SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 10
Honorable Frederick S. Chung

Rachel Tien, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408-882-2210

DATE: January 16, 2024 TIME: 9:00 A.M.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

The courthouse is open: Department 10 is now fully open for in-person hearings, as of April 18, 2023. The court strongly prefers **in-person** appearances for all contested law-and-motion matters. For all other hearings (*e.g.*, case management conferences), the court strongly prefers either **in-person or video** appearances. Audio-only appearances are permitted but disfavored, as they cause significant disruptions and delays to the proceedings. Please use telephone-only appearances as a last resort.

Scheduling motion hearings: Please call 408-882-2430 between 8:30 a.m. and 12:30 p.m. (Mon.-Fri.) to reserve a hearing date for your motion *before* you file and serve it. You must then file your motion papers no more than five court days after reserving the hearing date, or else the date will be released to other cases.

CourtCall is no longer available: Department 10 uses Microsoft Teams for remote hearings. Please click on this link if you need to appear remotely, and then scroll down to click the link for Department 10: https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. Again, the court strongly prefers in-person or video appearances. Telephonic appearances are a sub-optimal relic of a bygone era.

Recording is prohibited: As a reminder, most hearings are open to the public, but state and local court rules prohibit recording of court proceedings without a court order. This prohibition applies to both in-person and remote appearances.

Court reporters: Unfortunately, the court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If any party wishes to have a court reporter, the appropriate form must be submitted. See https://www.scscourt.org/general_info/court_reporters.shtml.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV416945	Concepcion Pamonag et al. v. Lita & Ava Inc. et al.	Click on LINE 1 or scroll down for ruling in lines 1-2.
LINE 2	23CV416945	Concepcion Pamonag et al. v. Lita & Ava Inc. et al.	Click on LINE 1 or scroll down for ruling in lines 1-2.
LINE 3	23CV423644	Tolentino R. Aspiras et al. v. Roger Delos Reyes et al.	Click on LINE 3 or scroll down for ruling.
LINE 4	20CV372475	QTV Enterprise, LLC v. Hieu Minh Ngueyn et al.	OFF CALENDAR. Continued to 3/19/24 at 9am, per 1/9/24 discussion with the parties.
LINE 5	20CV372475	QTV Enterprise, LLC v. Hieu Minh Ngueyn et al.	OFF CALENDAR. Continued to 3/19/24 at 9am, per 1/9/24 discussion with the parties.
LINE 6	20CV372475	QTV Enterprise, LLC v. Hieu Minh Ngueyn et al.	OFF CALENDAR. Continued to 3/19/24 at 9am, per 1/9/24 discussion with the parties.
LINE 7	22CV401668	Steinberg Hart v. Z&L Properties, Inc.	Motion to be relieved as counsel: parties to appear.
LINE 8	22CV405189	Vicki L. Bridges-Kellar v. Forest River, Inc.	Click on LINE 8 or scroll down for ruling.
LINE 9	23CV412120	Alfredo Mendez Hernandez v. Alyssa Fernandez et al.	Motion to set aside dismissal under CCP § 473(b): the court finds good cause to GRANT the motion, based on the showing of "mistake, inadvertence, surprise, or excusable neglect" by the plaintiff. Because there is still no proof of service of the summons and complaint on defendants, the court sets this matter for an order to show cause re: dismissal for failure to serve on **March 21, 2024 at 10:00 a.m.** in Dept. 10.
LINE 10	23CV415836	Jin Zhang v. Zhichao Lu et al.	OFF CALENDAR. Continued by ex parte application to 2/1/24 at 9am.

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LINE 11	23CV415923	Sanmina Corporation v. Cue Health Inc.	Motion to seal portions of Exhibit A to the cross complaint: although the information that plaintiff proposes to redact from the Letter of Agreement does not strike the court as being particularly sensitive, the court will give plaintiff the benefit of the doubt, given that the proposed redactions are exceedingly narrowly tailored, and there does not appear to be any interest of the public in accessing this narrow scope of information. The court therefore finds that an overriding interest exists that overcomes the right of public access to the redacted portions. GRANTED. Plaintiff shall prepare a formal order for the court's signature that contains the necessary findings under rule 2.550(d) of the California Rules of Court.
LINE 12	2008-1-CV-131583	Unifund CCR Partners v. April B. Reyes	Motion to vacate original judgment and renewal of judgment: good cause appearing, the court GRANTS the unopposed motion by plaintiff. At plaintiff's request, the court hereby dismisses the case with prejudice.

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Calendar Lines 1-2
Case Name: *Concepcion Pamonag et al. v. Lita & Ava Inc. et al.*
Case No.: 23CV416945

I. FACTS

This is an action alleging dependent adult abuse against defendants Lita & Ava, Inc. d/b/a A Grace Sub Acute & Skilled Care ("Grace") and Florence Residential Care Home ("Florence") (collectively, "Defendants"). The plaintiffs are Concepcion Pamonag, by and through her successor in interest Milagros Vega, and Milagros Vega in her individual capacity (collectively, "Plaintiffs"). Plaintiffs filed the operative complaint on May 26, 2023.

The complaint alleges that Pamonag was a dependent adult and inpatient at Grace, a 24-hour skilled nursing facility. (Complaint, ¶¶ 3, 16.) On an unspecified date, and at an unspecified facility, someone on the staff at Grace placed a cap on Pamonag's tracheostomy tube, causing her to stop breathing, suffer brain damage, and ultimately pass away on March 5, 2022. (*Id*. at ¶¶ 1, 21.) Plaintiffs allege that as a result of the failure to follow Pamonag's care plan, as well as deliberate understaffing at their respective facilities, Defendants failed to provide adequate care to Pamonag, causing her to experience extreme pain and suffering, and resulting in her untimely demise. (*Id*. at ¶¶ 22-23, 58-59.)

The complaint asserts four causes of action: (1) dependent adult abuse[1] (against Defendants); (2) negligence (against Defendants); (3) violation of residents' rights (against Grace only); and (4) wrongful death (against Defendants).

Currently before the court are Grace's demurrer to the third cause of action and Grace's motion to strike any claim for attorney's fees under the third cause of action, both filed on August 14, 2023. On January 2, 2024, Plaintiffs filed an opposition to the demurrer only; Plaintiffs have not filed an opposition to the motion to strike.

II. GRACE'S DEMURRER TO THE THIRD CAUSE OF ACTION

A. Legal Standard

"A demurrer tests the sufficiency of the complaint as a matter of law." (*Osornio v. Weingarten* (2004) 124 Cal.App.4th 304, 316.) A court may sustain a demurrer on the ground of failure to state sufficient facts if "the complaint shows on its face the statute [of limitations] bars the action." (*E-Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1315 (*E-Fab*).) A demurrer is not sustainable on statute of limitations grounds if there is only a possibility that the cause of action is time-barred; the defense must be clearly and affirmatively apparent from the allegations of the pleading. (*Id*. at pp. 1315-1316.) "In assessing whether plaintiff's claims against defendant are time-barred, two basic questions drive our analysis: (a) What statutes of limitations govern the plaintiff's claims? (b) When did the plaintiff's causes of action accrue?" (*Id.* at p. 1316.)

[1] While the caption of the complaint claims dependent adult abuse, the body of the complaint labels the first cause of action "elder abuse." Moreover, Plaintiffs mistakenly cite Welfare and Institutions Code section 15610.27 instead of section 15610.23 for the statutory definition of "dependent adult."

In reviewing a demurrer, the court gives "the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.] Further, we treat the demurrer as admitting all material facts properly pleaded, but do not assume the truth of contentions, deductions or conclusions of law. [Citations.]" (*Valero v. Spread Your Wings, LLC* (2023) 88 Cal.App.5th 243, 253 [quoting *City of Dinuba v. County of Tulare* (2007) 41 Cal.4th 859, 865].) "The court may also consider as grounds for a demurrer any matter that is judicially noticeable under Evidence Code sections 451 or 452." (*Cryolife, Inc. v. Superior Court* (2003) 110 Cal.App.4th 1145, 1152 [citing Code Civ. Proc., § 430.30, subd. (a)].)

In support of its demurrer, Grace requests judicial notice of the complaint. While a complaint may be the proper subject of judicial notice under Evidence Code section 452, subdivision (d), the court DENIES the request as unnecessary in this situation, because the complaint is already under review as the pleading at issue. (See *Paul v. Patton* (2015) 235 Cal.App.4th 1088, 1091, fn.1.)

B. Discussion

Grace demurs to the third cause of action (brought under Health and Safety Code section 1430, subdivision (b)) on the ground that it is barred by a one-year statute of limitations. The application of a one-year statute or a three-year statute turns on nature of the remedy provided by the statute. Grace insists that Health and Safety Code section 1430(b) provides for a civil penalty, necessitating the application of a one-year statute of limitations under Code of Civil Procedure section 340, subdivision (a), while Plaintiffs maintain that Health and Safety Code section 1430(b) provides for compensatory civil damages, and therefore falls under the three-year statute of limitations under Code of Civil Procedure section 338, subdivision (a).

1. Applicable Statute of Limitations

As Plaintiffs persuasively point out, Grace provides no legal authority in support of its claim that the statute provides for a civil penalty. While Grace cites *Myers v. Eastwood Care Center Inc.* (1982) 31 Cal.3d 628 (*Myers*) for the proposition that a one-year statute of limitations applies to actions brought on behalf of a skilled nursing patient, that case is distinguishable in two material respects. (Demurrer at p. 3:11-13.) First, in *Myers*, the case was brought by the Attorney General under Health and Safety Code section 1428, subdivision (c), which expressly provides for the "assessment of a *civil penalty*." By contrast, in this case, Plaintiffs bring the action under section 1430, which addresses actions "for injunction or *civil damages*." Second, in *Myers*, the Attorney General, acting on behalf of a director of the State Department of Health Services, sought enforcement of penalties "'to the people of this State;'" here, however, Plaintiffs seek an award of personal, monetary damages under section 1430(b). (*Myers, supra*, 31 Cal.3d at p. 634.)

Plaintiffs also argue that the California Supreme Court has expressly held that the Long-Term Care, Health, Safety and Security Act of 1973 (the "Act"), of which section 1430 is a part, was a remedial rather than punitive scheme. (*California Assn. of Health Facilities v. Department of Health Services* (1997) 16 Cal.4th 284, 294 (*California Assn.*).) While *California Assn.* focused on section 1424 of the Health and Safety Code in particular, the Supreme Court also cited its earlier decision in *Kizer v. County of San Mateo* (1991) 53 Cal.3d 139 (*Kizer*) (overruled on other grounds), which discussed the statutory scheme of section

1430 at length. (*Ibid*.) In *Kizer,* the California Supreme Court understood section 1430 as generally providing a private right of action for civil damages by patients injured by a violation of the Act. (*Kizer, supra,* 53 Cal.3d at p. 143 ["Section 1430 does not foreclose civil actions for damages by patients who have been injured by a violation; the remedies specified in that section are 'in addition to any other remedy provided by law.'"]) The Court further viewed the private right of action as an "alternative enforcement mechanism" that did not "vitiate the need for the statutory penalties." (*Id.* at p. 150.) In a more recent case, the Supreme Court reaffirmed its interpretation by concluding that section 1430(b) is one method "for residents of long-term care facilities [to seek] compensation for harms suffered in those facilities." (*Jarman v. HCR ManorCare, Inc.* (2020) 10 Cal.5th 375, 390 (*Jarman*) [citing *Lemaire v. Covenant Care California, LLC* (2015) 234 Cal.App.4th 860, 867 (*Lemaire*)].)

Plaintiffs further note that the legislative history of section 1430(b) supports characterizing an award under the statute as civil damages. (On its own motion, the court takes judicial notice of Assembly Bill No. 849 (Cal. 2021), which sets forth the factors to be considered in assessing the amount of damages.)[2]

Finally, the court notes that in *Mou v. SSC San Jose Operating Co. LP* (N.D. Cal. 2019) 415 F. Supp. 3d 918, 925, the U.S. District Court followed *Kizer* and its progeny in holding that a three-year statute of limitations applies to a section 1430(b) claim. (See also *Hargrove v. Legacy Healthcare, Inc.* (2022) 80 Cal.App.5th 782, 789, fn. 4 [published decisions of the lower federal courts are not binding on state courts, but they are persuasive authority].)

For all of the foregoing reasons, the court finds that Health and Safety Code section 1430(b) provides for compensatory damages rather than a civil penalty, and that the three-year statute of limitations under Code of Civil Procedure section 338, subdivision (a), therefore applies.

2. Date of Accrual

The parties agree that Plaintiffs' third cause of action for violation of residents' rights accrued no later than March 5, 2022, when Pamonag passed away. As noted above, Plaintiffs filed the complaint on May 26, 2023, well within the three-year limitations period provided by section 338, subdivision (a).

For the foregoing reasons, the court OVERRULES the demurrer to the third cause of action on the ground that it is time-barred. (Code Civ. Proc., § 430.10, subd. (e); see *E-Fab, supra,* 153 Cal.App.4th at p. 1316 [requiring time bar to "clearly and affirmatively appear on the face of the complaint"].)

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[2] Plaintiffs also cite *Nevarrez v. San Marino Skilled Nursing & Wellness Ctr., LLP* (2013) 221 Cal.App.4th 102 to support their legislative history argument; however, the *Nevarrez* Court specifically noted that the issue of whether the award under section 1430(b) should be considered as damages or a civil penalty was not before the court. (*Id.* at p. 129, fn. 10.)

III. GRACE'S MOTION TO STRIKE

Grace's motion to strike the prayer for attorney's fees is premised on the court finding the third cause of action to be time-barred. In light of the court's ruling on the demurrer, the court DENIES Grace's motion to strike.

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Calendar Line 3
Case Name: *Tolentino R. Aspiras et al. v. Roger Delos Reyes et al.*
Case No.: 23CV423644

I. FACTS

This is a partition action brought by plaintiffs Tolentino R. Aspiras and Clara V. Aspiras (collectively, "Plaintiffs") against defendants Roger Delos Reyes, Leticia Delos Reyes (together, the "Reyes Defendants"), and Mortgage Electronic Systems, Inc. ("MERS") for the real property located at 29 Jason Drive, Milpitas, California 95035 (the "Property").

Plaintiffs filed the operative complaint on September 28, 2023, alleging a single cause of action for partition. According to the complaint, Plaintiffs reside in the Philippines and are collectively a tenant-in-common owner of a 50% interest in the Property. (Complaint, ¶ 3.) The Reyes Defendants are a tenant-in-common owner of the remaining 50% interest. (*Id*. at ¶ 4.) Plaintiffs and the Reyes Defendants acquired their interest in the Property as joint tenants through a Grant Deed recorded with Santa Clara County on February 17, 1993. (*Id*. at ¶ 10.) On February 11, 2004, the parties secured a Deed of Trust with Fremont Bank, subsequently released through execution of a reconveyance. (*Id*. at ¶ 11.) On July 17, 2013, the parties secured a Deed of Trust with MERS, and on August 23, 2023, Plaintiffs executed a declaration severing joint tenancy, recorded on November 21, 2023, forming the tenancy-in-common. (*Id*. at ¶¶ 12-13.) Since then, the parties' relationship has deteriorated; they have not been able to communicate well or to reach an agreement about dividing the Property. (*Id*. at ¶ 14.)

The Reyes Defendants filed a verified answer on November 9, 2023, generally and specifically denying allegations of the complaint and asserting five affirmative defenses.

Currently before the court is Plaintiffs' demurrer to the Reyes Defendants' verified answer. The Reyes Defendants filed a timely opposition.

II. LEGAL STANDARDS

"The answer to a complaint shall contain: [¶] (1) The general or specific denial of the material allegations of the complaint controverted by the defendant. [¶] (2) A statement of any new matter constituting a defense." (Code Civ. Proc., § 431.30, subd. (b).) "A material allegation in a pleading is one essential to the claim or defense and which could not be stricken from the pleading without leaving it insufficient as to that claim or defense." (Code Civ. Proc., § 431.10, subd. (a).) An affirmative defense is a "new matter" not in issue under a general denial. (See *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 239 (*Harris*) ["if the onus of proof is thrown upon the defendant, the matter to be proved by him is [a] new matter"].) "Affirmative defenses cannot be pled as mere legal conclusions but must instead be alleged with as much factual detail as the allegations of a complaint." (*Quantification Settlement Agreement Cases* (2011) 201 Cal.App.4th 758, 813.) Thus "[t]he primary function of a pleading is to give the other party notice so that it may prepare its case." (See *Harris, supra,* 56 Cal.4th at p. 240; see also *Roger v. County of Riverside* (2020) 44 Cal.App.5th 510, 533 [holding that the pleading standard requires setting forth "essential facts of his case with reasonable precision and with particularity sufficient to acquaint a defendant with the nature, source and extent of his cause of action"].)

A plaintiff may demur to a defendant's answer within 10 days of service on three grounds: (1) failure to state facts sufficient to constitute a defense; (2) uncertainty; or (3) failure to state whether a contract alleged in the answer is written or oral. (Code Civ. Proc., §§ 430.20, 430.40, subd. (b).) The demurrer may be to the whole answer or to any one or more of the several defenses set up in the answer. (Code Civ. Proc., § 430.50, subd. (b).) In ruling on a demurrer, courts may consider matters subject to judicial notice. (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 751.)

In support of their reply, Plaintiffs submit a request for judicial notice of tentative rulings from Butte County Superior Court and San Francisco County Superior Court. While the existence of a tentative ruling is potentially subject to judicial notice under Evidence Code section 452, subdivision (d), the Court DENIES the request as not "necessary, helpful, or relevant" to Plaintiffs' argument. (See *Aquila, Inc. v. Superior Court (City and County of San Francisco)* (2007) 148 Cal.App.4th 556, 569 [holding that "[a]lthough a court may judicially notice a variety of matters . . . only relevant material may be noticed [and] judicial notice . . . is always confined to those matters which are relevant to the issue at hand"].) In addition, it is particularly inappropriate for the court to consider evidence submitted for the first time on reply. (*Valentine v. Plum Healthcare Group, LLC* (2019) 37 Cal.App.5th 1076, 1089 [**"**New evidence is generally not permitted with reply papers."].)

III. DISCUSSION

Plaintiffs demur to the verified answer and to the first, second, third, and fourth affirmative defenses.

A. Verified Answer

The court OVERRULES Plaintiffs' demurrer to the answer on the ground of insufficient facts. (Code Civ. Proc., § 430.20.)

Plaintiffs argue that the answer is subject to demurrer because the Reyes Defendants fail to state the particular interests they claim in the Property. Plaintiffs cite Code of Civil Procedure section 872.410, which provides: "The answer shall set forth: [¶] **(a)** Any interest the defendant has or claims in the property." The court finds that the answer meets this requirement by admitting the allegations regarding 50% ownership within the complaint. In particular, the answer expressly admits that the Reyes Defendants are owners of an undivided one-half tenant-in-common interest in the Property. (See Answer, ¶¶ 4, 10; see also Complaint, ¶ 4.) Thus, this contention by Plaintiffs is without merit. (See *South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 733 (*South Shore*) ["The determination of the sufficiency of the answer requires an examination of the complaint because its adequacy is with reference to the complaint it purports to answer . . . . [T]he demurrer to the answer admits all issuable facts pleaded therein and eliminates all allegations of the complaint denied by the answer."].)

Plaintiffs also argue that because the answer denies that Plaintiffs themselves are the owners of the other one-half interest in the Property, the Reyes Defendants fail to state their particular interest. (Demurrer, p. 3:1-2.) But Code of Civil Procedure section 872.410 only requires defendants to plead *their* interests, not the interests of any other parties.

B. Affirmative Defenses

Plaintiffs object to the first affirmative defense (failure to state sufficient facts to constitute a cause of action) on the ground that a general denial to a verified complaint is improper under Code of Civil Procedure section 431.30, subdivision (d), which requires the positive denial of allegations or denials on information and belief of the defendant. While this statement may be true as a general matter, the principle applies to an answer *as a whole*, not to any particular affirmative defense. (Code Civ. Proc., § 431.30 [stating that the "answer to a complaint" shall include general or specific denials].) In this case, the Reyes Defendants' answer contains specific denials that satisfy section 431.30. Accordingly, the objection to the first affirmative defense is OVERRULED.

Next, Plaintiffs argue that the following defenses "fail" as a matter of law: the second affirmative defense (statute of limitations), third affirmative defense (offset), and fourth affirmative defense (no entitlement to attorneys' fees). The court rejects this argument, as it does not present a proper basis for a demurrer. Again, a demurrer to an answer may be brought on only three grounds: (1) failure to state facts sufficient to constitute a defense; (2) uncertainty; or (3) failure to state whether a contract alleged in the answer is written or oral. (Code Civ. Proc., § 430.20.) The argument that an affirmative defense cannot prevail on the merits is not one of these grounds.

For example, Plaintiffs contend that the second affirmative defense is improper because the statute of limitations is no defense to a partition action. (See *Patrick v. Alacer Corp.* (2011) 201 Cal.App.4th 1326, 1338 ["'The statute of limitations never bars relief between tenants in common in an action of partition.'"]; see also *Sangiolo v. Sangiolo* (1978) 87 Cal.App.3d 511, 513 [same].) Whether or not this is correct, it is not a basis for a demurrer, which focuses on whether defendants have stated *sufficient facts* to set forth a defense, not whether that defense is actually meritorious.

Similarly, Plaintiffs take issue with the third affirmative defense because it "is already covered by statute and thus cannot constitute 'new matter.'"[3] (Demurrer, p. 5:13-14.) And they take issue with the fourth affirmative defense because Defendants "ignore[] the law of partition," which allows for the apportionment of attorney's fees. (Demurrer, p. 5:20.) Again, these are not arguments regarding the sufficiency of the allegations in the answer; these are arguments as to whether the Reyes Defendants can actually prevail on these defenses.

The court OVERRULES the demurrer to all of the affirmative defenses in the answer.

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[3] While Plaintiffs cite *South Shore, supra*, Cal.App.2d at 731 and *Semole v. Sansoucie* (1972) 28 Cal.App.3d 714, 719, the pin cites provided do not support Plaintiffs' proposition at all.

Calendar Line 8
Case Name: *Vicki L. Bridges-Kellar v. Forest River, Inc.*
Case No.: 22CV405189

This is a "lemon law" case involving a recreational vehicle purchased by plaintiff Vicki Bridges-Kellar from defendant Forest River, Inc. ("Forest River") in Morgan Hill, California. Forest River now moves to stay the case under Code of Civil Procedure section 410.30, based on a forum-selection clause contained in a warranty that Bridges-Kellar acknowledged and agreed to at the time of purchase. That forum-selection clause states that the courts of Indiana shall have "exclusive jurisdiction for deciding legal disputes relating to this limited warranty."

Having reviewed the parties' submissions, the court concludes that the forum selection clause here is valid and that a stay is appropriate under section 410.30, subdivision (a), which provides that when a court "finds that in the interest of substantial justice an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just." The court grants the motion.

California courts generally presume the validity of a forum-selection clause, and the burden is on the party seeking to defeat such a clause to show that it would be unfair or unreasonable under the circumstances of the case. (*Miller-Leigh LLC v. Henson* (2007) 152 Cal.App.4th 1143, 1149.) In this case, Bridges-Kellar argues that the forum-selection clause in the vehicle warranty violates the "single document" rule in the Automobile Sales Finance Act (Civ. Code, §§ 2981 *et seq.*), which provides a detailed framework applicable to vehicle sales contracts and requires that California consumers be presented with a "single document" that addresses payments and financing of the vehicle. Forest River correctly points out, however, that the single document rule applies to agreements regarding "the total cost and the terms of payment for the motor vehicle." It does not extend to any *warranty* separately acknowledged by Bridges-Kellar at the time of purchase. Consequently, the court rejects this argument by Bridges-Kellar regarding the validity of the clause.

In addition, Bridges-Kellar argues that although the party opposing enforcement of a forum-selection clause ordinarily bears the burden of showing that its enforcement would be unreasonable or unfair, that "burden is reversed when the underlying claims are based on statutory rights the Legislature has declared to be unwaivable." (*Verdugo v. Alliantgroup, L.P.* (2015) 237 Cal.App.4th 141, 144 (*Verdugo*).) (Opposition at pp. 2:24-3:7.) Accordingly, Bridges-Kellar contends that Forest River "must show that enforcing the forum selection clause ***will not diminish in any way*** the California plaintiffs' rights." (*Ibid.*, emphasis in original.)

The court finds that Forest River has done so. The choice of law clause states that federal law and California law apply to the claims in this case, and Forest River has made it clear that it stipulates to the application of the California Song-Beverly Consumer Warranty Act and California Consumers Legal Remedies Act in the Indiana forum. In addition, Forest River notes that "[i]n the unlikely event the Indiana court refuses to honor the stipulation by Defendant that Plaintiff's claims against it are governed by the Song-Beverly Act and Consumer's Legal Remedies Act, this Court can dissolve the stay of this case and reassert jurisdiction over the dispute." (Reply at p. 7:5-9.) Based on this clear acknowledgement by Forest River that California must apply in the Indiana forum, the court concludes that enforcement in Indiana would not adversely affect Bridges-Kellar's substantive legal rights.

Finally, Bridges-Kellar claims, somewhat conclusorily, that enforcement of the forum-selection clause would be "unreasonable," given the unequal bargaining power between the parties. But the fact that a forum-selection clause is included in a contract of adhesion does not necessarily defeat enforcement as a matter of law. (*Cal-State Business Products & Services, Inc. v. Ricoh* (1993) 12 Cal.App.4th 1666, 1679.) Nor does the fact that there is unequal bargaining power between the parties necessarily absolve the consumer of her written agreements and acknowledgements. More than the simple fact that plaintiff is a consumer and defendant is a corporation is needed to demonstrate unreasonableness, and Bridges-Kellar has not shown that here.

Finally, the court notes that Bridges-Kellar has not argued that there was any unreasonable delay in bringing this motion, under *Trident Labs, Inc. v. Merrill Lynch Commercial Finance Corporation* (2011) 200 Cal.App.4th 147, 155. That case involved a delay of 19 months and significant discovery and motion practice before defendant filed the motion to enforce; here, we have a delay of approximately 10 months before Forest River filed this motion, but no discovery or motion practice (other than this motion). Accordingly, the court finds that the time that it took Forest River to bring this motion was not unreasonable.

The motion is GRANTED, and this case is STAYED pending resolution in the out-of-state forum. The court sets this matter for a case status review on **August 15, 2024 at 10:00 a.m.** in Department 10 of this court.

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