authorizations required for such work."

Landlord alleges that Defendant, without Landlord's permission, removed some of the trellis system and other associated improvements. Pursuant to the amendment to the original lease, upon leaving the Subject Property, Tenant would leave any mature vines of 5-years or older and the trellis system. Therefore, the FAC alleges Defendant is presently in breach and default of the parties' agreement to obtain Landlord's written consent prior to adding or removing improvements and damages therefrom—not that it is merely entitled to a reversionary interest.

3. Waiver

Defendant argues that its liability is barred by a broad waiver in the subject lease, citing paragraph 2, which states in part: "…Landlord waives, for itself and its successors and assigns, any claim against Tenant regarding any agricultural and viticultural activities and any conduct incidental

or necessary thereto…." However, Defendant then argues that removal of improvements did not breach the lease agreement because it was only required to obtain Landlord's consent for the alteration of improvements that required Landlord's signature on government permits. The plain language of paragraph 8 does not support Defendant's argument.

4. Acceptance of rent

Defendant next argues that Landlord's acceptance of rent from Tenant in 2021 through 2023 waives Landlord's claims for breach or forfeiture of the lease. The cases cited by Defendant involve breach of the obligation to pay rent; therefore, the acceptance of rent waived the landlord's right to assert a forfeiture. (See e.g., *EDC Associates Ltd v. Gutierrez* (1984) 153 Cal.App.3d 167.)

5. Waste

Defendant argues that the lease fails to impose repair, maintenance, or remedial duties supporting a claim for waste. It argues that in the absence of any reversionary interest in Tenant's improvements, Landlord cannot establish a claim for waste.

"[W]aste is conduct (including in this word both acts of commission and of omission) on the part of the person in possession of land which is actionable at the behest of, and for the protection of the reasonable expectations of, another owner of an interest in the same land.... Thus, waste is, functionally, a part of the law which keeps in balance the conflicting desires of persons having interests in the same land." (A*valon Pacific-Santa Ana, L.P. v. HD Supply Repair & Remodel, LLC* (2011) 192 Cal.App.4th 1183, 1211.) In order to state a cause of action for waste, a plaintiff must plead and prove that the defendant was under a duty to preserve and protect the property involved. (*Ibid*.)

Defendant in *Avalon* did not allege waste as a matter of law because the lease in that case gave the defendant the right to make the proposed renovations. The subject lease requires Landlord's approval prior to altering improvements with less than five years remaining on the lease. It is Landlord's position that the vines and trellis system that was allegedly removed would have been subject to Landlord's reversionary interest. Defendant has not established that the subject FAC facts fail as a matter of law to allege a cause of action for waste.

6. Conclusion and Order

Defendant's demurrer is OVERRULED.

Landlord's counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

3-5. SCV-267587, Felker v JRK Residential Group, Inc

1. Motion for Leave

Plaintiffs Sharon Felker, Herman Grishaver, Edgar Cruz Soriano, and Jeanace Zetino ("Plaintiffs") move for an order granting leave to file a Second Amended Complaint**. The motion is**

GRANTED. Plaintiffs are directed to file the Second Amended Complaint within 10 days of this order. Plaintiffs' counsel is directed to submit a written order to the court consistent with this ruling.

2. File Under Seal

Plaintiffs Sharon Felker, Herman Grishaver, Edgar Cruz Soriano, and Jeanace Zetino ("Plaintiffs") move to seal certain records in this action. The motion is made pursuant to Cal. Rules of Court, Rule 2.551 on the grounds that the records subject to the request contain trade secrets. Plaintiffs seek to file 35 exhibits under seal consisting of Exhibits 20 through 35. The exhibits are attached to Plaintiffs' motion for class certification. **The motion is DENIED without prejudice.**

A party requesting that a record be filed under seal must file a motion or an application for an order sealing the record. (Cal. Rules of Court, rule 2.551(b).) The motion or application must be accompanied by a memorandum and a declaration containing facts sufficient to justify the sealing. (*Ibid*.) The court must not permit a record to be filed under seal based solely on the agreement or stipulation of the parties. (Rule 2.551(a).) The party requesting that a record be filed under seal must lodge it with the court under (d) when the motion or application is made, unless good cause exists for not lodging it or the record has previously been lodged under (3)(A)(i). (Rule 2.551(b)(4).)

Plaintiffs have not filed a memorandum of points and authorities supporting this motion. Rather, they list a description of each exhibit they seek to have sealed and state: "The records contain items Defendants have designated as "Confidential," meaning they contain trade secrets, or confidential business or financial information, including personal financial information about any party to this lawsuit, putative class members, or employee of any party to this lawsuit, information regarding any individual's banking relationship with any banking institution, including information regarding the individual's financial transactions or financial accounts, and any information regarding any party not otherwise available to the public, subject to protection under Rules 2.550, 2.551, 2.580, 2.585, and 8.46 of the California Rules of Court or under other provisions of California law." (Osborne decl., ¶4.) This conclusory statement is insufficient. Nor can the court file exhibits under seal pursuant to a stipulation between the parties.

Plaintiffs have not met the conditions required to allow this court to grant the motion as they have not provided a memorandum supporting the motion and have not provided facts justifying the sealing request. Accordingly, the motion is DENIED without prejudice.

As no opposition has been filed, Plaintiffs' counsel is directed to submit a written order to the court consistent with this ruling.

3. Class Certification

Plaintiffs Sharon Felker, Herman Grishaver, Edgar Cruz Soriano, and Jeanace Zetino ("Plaintiffs") move for an order granting class certification. **The motion is GRANTED.**

a. Proposed Classes

Plaintiff propose four classes: (1) Late Fee Class: All tenants whose leases provide for a late charge and who were charged that late charge; (2) RINCO (Renters Insurance Compliance) Class: All tenants whose leases require a fee for a missing renter's liability insurance policy and who were

charged that fee; (3) Price Gauging Class: All tenants with initial lease terms of no longer than one year who were charged rental price increases of more than 10 percent in Los Angeles, Sonoma, or Ventura Counties during Wildfire Price Gouging Protection Periods in those counties; and, (4) the TPA Class: All tenants who on January 1, 2020 or thereafter were charged rent increases based on gross rental rates excluding discounts, incentives, concessions or credits that exceeded the Rental Rate Caps. Excluded from this class are tenants of Parkside Glen Apartment Homes, Somerset Glen Senior Apartments, The Harrison Glendale, and Duo Apartments. Also excluded from this class are tenants of the Serenade at RiverPark whose rent increased in excess of the Rental Rate Caps before the Serenade TPA Dates.

b. Allegations

Plaintiffs state that JRK Residential group, Inc. and JRK Property Holdings, Inc. ("JRK Residential Group" and "JRK Property Holdings," respectively, and "JRK," collectively) own 80,000 residential units across 30 states worth more than $15 billion. JRK Residential Group manages the properties in the JRK portfolio and employs property managers. JRK Residential Group enters standard property management agreements with the JRK-affiliated limited liability companies and limited partnerships that hold title to various properties and receive payments from tenants.

Plaintiffs state that during the period from June 2016 to the present, JRK has operated fourteen apartment properties in California comprising over 4,000 rental units. These are located across nine counties, including 492 units in JRK's Vineyard Luxury Apartments in Sonoma County.

c. Late Fee and RINCO classes

Plaintiffs argue that provisions in JRK's leases specifying charges for late payment of rent and failure to maintain renter's liability insurance are liquidated damage provisions that are void under Civil Code section 1671(d). Plaintiffs state that JRK uses software to track late fees and Renters Insurance Compliance ("RINCO") fines.

d. Price Gouging

Penal Code section 396 makes it unlawful for any business or other entity to rent or offer housing with an initial lease term of no longer than one year for a price more than 10 percent greater than the price charged immediately prior to the emergency proclamation. Plaintiffs allege that JRK violated price gouging protections during wildfire emergency proclamations in 2017 through 2021 in Los Angeles, Sonoma, and Ventura Counties. There are four separate periods at issue for Los Angeles County and one each for Sonoma and Ventura Counties.

e. Tenant Protection Act ("TPA")

Plaintiffs allege that JRK violated the TPA, which took effect January 1, 2020. The TPA caps rent increases for most housing on a statewide basis. Under the law, annual increases are capped at either 5 percent plus the percentage change in a government-determined consumer price index or 10 percent, whichever is lower. Plaintiffs state that its expert can identify all instances where JRK rent hikes violated the TPA through the creation of a relational database.

Defendants have identified Parkside Glen, Somerset Glen, Duo Apartments, The Harrison Glendale, and Serenade as exempt from TPA rent limits pursuant to exceptions in the statute.

f. Legal Standards

In a class action, "[t]he party advocating class treatment must demonstrate the existence of an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives. [Citations.] 'In turn, the "community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." ' " (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.)

In regard to the factor of predominant common questions, the question that must be answered is "whether 'the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.' [Citations.] The answer hinges on 'whether the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment.' [Citation.] A court must examine the allegations of the complaint and supporting declarations [citation] and consider whether the legal and factual issues they present are such that their resolution in a single class proceeding would be both desirable and feasible. 'As a general rule if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages.' " (*Brinker, supra,* 53 Cal.4th at pp. 1021-1022.)

a. Ascertainable and sufficiently numerous class

The proposed Class is sufficiently numerous as they are calculated to involve thousands of individuals. In addition, JRK's arguments that the 396 and TPA classes are not ascertainable are unconvincing. The court finds that the classes are ascertainable and sufficiently numerous.

b. Community of interest

i. predominant common questions of law or fact

In deciding whether the common questions "predominate," courts must do three things: "identify the common and individual issues"; "consider the manageability of those issues"; and "taking into account the available management tools, weigh the common against the individual issues to determine which of them predominate." (*Dunbar v. Albertson's, Inc.* (2006) 141 Cal.App.4th 1422, 1432.) Class treatment of a claim is appropriate if the facts necessary to establish liability are capable of common proof, including the so-called " 'fact of damage,' " that is, the existence of harm establishing an entitlement to damages. (*Id.,* at 1154.) If the defendant's liability can be determined " ' "by facts common to all members of the class," ' " a class may be certified even though class members must individually establish the amount of their restitution. (*Ibid.*) Generally, the fact of damage is suitable for class treatment only when the class members have sustained the same or similar damage. (*Id.,* at 1158.) Class treatment is not appropriate if every member of the alleged class would be required to litigate numerous and substantial questions determining his individual right to recover following the class judgment on common issues. (*Id.,* at 1154.)

Here, Plaintiffs state they will use common evidence to establish JRK's liability with respect to late fee and RINCO classes because the relevant documents bearing on that issue—lease agreements—are form contracts with nearly identical provisions. The common issues include: (1) whether the late fee provisions are void under Civil Code section 1671; (2) whether the renter's insurance provisions are void under section 1671; (3) whether it would be impracticable or extremely difficult to determine the actual damages caused by a breach of the late payment or insurance requirements; (4) whether JRK made a reasonable endeavor to determine the actual damages it would incur as a consequence of a breach of the late payments or insurance requirements; (5) whether either the late fee or insurance requirement constitutes an unlawful business act or practice in violation of the UCL; (6) whether either of the provisions constitutes an unfair method of competition or unfair act or practice under the CLRA; (7) whether JRK apartment housing is a "good or service" under the CLRA; and (8) whether the members of the Classes are entitled to recover restitution and damages available under the UCL and CLRA.

With respect to the price gouging and TPA allegations, Plaintiffs state that the common questions regarding this claim include: (1) the timing of the price gouging periods in Los Angeles, Sonoma, and Ventura Counties; (2) whether JRK offered for rent or rented housing for a price more than 10 percent greater than the price charged prior to the emergency proclamation; (3) whether JRK's price increases of over 10 percent violated section 396(b) and were, therefore, an unlawful business practice in violation of the UCL; (4) whether JRK'S rent increases constitute an unfair method of competition or unfair act or practice under the CLRA; (5) whether JRK apartment housing is a "good or service" under the CLRA; and (6) whether the class members are entitled to restitution and damages for such overcharges.

JRK argues that to determine the section 369 or price gouging issues, the class action will splinter into individual trials. It argues there are seven separate questions that need to be answered in each individual case. These are whether the lease comes within the definition of "housing," whether there was a rental price increase of 10% during an emergency period, whether the excess of 10% was attributable to permissible costs, whether the tenant entered into the lease prior to the declaration of a state of emergency, whether the relevant rental price increase occurred when section 396 protections were in place; whether someone else paid the rent; and whether the rental price increased more than 10% because of the length of the rental term.

While there will have to be a determination regarding whether or not each issue is true for each class member, the issues are the same. Overall, the resolution of these issues is easier by going systematically through them in one action rather than bringing numerous actions and relitigating common issues.

With respect to the rents over 10%, JRK argues that it was able to recoup the substantial amounts of money it put into renovating four properties; specifically: The Vineyard; Serenade; Rancho Solana; The Harrison, and The Somerset Glen. JRK names two plaintiffs arguing they cannot state a price-gouging claim and that each class member's case will have to be evaluated individually. The court is not convinced that this argument justifies denying class certification.

JRK also argues that determining whether the fees reflected a reasonable estimate of the damages is incompatible with class treatment because, for example, the amount of late fees varied due to different individual situations and different properties, the res judicata effect based upon

unlawful detainer actions that were brought against it and lost, fees that were not actually paid, or whether tenants paid fees with "full knowledge" of the facts precluding recovery of the fees.

JRK also argues that starting in May 2021, it included an arbitration waiver addendum in all of its leases which govern "any and all" claims. However, JRK only cites federal cases in support of its argument that class members with valid arbitration agreements cannot be certified with others not subject to the arbitration agreements. The merits of affirmative defenses are not considered in deciding class certification. (*Hendershot v. Ready to Roll Transportation, Inc.* (2014) 228 Cal.App.4th 1213, 1223.) In addition, that some potential class members may be precluded does not support denying class certification for the remainder who are not subject to arbitration.

In reply, Plaintiffs argue that the context is what is important in this case—which is the same for all tenants. Plaintiffs argue that case law such as *Jack v. Sinsheimer* (1899) 125 Cal. 563, has already determined that it would *not* be extremely difficult to fix or impracticable to estimate damages in the rental context. Plaintiffs also argue that the amount charged is irrelevant as Plaintiffs' theory of recovery is that the purpose of these fines was to penalize tenants not to compensate for breach-related losses.

Whether the fines were imposed for an improper purpose is a common question subject to class resolution. In addition, Plaintiffs plan to argue that the property management structure is such that the same fees were collected despite the actual costs of collection. Numerous issues are based upon common lease provisions, specific timeframes regarding emergency proclamations, or common evidence. Overall, the issues are more manageable on a class-wide basis than by individual actions. The fact that there may be some affirmative defenses established against some individuals does not render class-treatment ineffectual for the majority of issues.

ii. class representatives with claims or defenses typical of the class and who can adequately represent the class.

"Typicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose 0r the relief sought." (*Martinez v. Joe 's Crab Shack Holdings* (2014) 231 Cal.App.4th 362, 375, as modified on denial of reh'g.)

JRK argues that specific plaintiffs are not adequate representatives because they have no claim for some of the issues or property locations. However, overall, Plaintiffs' claims arise under each of the proposed classes. There is no evidence that they cannot adequately represent the class.

c. Substantial benefits from certification that render proceeding as a class superior to the alternatives

"A class action also must be the superior means of resolving the litigation, for both the parties and the court. [Citation.] 'Generally, a class suit is appropriate "when numerous parties suffer injury of insufficient size to warrant individual action and when denial of class relief would result in unjust advantage to the wrongdoer." [Citations.]' [Citation.] '[R]elevant considerations include the probability that each class member will come forward ultimately to prove his or her separate claim to a portion of the total recovery and whether the class approach would actually serve to deter and redress the alleged wrongdoing.' [Citation.] '[B]ecause group action also has the potential to create injustice, trial courts are required to " 'carefully weigh respective benefits and burdens and to allow maintenance of the class action only where substantial benefits accrue both to

litigants and the courts.' " [Citations.]' " (*Harper v. 24 Hour Fitness, Inc.* (2008) 167 Cal.App.4th 966, 974.)

In the case at hand, there are numerous parties whose claims are not sufficiently significant to warrant taking on the burden of filing a complaint. Therefore, bringing suit as a class action to redress grievances of potentially insignificant value is the superior method to redress the subject grievances. In addition, the same discovery requests would be required for each individual case. Conducting bulk discovery and confining all claims to one action reduces costs and the burden on the court.

1. Conclusion and Order

The motion is GRANTED.

Plaintiffs' counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

6. SCV-269350, Santry v Hyundai Motor Company

This matter is on calendar for the motion of Defendant Hyundai Motor America ("HMA") for summary adjudication as to the cause of action for fraud and request for punitive damages alleged in the First Amended Complaint filed by Plaintiff Tamara Santry ("Plaintiff"). **The motion is DENIED.**

This action was brought by Plaintiff as a result of the purchase of a 2016 Hyundai Sonata Plug-In Hybrid ("Subject Vehicle"). Plaintiff's sixth cause of action alleges Fraudulent Inducement – Intentional Concealment; that HMA was under a duty to disclose to Plaintiff the defective nature of the Subject Vehicle and its Nu engine.

To succeed on a fraudulent concealment cause of action, Plaintiff must establish that: (1) HMA concealed a material fact; (2) HMA was under a duty to disclose the fact to Plaintiff; (3) HMA intentionally concealed or suppressed the fact with the intent to defraud or harm; (4) Plaintiff was unaware of the fact and would not have acted as Plaintiff did had she known the fact; and (5) as a result of the concealment, Plaintiff was harmed. (*Boschma v. Home Loan Center, Inc.* (2011) 198 Cal.App.4th 230, 248.) However, on this motion, it is HMA's burden to provide evidence establishing its right to the relief requested by showing that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action. (CCP section 437c(b)(1), (p)(2).)

CCP section 437c(b)(1) requires a party moving for summary adjudication to file a separate statement "setting forth plainly and concisely all material facts that the moving party contends are undisputed." HMA's separate statement consists of two sections. The first seeks to adjudicate Plaintiff's fraudulent concealment cause of action. However, numbers 4 through 25 of the 25 alleged material facts pertain to what discovery was served on the Plaintiff. That HMA served, for example, Special Interrogatory no. 60 on Plaintiff is not a material fact pertaining to Plaintiffs' fraud cause of action. Nor is Plaintiff's boilerplate response.

HMA argues that Plaintiff does not have evidence needed to establish that HMA concealed an engine defect. HMA points to the responses provided by Plaintiff to HMA's special interrogatories, numbers 33-37, 46-48, 50-55, 57, and 60. In response to these interrogatories, Plaintiff referred HMA to her complaint, documents produced by her, and the repair history of the Subject Vehicle. (HMA's separate statement numbers 4 through 23.) Plaintiff also noted that discovery was ongoing. (*Ibid*.) In addition, Plaintiff responded to HMA's 49th special interrogatory by listing "unidentified" dealership technicians and personnel involved with repairs on the Subject Vehicle.

To meet its burden on this motion, HMA must show that Plaintiff cannot establish at least one element of the cause of action by showing that the Plaintiff does not possess, and cannot reasonably obtain, needed evidence. (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 854.) CCP section 437c continues to require a defendant moving for summary judgment to present evidence, and not simply point out that the plaintiff does not possess, and cannot reasonably obtain, needed evidence. (*Ibid*.) Here, HMA has not presented evidence that Plaintiff does not possess, and cannot reasonably obtain, needed evidence.

HMA also argues that Plaintiff cannot establish HMA owed her a duty of disclosure. Without a fiduciary relationship, nondisclosure may constitute actionable conduct only when: (1) "the defendant had exclusive knowledge of material facts not known to the plaintiff," (2) "the defendant actively conceals a material fact from the plaintiff," and (3) "the defendant makes partial representations but also suppresses some material facts." (*LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 336.) HMA argues that because it did not sell the Subject Vehicle directly to Plaintiff, it cannot be liable for fraud based upon a duty to disclose. The cases cited are based upon completely different facts than the case at hand. A manufacturer of a product may be liable for fraud when it conceals material product information from potential users. (*Khan v. Shiley Inc.* (1990) 217 Cal.App.3d 848, 858.)

HMA next argues that Plaintiff has no evidence of damages from fraud. HMA also argues later in its memorandum that Plaintiff has no evidence to support her claim for punitive damages because Plaintiff does not have "clear and convincing" evidence to support punitive damages. HMA first argues Plaintiff does not have any evidence of the actual value or market price of the Subject Vehicle as received with purported defects as no such information has ever been produced in this lawsuit. HMA cites its statement of undisputed facts, number 57. HMA's separate statement only goes to number 28. HMA later argues, again, that HMA did not directly interact with Plaintiff and thus cannot be held liable for fraudulent concealment. It also cites its statement of undisputed facts numbers 1 through 3 and 27 and 28, which also do not provide evidence that Plaintiff cannot establish her claims.

HMA next argues that in order to establish fraudulent concealment, Plaintiff must establish evidence of pre-sale knowledge of the defect in the Subject Vehicle. HMA argues that Plaintiff does not have evidence in support of HMA's prior knowledge of the defect. HMA attempts to shift the burden to Plaintiff arguing that she has failed to provide evidence. However, again, on this motion, it is HMA who is required to support its request with evidence.

HMA next argues that Plaintiff's fraud claim is barred by the Economic Loss Rule because no evidence exists that Plaintiff sustained damages other than the defective vehicle.

The economic loss rule does not apply to fraudulent inducement because the duty not to commit fraud is independent of the contract, and because the tortious conduct occurs prior to contract formation. "Tort damages have been permitted in contract cases where a breach of duty directly causes physical injury,…or where the contract was fraudulently induced. In each of these cases, the duty that gives rise to tort liability is completely independent of the contract." (*Erlich v. Menezes* (1999) 21 Cal.4th 543, 552.) "Although punitive damages may not be awarded where defendant merely breaches a contract…, such damages may be awarded where defendant fraudulently induces plaintiff to enter into a contract. Fraudulent inducement to enter into a contract constitutes a tort." (*Kuchta v. Allied Builders Corp.* (1971) 21 Cal. App. 3d 541, 549.) In other words, in addition to the actual damages, a party may recover damages for the sake of example and by way of punishing the defendant. (*Ibid*.)

The motion is DENIED. HMA has failed to meet its burden of proof by presenting evidence that that Plaintiff does not possess, and cannot reasonably obtain, needed evidence. HMA's citation to discovery requests and responses is insufficient.

Plaintiff's counsel is directed to submit a written order to the court consistent with this ruling and in compliance with California Rules of Court, Rule 3.1312.

7. <u>SCV-271089, Garcia v Ortega</u>

Plaintiff Elizabeth Garcia moves for an order granting preliminary approval of the Joint Stipulation of Class Action and PAGA Settlement reached between Plaintiff and Defendants Lola's Market, Inc. and David Ortega; approving the proposed Notice of Class Action Settlement; provisionally certifying the proposed class for settlement purposes; appointing Plaintiff as the class representative; appointing Matern Law Group, PC as Class Counsel; appointing Phoenix Class Action Administration Solutions as the settlement administrator; directing Defendants to furnish certain information about proposed class members; and scheduling the final approval hearing. The hearing was initially on calendar on February 16, 2024, and was continued to May 8, 2024, to allow Plaintiff to address various issues. As of the date the court reviewed this matter, no additional memorandum had been filed. Accordingly, the **motion is DENIED without prejudice.**