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: December 3, 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 go to https://reservations.scscourt.org or 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	23CV426219	Thomas Fleischli v. Harminder Sing Dhaliwal	Order of examination: parties to appear.
LINE 2	24CV441458	Kim Narog v. William T. Arkley et al.	Click on LINE 2 or scroll down for ruling.
LINE 3	21CV391989	Escarlett Valle Guillen Lopez et al. v. DGDG 10, LLC et al.	Click on LINE 3 or scroll down for ruling.
LINE 4	24CV430701	Wells Fargo Bank, N.A. v. Jocelyn R. Lebumfacil	Motion for RFAs to be deemed admitted: notice is proper, and the motion is unopposed by defendant. Good cause appearing, the court GRANTS the motion. Plaintiff to prepare the proposed order.
LINE 5	18CV330988	Discover Bank v. Chase A. Dickson	Claim of exemption: parties to appear. Judgment debtor claims that the property at issue is exempt as payments of either social security benefits or veterans benefits, but the court has not received any evidence from the judgment debtor to indicate that the bank account amount ($10,701.76) is entirely the product of such benefit payments. The court needs to hear from the parties.
LINE 6	19CV349959	State Farm Mutual Automobile Insurance Company v. Christian Cervantes	Motion to vacate dismissal and enforce settlement: notice is proper, and the motion is unopposed. Good cause appearing, the court GRANTS the motion. Moving party to prepare proposed order and final judgment.
LINE 7	22CV396170	Christian Humanitarian Aid, Inc. v. AM Star Construction, Inc. et al.	Click on LINE 7 or scroll down for ruling.

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LINE #	CASE #	CASE TITLE	RULING
LINE 8	24CV442346	Jamal Ramses Eagle Comes Looking El Bey v. Lor Xiong et al.	Motion to "supplement the record": the court does not understand the relief being sought by this motion. It appears that the plaintiff wishes the court to take judicial notice of certain federal cases, cited on pages 2-3 of the motion, but the relevance of these cases to any contested issue of law or fact in this case remains unclear. At best, the request is premature. If plaintiff wishes to rely on these federal cases in response to the demurrer filed by defendants (to be heard on February 25, 2025), plaintiff may explain their relevance in an opposition brief (due February 10, 2025). If plaintiff wishes to rely on these federal cases at trial, then that issue will be addressed even later in the case. Until then, the issue is not ripe, as there is no "record" to supplement. The motion is DENIED.

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Calendar Line 2
Case Name: *Kim Narog v. William T. Arkley et al.*
Case No.: 24CV441458

I. BACKGROUND

This lawsuit arises from a dispute over ownership of real property located at 4680 Meritage Court in Gilroy, California. Self-represented plaintiff Kim Narog filed his original and still-operative complaint on June 20, 2024. The complaint states five causes of action, some of which attempt (improperly) to combine separate and distinct causes.[1] The five causes of action are: (1) a cause of action that appears to allege unidentified "deceptive" and "unfair" business practices as well as unspecified "fraud"; (2) "Unconscionable Contract/ Violation of Homeowners' Bill of Rights"; (3) "Breach of Fiduciary Duty/Quiet Title"; (4) "Contractual Breach of Good Faith and Fair Dealing"; and (5) Declaratory Relief.

The named defendants in the complaint are William and Lorie Arkley, individually and as trustees of The William and Lorie Arkley Trust (collectively, the "Arkley Defendants"), and Excel Trust Deed Investments, Inc. ("Excel"). The complaint also refers to Does 1 through 10 in the fourth paragraph. On August 2, 2024, Narog filed a Doe amendment substituting Craig Cuffie, Karen Cuffie, the Cuffies in their capacity as trustees of The Cuffie Family Trust (collectively, the "Cuffie Defendants"), and PLM Loan Management Services, Inc., as Does 1 through 4.

Narog is self-represented, which is sometimes referred to as appearing "in propria persona." "[W]hen a litigant is appearing in propria persona, he is entitled to the same, but no greater, consideration than other litigants and attorneys. Further, the in propria persona litigant is held to the same restrictive rules of procedure as an attorney." (*Burnete v. La Casa Dana Apartments* (2007) 148 Cal.App.4th 1262, 1267 [internal citations omitted]; see also *Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543 [self-represented litigants "are held to the same standards as attorneys" and must comply with the rules of civil procedure]; *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985 ["A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation."].) As Narog is not an attorney, he cannot represent KJMN Properties LLC, the purported second plaintiff on the complaint.

On August 28, 2024, this court (Judge Arand) denied Narog's ex parte application for a writ of possession. On August 30, 2024, Judge Arand denied Narog's second application for a writ of possession, as well as his request for specific performance, a temporary restraining order, and a preliminary injunction. As noted in the August 30 order: "Among other defects, Plaintiffs have not shown likelihood of success on the merits, and the property was already foreclosed."[2]

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[1] The complaint's caption page lists seven causes of action, but this does not correspond to the causes of action in the body of the complaint.
[2] The court takes judicial notice of Judge Arand's August 30, 2024 order on its own motion under Evidence Code section 452, subdivision (d).

Currently before the court is a demurrer to the complaint by the Arkley Defendants, filed on August 20, 2024. Notice is proper, but the court has received no timely response to the demurrer from Narog.

II. REQUEST FOR JUDICIAL NOTICE

The Arkley Defendants have submitted a request for judicial notice. "Judicial notice may not be taken of any matter unless authorized or required by law." (Evid. Code, § 450.) A precondition to judicial notice in either its permissive or mandatory forms is that the matter to be noticed be relevant to the material issue before the court. (*Silverado Modjeska Recreation and Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 307 [citing *People v. Shamrock Foods Co*. (2000) 24 Cal.4th 415, 422, fn. 2].) It is the court, and not the parties, that determines relevance. Evidence Code section 453, subdivision (b), requires a party seeking notice to "[furnish] the court with sufficient information to enable it to take judicial notice of the matter."

The Arkley Defendants request judicial notice of five documents, submitted as Exhibits 1, 3, 4, 7, and 8 to the request, under Evidence Code section 452, subdivisions (d) and (h). Subdivision (h) does not apply to any of the submitted documents. (See *Gould v. Md. Sound Indus*. (1995) 31 Cal.App.4th 1137, 1145 ["Judicial notice under Evidence Code section 452, subdivision (h), is intended to cover facts which are not reasonably subject to dispute and are easily verified. These include, for example, facts which are widely accepted as established by experts and specialists in the natural, physical, and social sciences which can be verified by reference to treatises, encyclopedias, almanacs and the like or by persons learned in the subject matter."].)

The court denies judicial notice of Exhibits 1, 3, and 4, which are docket printouts from three different bankruptcy cases, as there is no apparent relevance of these documents to the issues before the court. The court grants judicial notice of Exhibits 7 and 8, a status conference statement filed by KJMN Properties LLC and a Chapter 13 bankruptcy petition filed by Narog, under subdivision (d). While the court takes judicial notice of these filings, the court does not take notice of the truth of the contents of these documents. (See *Oh v. Teachers Ins. & Annuity Assn. of America* (2020) 53 Cal.App.5th 71, 79-81 [truth of contents of court records cannot be judicially noticed].)

III. DEMURRER TO THE COMPLAINT

A. General Standards

The court, in ruling on a demurrer, treats it "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp*. (1983) 35 Cal.3d 197, 213-214.) A plaintiff is not ordinarily required to allege "'each evidentiary fact that might eventually form part of the plaintiff's proof . . . .' [Citation.]" (*Ferrick v. Santa Clara University* (2014) 231 Cal.App.4th 1337, 1341.)

The court considers only the pleading under attack, any attached exhibits, and any facts or documents of which the court may take judicial notice. (See *Barnett v. Fireman's Fund Ins. Co.* (2001) 90 Cal.App.4th 500, 505 ["[T]o the extent the factual allegations conflict with the content of the exhibits to the complaint, we rely on and accept as true the contents of the exhibits and treat as surplusage the pleader's allegations as to the legal effect of the exhibits."].) The court cannot consider extrinsic evidence in ruling on a demurrer or motion to strike. This includes declarations. The court has only considered the declaration of Melanie Frakes, submitted by the Arkley Defendants, to the extent that it addresses the meet-and-confer efforts required by statute. The court has not considered the declaration submitted by Sheldon Perry, as it constitutes extrinsic evidence.

Code of Civil Procedure section 430.60 states that "[a] demurrer shall distinctly specify the grounds upon which any of the objections to the complaint, cross-complaint, or answer are taken. Unless it does so, it may be disregarded." The rules of court also require that that the demurrer itself specify the target of any objection and the grounds. (See Cal. Rules of Court, rules 3.1103(c), 3.1112(a), 3.1320(a) ["Each ground of demurrer must be in a separate paragraph and must state whether it applies to the entire complaint, cross-complaint, or answer, or to specified causes of action or defenses."]; see also 5 Witkin, *Cal. Procedure* (5th ed., 2019) Pleading, § 953 ["Each ground of demurrer must be in a separate paragraph and must state whether the demurrer applies to the entire complaint, cross-complaint, or answer, or to specified causes of action or defenses."].)

B. Discussion

As an initial matter, the court observes that the Arkley Defendants' meet-and-confer efforts were inadequate. Code of Civil Procedure section 430.41, subdivision (a), requires the parties to meet and confer "in person, by telephone, or by video conference" before the filing of a demurrer. Simply sending an email, as described in the declaration of Melanie Frakes, does not comply with the statute. Nevertheless, because a finding that the meet-and-confer efforts were insufficient is not itself a basis for sustaining or overruling a demurrer, the court will consider the demurrer on its merits. (See Code Civ. Proc., § 430.41, subd. (a)(4).)

The Arkley Defendants demur to the first four causes of action in the complaint on the ground that they fail to state sufficient facts. (See Notice of Demurrer and Demurrer.) The court sustains the demurrer to the first four causes of action.

1. First Cause of Action

As noted above, the first three causes of action combine distinct causes of action with different elements. The court agrees with the Arkley Defendants that it is not clear what is being alleged in the first cause of action. (See Complaint, ¶¶ 28-35.) To the extent that Narog is trying to allege unfair or unlawful business practices in violation of Business and Professions Code section 17200, such a statutory cause of action must be pleaded with particularity. (See *Lopez v. Southern California Rapid Transit District* (1985) 40 Cal.3d 780, 795; *Covenant Care, Inc. v. Superior Court* (2004) 32 Cal.4th 771, 790 (*Covenant Care*).)

The Arkley Defendants identify the first cause of action as one for wrongful foreclosure and fraud, which is possible but not at all clear from the court's independent reading of the complaint. To the extent that Narog alleges that the foreclosure in this case was wrongful as a

result of fraud, he does not make that clear. Fraud must also be pleaded with particularity, and Narog has not done so here.

The second cause of action for "Unconscionable Contract/Violation of Homeowners' Bill of Rights" also fails to state sufficient facts. (See Complaint, ¶¶ 36-41.) First, it improperly attempts to combine separate causes of action. If Narog wishes to allege a violation of the "Homeowners Bill of Rights"—specifically, Civil Code section 2924.12, subdivision (b)—this must be pled on its own and with particularity. (See *Covenant Care, supra*.) To the extent that Narog appears to be claiming that some provision of an (unspecified) contract was unconscionable, he has not adequately alleged that, either, as no contract (or provision) is clearly identified.

The third cause of action for "Breach of Fiduciary Duty/Quiet Title" also fails to state sufficient facts. (See Complaint, ¶¶ 42-45.) Again, this cause of action appears to mix different causes into one. "The elements of a cause of action for breach of fiduciary duty are the existence of a fiduciary relationship, its breach, and damage proximately caused by the breach." (*Knox v. Dean* (2012) 205 Cal.App.4th 417, 432.) "While breach of fiduciary duty is a question of fact, the existence of legal duty in the first instance and its scope are questions of law." (*Kirschner Brothers Oil, Inc. v. Natomas Co.* (1986) 185 Cal.App.3d 784, 790.) The Arkley Defendants are correct that the third cause of action fails to adequately allege the existence of a fiduciary relationship, particularly given that it refers only to "Defendant" without specifying which defendant had a fiduciary relationship with Narog. Nor does the cause of action identify the nature of that fiduciary relationship.

To the extent that the third cause of action also attempts to state a quiet title cause of action, this is not adequately alleged and must be pled separately. (See Complaint, ¶ 45.) To maintain an action to quiet title, a plaintiff's complaint must be verified and must include: (1) a description of the property, including both its legal description and its street address or common designation; (2) the title of plaintiff as to which a determination is sought and the basis of the title; (3) the adverse claims to the title of the plaintiff against which a determination is sought; (4) the date as of which the determination is sought and, if other than the date the complaint is filed, a statement why the determination is sought as of that date; and (5) a prayer for determination of plaintiff's title against the adverse claims. (See Code Civ. Proc., § 761.020.) Again, statutory claims must be pled with particularity.

The fourth cause of action for breach of the covenant of good faith and fair dealing fails to state sufficient facts, as it does not describe the alleged contractual relationship or how the implied covenant (as opposed to an actual contract term) was breached. "The implied covenant of good faith and fair dealing rests upon the existence of some specific contractual obligation. [Citation.] 'The covenant of good faith is read into contracts in order to protect the express covenants or promises of the contract, not to protect some general public policy interest not directly tied to the contract's purpose.' [Citation.] . . . 'In essence, the covenant is implied as a supplement to the express contractual covenants, to prevent a contracting party from engaging in conduct which (while not technically transgressing the express covenants) frustrates the other party's rights to the benefits of the contract.'" (*Racine & Laramie, Ltd. v. Department of Parks & Recreation* (1992) 11 Cal.App.4th 1026, 1031-1032.)

A plaintiff bears the burden of proving an amendment would cure the defect(s) in a cause of action identified on demurrer. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th

1074, 1081; *Shaeffer v. Califia Farms, LLC* (2020) 44 Cal.App.5th 1125, 1145 (*Shaeffer*) ["The onus is on the plaintiff to articulate the 'specifi[c] ways' to cure the identified defect, and absent such an articulation, a trial or appellate court may grant leave to amend 'only if a potentially effective amendment [is] both apparent and consistent with the plaintiff's theory of the case. [Citation.]'"].) Because Narog has not submitted a timely opposition, he has failed to meet this burden. Given the ambiguity of the complaint, it is not apparent to the court that any potential amendments would be effective.

Nevertheless, because this is the first pleading challenge to be heard in this case, the court will grants 20 days' leave to amend.

The court reminds the parties that when a demurrer is sustained with leave to amend, the leave must be construed as permission to the pleader to amend the causes of action to which the demurrer has been sustained, not to add entirely new causes of action. (*Patrick v. Alacer Corp.* (2008) 167 Cal.App.4th 995, 1015.) To raise claims entirely unrelated to those originally alleged requires either a new lawsuit or a noticed motion for leave to amend. (*Zakk v. Diesel* (2019) 33 Cal.App.5th 431, 456 [citing *Harris v. Wachovia Mortgage, FSB* (2010) 185 Cal.App.4th 1018, 1023].) Here, the court does not grant leave to add new causes of action or parties.

The court notes that by sustaining the Arkley Defendants' demurrer with leave to amend, this may render moot the upcoming demurrers to the first four causes of action in the complaint brought by Excel (scheduled to be heard on December 12, 2024) and the Cuffie Defendants (scheduled to be heard on December 19, 2024), if Narog amends the complaint in accordance with this order. As a practical matter, that is the consequence of hearing the parties' demurrers on separate days. In the future, if there are pleading challenges (or other motions) to be filed by multiple parties that raise the *same or overlapping* issues, the parties should either endeavor to have them heard on the same day, or—if the court's online motion scheduling system does not initially allow for it—they should file an ex parte application for the court to set the hearings specially on the same day.

The Arkley Defendants' demurrer is SUSTAINED with 20 days' leave to amend.

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Calendar Line 3
Case Name: *Escarlett Valle Guillen Lopez et al. v. DGDG 10, LLC et al.*
Case No.: 21CV391989

I. BACKGROUND

This is an action under the Song-Beverly Consumer Warranty Act by plaintiffs Escarlett Valle Guillen Lopez and Fidel Lopez Ramos ("Plaintiffs") against defendants DGDG 10, LLC ("Capitol Buick"), General Motors, LLC ("GM"), and various Doe defendants. The lawsuit is based on Plaintiffs' acquisition of a 2016 GMC Terrain. Plaintiffs allege that they entered into a written warranty contract with GM and that the vehicle suffered from (unspecified) engine defects.

Plaintiffs filed their original and still-operative complaint on December 6, 2021. The complaint states three causes of action: (1) Violation of the Song-Beverly Act—Breach of Express Warranty (against GM and Does); (2) Violation of the Song-Beverly Act—Breach of Implied Warranty (against GM and Does); and (3) Negligent Repair (against Capitol Buick and Does).[3] Attached to the complaint as Exhibit 1 are selected pages from the owners' manual for the subject vehicle.

Currently before the court is a motion for summary judgment, filed by GM on August 28, 2024. The court has not received an opposition from Plaintiffs. This matter is currently set for a jury trial on December 16, 2024. The trial date was set at a March 5, 2024 trial setting conference, more than five and a half months before the filing of the motion for summary judgment was filed.

II. MOTION FOR SUMMARY JUDGMENT

A. The Basis for GM's Motion

GM moves for summary judgment on the basis that "Plaintiffs cannot pursue breach of express warranty claims under Song-Beverly against GM about a vehicle Plaintiffs did not purchase as a 'new motor vehicle'" and on the basis that "Plaintiffs cannot pursue breach of implied warranty claims against GM based upon a vehicle that Plaintiffs bought 'used.'" (Notice of Motion at p. 2:6-9.) GM relies on *Rodriguez v. FCA US LLC* (2024) 17 Cal.5th 189 (*Rodriguez*), which was pending review at the time GM filed its motion but as to which the California Supreme Court has now issued a published decision, on October 31, 2024.

B. Discussion

Despite the fact that the *Rodriguez* case may provide some support for GM's position, the court denies the motion for summary judgment for failure to comply with Code of Civil Procedure section 437c, subdivision (a)(3). This code provision states: "The motion [for summary judgment] shall be heard no later than 30 days before the date of trial, unless the court for good cause orders otherwise. The filing of the motion shall not extend the time within which a party must otherwise file a responsive pleading." The 30-day time limit on summary judgment hearings before trial is calculated based on the trial date in effect *at the*

[3] The third cause of action is mislabeled as a fourth cause of action in the body of the complaint.

time the summary judgment motion is filed and noticed, regardless of whether or not that is the original trial date. (See *Green v. Bristol Meyers Co.* (1988) 206 Cal.App.3d 604.)

Ordinarily, if a moving party is unable to obtain a hearing for the summary judgment motion more than 30 days before trial, the party will immediately file an ex parte application for the court to find good cause to hear the motion within 30 days of the trial date. GM did not do that here; instead, after obtaining the December 3, 2024 hearing date in *August 2024*, it did nothing to alert the court or the Plaintiffs to the fact that this hearing date was only 13 calendar days before the jury trial. If it had done so, the court could have made the necessary adjustments. In addition, GM had ample time after the trial setting conference on March 5, 2024 to file a motion for summary judgment that would have complied with Code of Civil Procedure section 473c, subdivision (a)(3); instead, it *waited five and a half more months to file its motion*. Unless a trial court finds good cause under subdivision (a)(3), a notice of motion setting a summary judgment motion for hearing within 30 days of the trial date is invalid. (*Robinson v. Woods* (2008) 168 Cal.App.4th 1258, 1268; see also *Diaz v. Professional Community Management, Inc.* (2017) 16 Cal.App.5th 1190, 1204-1205 ["the court lacks jurisdiction to rule on a motion that has not been properly noticed for hearing on the date in question"].)

While the court could theoretically find good cause on its own, GM has provided no apparent rationale for doing so. Rather, GM has simply ignored subdivision (a)(3). In addition, the court finds that 13 calendar days—here, only nine court days—is far too close to the trial date to be reasonable.

If GM believes that the new *Rodriguez* decision provides a basis for a favorable judgment as to one or more of Plaintiffs' causes of action, it can make that argument to the trial court judge. GM does not get to have a non-compliant summary judgment hearing or an 11th-hour continuance of trial after having sat on its hands for the last several months.

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Calendar Line 7
Case Name: *Christian Humanitarian Aid, Inc. v. AM Star Construction, Inc. et al.*
Case No.: 22CV396170

Plaintiff Christian Humanitarian Aid, Inc. ("CHA") brings the present motion to release or reduce the mechanic's lien in this case, under *Lambert v. Superior Court* (1991) 228 Cal.App.3d 383, 388. CHA argues that defendant AM Star Construction, Inc.'s ("AMS's") lien was both untimely and that it "willfully included un-lienable consequential damages."[4] The court finds that the lien was untimely and therefore must be released.

CHA contends that AMS, the general contractor on the construction project at issue, stopped all work on the project on October 21, 2020. AMS contends that it stopped all work slightly later, on November 30, 2020. For purposes of this motion, CHA "conservatively" takes the latter date and then argues that because there was no work performed on the project "for a continuous period of 60 days" from November 30, 2020 to January 29, 2021, AMS had 90 days from January 29, 2021 to record its mechanics lien under Civil Code section 8412—*i.e.*, until April 29, 2021.[5] Here, AMS did not record its lien until June 1, 2021, which was more than a month after the statutory deadline.

AMS opposes CHA's timeliness argument by disputing the factual predicate: even though AMS admitted in a verified RFA response that it "did not perform any work at the PROJECT after November 30, 2020" (Response to Request for Admission No. 15 (Declaration of Kaveh Badiei, Exhibit D)), it claims that *other* parties continued to work on the project from December 2020 to May 2021, and so "there was no continuous 60-day cessation of work during any part of the [relevant] period." (Opposition, p. 2:5-21.) AMS supports its opposition with two declarations: (1) a declaration of Michael Achkar, AMS's President, who says that he "observed labor and work being performed by construction workers, observed building materials being transported into the Property's building by construction workers, and/or observed piles of construction debris generated by construction activities performed during said time period" (Achkar Declaration, ¶ 4.d); and (2) a declaration of Lucie Michail, an attendee of church mass at CHA, who "personally observed the progress of ongoing work at the first floor areas and second floor areas of the Property's building where AMS had performed its work" (Michail Declaration, ¶ 7.c).

The court finds this to be a very odd argument by AMS. The court has been given no legal authority to support the proposition that even if a lien claimant admittedly stops all work on a construction project, the deadline under Civil Code section 8180, subdivision (a)(3), does not start to run as long as *someone else* works on the project within six months. This interpretation of the statutory scheme seems to run counter to the very purpose of Civil Code sections 8180 and 8412, which are designed to set reasonable time limits on a party's ability to bring a mechanics lien claim. While it may well be the case that the period continues to run

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[4] CHA also argues that AMS over-valued its work under Civil Code section 8430, subdivision (a): "(a) The lien is a direct lien for the lesser of the following amounts: [¶] (1) The reasonable value of the work provided by the claimant. [¶] (2) The price agreed to by the claimant and the person that contracted for the work."

[5] Under Civil Code section 8412, a direct contractor "may not enforce a lien unless [it] records a claim of lien after [it] completes the direct contract, and before the earlier of the following times: (a) Ninety days after completion of the work of improvement . . . ." Under Civil Code section 8180, "completion" can include: "(a)(3) Cessation of labor for a continuous period of 60 days."

while a *subcontractor* who was hired to work under the direction of the lien claimant (the direct contractor) is still doing work, there is no evidence here that that is the case—indeed, neither of AMS's declarants (Achkar and Michail) appears to have any personal knowledge of *who* was allegedly still working on the project or *what work* they were doing. Under AMS's interpretation, if a lien claimant completely abandons a construction project—as is alleged here by CHA—it does not have to act promptly as long as the owner of the project hires someone else to pick up the slack within six months. The court has been given no support for this legal argument and therefore cannot accept it.[6]

Having found that the lien was not timely and must be released, the court declines to address CHA's alternative arguments that AMS "willfully" included consequential damages in the amount of its lien, or that AMS over-valued the lien under Civil Code section 8430.

The motion is GRANTED.

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[6] The court also finds AMS's evidence – the Achkar and Michail declarations – to be highly insubstantial. As noted above, there is no indication that either declarant has any direct, personal knowledge of what was happening on the property between December 2020 and May 2021, other than what they purportedly observed in passing, presumably from a distance. No specific dates are provided, no details are given as to what particular "labor and work" was being performed (other than the "transport" of materials), and no information is provided as to *who* was allegedly performing any of this work, Nevertheless, the court will not weigh the evidence and will simply accept it for what it is for the purpose of this motion.