SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 12
Honorable Nahal Iravani-Sani, Presiding

191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2230

DATE: 2/4/2026 TIME: 9:00 A.M. and 9:01 A.M.

TO CONTEST THE RULING: Before 4:00 p.m. ON THE DAY PRIOR TO THE HEARING, YOU MUST NOTIFY:

(1) Court by calling (408) 808-6856 and
(2) Other side by phone or email that you plan to appear and contest the ruling.

The Court will not hear argument, and the tentative ruling will be adopted if these notifications are not made. (Cal. Rule of Court 3.1308(a)(1); Civil Local Rule 8.D.)

IN-PERSON APPEARANCES: Department 12 is a fully open courtroom conducting in-person hearings on the days it has scheduled matters. The Court strongly encourages in-person appearances for any **contested** law-and-motion matter.

REMOTE APPEARANCES: Remote appearance is governed by Civil Local Rule 5 and General Local Rule 9. Department 12 uses UDC as its remote platform.

The Court **strongly** encourages in-person appearance, but if appearing remotely, **VIDEO IS REQUIRED**. Audio only appearances are not allowed absent exceptional circumstances. (Civil Local Rule 5.B.)

TELEPHONIC APPEARANCE IS PROHIBITED, unless the Court grants an exception. (Civil Local Rule 5.A.) CourtCall is no longer available.

RECORDING IS PROHIBITED: State and local court rules prohibit recording court proceedings without a court order. This prohibition applies to both in-person and remote appearances.

COURT REPORTERS ARE NOT PROVIDED: If any party wishes to have a court reporter, the appropriate forms and process may be found on the court's website https://www.scscourt.org/general_info/court_reporters.shtml.

SCHEDULING MOTION HEARINGS: Please reserve your next hearing date using Court Schedule—an online scheduling tool on the Santa Clara County court website. https://reservations.scscourt.org or call 408-882-2430 between 8:30 a.m. and 12:30 p.m. (Mon.-Fri.) You must then file your motion papers no more than five court days after reserving the hearing date, or the date will be released to other cases.

FINAL ORDERS: The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.) **Please Note:** Any proposed orders must be submitted with the Judicial Council Form EFS-020 Proposed Order (Cover Sheet). Please include the date, time, department and line number.

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DATE: 2/4/2026 TIME: 9:00 A.M. and 9:01 A.M.

LINE #	CASE #	CASE TITLE	HEARING/RULING
LINE 1	25CV461455	MARIA ROSAS vs FCA US, LLC. et al	Hearing: Demurrer Demurrer is Unopposed and Sustained with 15 days leave to amend; Notice of Non-Opposition filed 01/28/26.
LINE 2	25CV466810	Ampalavanapillai Kumarathasan vs BMW of North America, LLC	Hearing: Demurrer Please scroll down to Line 2
LINE 3	24CV438629	James Atkins vs GOOD SAMARITAN HOSPITAL, L.P.	Motion: Summary Judgment/Adjudication Please scroll down to Line 3
LINE 4	20CV363709	Griego v. The Tehama Law Group, P.C., et al. (Class Action)	Motion: to Enforce Subpoenas Notice is proper. Cross Complainant Patelco placed the alter ego/veil piercing theory directly at issue, which the Court previously deemed a triable issue of fact. The Motion to Enforce seeks discovery of financial records relevant and reasonably calculated to the discovery of admissible evidence pursuant to CCP 2017.010. Any privacy intrusion may be addressed via confidentiality restriction orders and redaction of sensitive identifiers. The time and scope is reasonable to reveal, *if any*, history of formation, operation, transfers, unity of interest, impeachment and tracing evidence, among entities – or lack thereof. Motion to Enforce Subpoenas is granted. Prevailing party to prepare the order
LINE 5	24CV445005	ALAN LEMUS et al vs CITY OF SAN JOSE	Motion: Compel Answers Notice of Reset Hearing sent: 03/20/2026 in Dpt 16

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DATE: 2/4/2026 TIME: 9:00 A.M. and 9:01 A.M.

LINE 6	24CV454380	Capital One N.a. vs Isabel Obispado	Motion: Admissions Deemed Admitted Plaintiff's Motion to Deem Requests for Admission, Admitted is *tentatively* GRANTED, subject to additional proof. Plaintiff contends that the Requests for Admission were properly served on Defendant and that no responses were served within the time permitted by law. The Court notes that while Defendant filed "Answer to the Complaint and Affirmative Defenses" dated 03/20/2025, as of the hearing date, Defendant has not served responses to "Requests for Admission". Accordingly, pursuant to Code of Civil Procedure section 2033.280(b)–(c), the truth of the matters specified in the Requests for Admission and the genuineness of any documents identified therein are tentatively deemed admitted. Moreover, the Defendant failed to file any Opposition to the current Motion filed on 10/03/2025. "Failure to oppose a motion may be deemed a consent to the granting of the motion." CRC Rule 8.54(c). Plaintiff's Proof of Service of Exhibit1, however, is illegible in part. Court's tentative is to grant the motion upon submission of proof of past proper notice (Proof of Service dates under penalty of perjury by Connie Jimenez.)
LINE 7	24CV440826	Clear Recon Corp In Re: 67-69-73-75 E Hedding St., San Jose, Ca 95112	Motion: for Disbursement of Surplus Funds Notice is proper, and the motion is unopposed. Claimant's motion is granted, consistent with Court's Order for Payment from Court Deposit on 7/3/2025 Claimant to Prepare the Order

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DATE: 2/4/2026 TIME: 9:00 A.M. and 9:01 A.M.

LINE 8	25CV481671	Hongyu Ximen vs Linktel Technologies, Inc. et al	Motion: Order Authorizing Service by Electronic Mail The court record establishes that Counsel for Defense filed Declaration of Demurring Party in Support of Automatic Extension on or about the same date of Plaintiff's motion, which may now be MOOT. Matter is to be taken off calendar; Case Management Conference date to remain as set.
LINE 1 (9:01)	24CV428916	Ran Jethani et al vs MattIhsan	Order on Motion by Plaintiff's Counsel to Be Relieved as Counsel Plaintiffs'/Cross Defendants' Counsel Elise M. Balgley moves under Code of Civil Procedure 284(2) for an Order to Be Relieved as Counsel. No Opposition received. As the Motion complies with applicable law and is duly served, the Motion is hereby GRANTED. The The Court will sign the Proposed Order that has already been prepared and filed.

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Calendar Line 2
Case Name: *Ampalavanapillai Kumarathasan v. BMW of North America, LLC*
Case No.: 25-CV-466810

Demurrer to the Complaint by Defendant BMW of North America, LLC

Factual and Procedural Background

This is an action for violations of the Song-Beverly Act by plaintiff Ampalavanapillai Kumarathasan ("Plaintiff") against defendant BMW of North America, LLC ("BMW").

According to the complaint, on October 7, 2024, Plaintiff purchased a 2025 BMW X5 ("vehicle"), manufactured and/or distributed by defendant BMW. (Complaint at ¶ 6.) Plaintiff purchased the vehicle primarily for personal, family, or household purposes. (Id. at ¶ 8.)

In connection with the purchase of the vehicle, Plaintiff received an express written warranty. (Complaint at ¶ 10.) The warranty provided, in relevant part, that in the event a defect developed with the vehicle during the warranty period, Plaintiff could deliver the vehicle for repair services to defendant BMW's representative and the vehicle would be repaired. (Ibid.)

During the warranty period, the vehicle contained or developed defects to the: (1) electrical system; (2) engine; and (3) ignition system. (Complaint at ¶ 12.) The defects violate the express written warranties issued by defendant BMW, as well as the implied warranty of merchantability. (Id. at ¶ 13.)

Plaintiff provided defendant BMW and its representatives in this state sufficient opportunity to service or repair the vehicle. (Complaint at ¶ 14.) BMW and its representatives however were unable and/or failed to service or repair the vehicle within a reasonable number of attempts. (Id. at ¶ 15.)

On May 27, 2025, Plaintiff filed the operative complaint against defendant BMW alleging causes of action for:

(1) Violation of Subdivision (D) of Civil Code Section 1793.2;
(2) Violation of Subdivision (B) of Civil Code Section 1793.2;
(3) Violation of Subdivision (A)(3) of Civil Code Section 1793.2;
(4) Breach of Express Warranty; and
(5) Breach of the Implied Warranty of Merchantability.

On August 1, 2025, defendant BMW filed the motion presently before the court, a demurrer to the complaint. BMW filed a request for judicial notice in conjunction with the motion. Plaintiff filed written opposition.

A further case management conference is also scheduled for February 4, 2026.

Demurrer to the Complaint

Defendant BMW argues the first, second, third, and fifth causes of action are subject to demurrer for failure to state a valid claim.[1] (See Code Civ. Proc., § 430.10, subd. (e).)

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[1] The court notes defendant BMW does not challenge the fourth cause of action for breach of express warranty on demurrer. The court declines to consider the challenge on demurrer to the sixth cause of action for fraudulent inducement – concealment as no such claim appears in the complaint. Furthermore, the court's review of the

Request for Judicial Notice

"Judicial notice is the recognition and acceptance by the court, for use by the trier of fact or by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter." (*Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1117.)

In support of the demurrer, defendant BMW requests judicial notice of its Statement of Information filed with the State of California, Office of the Secretary of State, on November 11, 2024. (See Request for Judicial Notice ["RJN"] at Ex. 1.) The court may take judicial notice of the Secretary of State filing under Evidence Code section 452, subdivision (c). (Evid. Code, § 452, subd. (c) [permitting judicial notice of official acts of a state including records, orders and reports of its administrative agencies]; see *Pedus Building Services, Inc. v. Allen* (2002) 96 Cal.App.4th 152, 156 [granting request for "judicial notice of the official records of the California Secretary of State confirming that Pedus is a California Corporation with its principal place of business in Monterey Park, California" on the basis of Evidence Code § 452, subdivision (c)]; see also *Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1286-1287 [granting request for judicial notice of Secretary of State's domestic corporation certificate of filing and suspension pertaining to corporate status of ASI].) Plaintiff does not oppose the request. Furthermore, the request is relevant to arguments raised in support of the demurrer for reasons explained below. (See *Gbur v. Cohen* (1979) 93 Cal.App.3d 296, 301 [judicial notice is confined to those matters which are relevant to the issue at hand].)

Accordingly, the request for judicial notice is GRANTED.

Legal Standard

A complaint must contain substantive factual allegations sufficiently apprising the defendant of the issues to be addressed. (See *Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139, fn. 2.)

"In reviewing the sufficiency of a complaint against a general demurrer, we are guided by long settled rules. 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.' [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context. [Citation.]" (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

" 'It is not the ordinary function of a demurrer to test the truth of the plaintiff's allegations or the accuracy with which he describes the defendant's conduct. A demurrer tests only the legal sufficiency of the pleading. [Citation.]' [Citation.] In reviewing the ruling on a demurrer, 'the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court [citations] … .' [Citation.] 'To survive a demurrer, the complaint need only allege facts sufficient to state a cause of action; each evidentiary fact that might eventually form part of the plaintiff's proof need not be alleged. [Citation.]' [Citation.] A complaint's allegations are construed liberally in favor of the pleader. [Citations.]" (*Ferrick v. Santa Clara University* (2014) 231 Cal.App.4th 1337, 1341.)

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moving papers suggests that defense counsel has cut and paste facts and arguments from a different case in support of the instant demurrer. These cut and paste errors do not impair the court's ability to consider the merits of the demurrer. The court however reminds defense counsel to file and serve future motions with the appropriate facts and supporting arguments directed to the challenged pleading.

Also, " 'it is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. [Citation.] And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment.' [Citations.]" (*Gregory v. Albertson's, Inc.* (2002) 104 Cal.App.4th 845, 850.)

First, Second, Third and Fifth Third Causes of Action

Each of Plaintiff's causes of action arise out of The Song-Beverly Consumer Warranty Act codified in Civil Code section 1791 et seq.

The Song-Beverly Consumer Warranty Act provides that if a manufacturer or its representative in the state fails to repair a new motor vehicle to conform to any express warranty after a reasonable number of attempts to repair, the manufacturer must replace the vehicle or pay restitution. (*Cummins, Inc. v. Super. Ct.* (2005) 36 Cal.4th 478, 483 (*Cummins*).)

"The Song-Beverly Consumer Warranty Act was enacted to address the difficulties faced by consumers in enforcing express warranties. Consumers frequently were frustrated by the inconvenience of having to return goods to the manufacturer for repairs and by repeated unsuccessful attempts to remedy the problem. [Citation.] The Act protects purchasers of consumer goods by requiring specified implied warranties, placing strict limitations on how and when a manufacturer may disclaim those implied warranties, and providing mechanisms to ensure that manufacturers live up to the terms of any express warranty. [Citations.]" (*Cummins, supra,* 36 Cal.4th at p. 484.)

A plaintiff pursuing an action under the Act has the burden to prove that (1) the vehicle had a nonconformity covered by the express warranty that substantially impaired the use, value or safety of the vehicle (the nonconformity element); (2) the vehicle was presented to an authorized representative of the manufacturer of the vehicle for repair (the presentation element); and (3) the manufacturer or his representative did not repair the nonconformity after a reasonable number of repair attempts (the failure to repair element)." (*Oregel v. American Isuzu Motors, Inc.* (2001) 90 Cal.App.4th 1094, 1101.)

As to the first, second, third, and fifth causes of action, defendant BMW argues Plaintiff lacks standing to assert these claims as he fails to allege that: (1) he bought the subject vehicle; or (2) he purchased the vehicle in California. (See *Cummins, supra,* 36 Cal.4th at pp. 483, 493 [California Supreme Court concludes Act does not apply unless vehicle was purchased in California].)

The court does not find these arguments to be persuasive. First, the complaint clearly alleges Plaintiff purchased the vehicle from defendant BMW on October 7, 2024. (Complaint at ¶ 6.) Second, the complaint alleges that Plaintiff is a resident of San Joaquin County in the State of California and BMW is a Delaware corporation registered to do business in California that is "engaged in the design, manufacturer, construction, assembly, marketing, sale, and distribution of automobiles, motor vehicles and other related components and services in Santa Clara County." (Id. at ¶¶ 2, 4.) Such allegations are accepted as true at the pleading stage. Nor is it evident from the face of the complaint that Plaintiff purchased the vehicle outside of California and BMW has not submitted any request for judicial notice to that effect. And, as the opposition points out, Plaintiff resided in San Joaquin County at the time he purchased the vehicle, and thus the court may reasonably infer that he purchased the vehicle in California. (See OPP at p. 3:1-6; see also *Bank of New York Mellon v. Citibank, N.A.* (2017) 8 Cal.App.5th 935, 952 ["On demurrer, we draw all reasonable inferences in favor of the plaintiff."].) The demurrer therefore is not sustainable on this ground.

First Cause of Action

The first cause of action is a violation of Civil Code section 1793.2, subdivision (d) which provides in part:

(1) "Except as provided in paragraph (2), if the manufacturer or its representative in this state does not service or repair the goods to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either replace the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer, less that amount directly attributable to use by the buyer prior to the discovery of the nonconformity. However, if the manufacturer or its representative in this state does not service or repair a travel trailer or a portion of a motor home designed, used, or maintained for human habitation, to conform to the applicable express warranties after a reasonable number of attempts, the buyer shall be free to elect reimbursement in lieu of replacement, and in no event shall the buyer be required by the manufacturer to accept a replacement travel trailer or motor home.

(2) If the manufacturer or its representative in this state is unable to service or repair a new motor vehicle, as that term is defined in paragraph (2) of subdivision (e) of Section 1793.22, to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the new motor vehicle in accordance with subparagraph (A) or promptly make restitution to the buyer in accordance with subparagraph (B). However, the buyer shall be free to elect restitution in lieu of replacement, and in no event shall the buyer be required by the manufacturer to accept a replacement vehicle." (Civ. Code, § 1793.2, subd. (d) (1) – (2).)

Defendant BMW contends the first cause of action is subject to demurrer as Plaintiff fails to state facts showing: (1) what dates he presented the vehicle for repair of purported nonconformities; (2) what the specific nonconformities or defects existed on any such presentation date; (3) what, if any, defects occurred more than once; and (4) whether any alleged specific nonconformities were repaired. (See Demurrer at pp. 4:26-5:2.) In support, BMW relies on *Silvio v. Ford Motor Co.* (2003) 109 Cal.App.4th 1205 (*Silvio*), a decision from the Second Appellate District. There, appellants Frank M. and Charlotte Silvio gave respondents Ford Motor Company and Board Ford one chance to repair their allegedly defective Ford Explorer. (*Silvio, supra,* at p. 1207.) Respondents moved for nonsuit on the ground that "reasonable number of attempts," being in the plural, required that they be given at least two opportunities to repair. (*Ibid*.) The trial court agreed with respondents' reading of the statute. (*Ibid*.) The Court of Appeal affirmed and concluded:

> "We see no ambiguity or uncertainty here and thus do not consider any argument regarding intent. The statute requires the manufacturer to afford the specified remedies of restitution or replacement if that manufacturer is unable to repair the vehicle 'after a reasonable number of *attempts*.' 'Attempts' is plural. The statute does not require the manufacturer to make restitution or replace a vehicle if it has had only one opportunity to repair that vehicle." (*Id*. at p. 1208.)

As a preliminary matter, neither *Silvio* nor any other legal authorities cited by defendant BMW require the level of specificity requested in its argument to the first cause of action. Also, to the extent that BMW relies on *Silvio* to imply there was a single attempt to repair the vehicle, Plaintiff alleges otherwise as he states he brought the vehicle for service and repair within a reasonable number of attempts. (See Complaint at ¶¶ 15, 19-21.) This is sufficient to withstand demurrer as the pleading suggests there were multiple attempts for service and repair of the vehicle. Whether those repair attempts were reasonable remains a question of fact beyond the scope of this demurrer. (See *Robertson v. Fleetwood Travel Trailers of California, Inc.* (2006) 144 Cal.App.4th 785, 799 ["The reasonableness of the number of repair attempts is a question of fact to be determined in light of the circumstances, but a minimum there must be more than one opportunity to fix the nonconformity."].) Thus, the demurrer to the first cause of action is not sustainable on this ground.

Second Cause of Action

The second cause of action is a violation of Civil Code section 1793.2, subdivision (b) which states:

> "Where those service and repair facilities are maintained in this state and service or repair of the goods is necessary because they do not conform with the applicable express warranties, service and repair shall be commenced within a reasonable time by the manufacturer or its representative in this state. Unless the buyer agrees in writing to the contrary, the goods shall be serviced or repaired so as to conform to the applicable warranties within 30 days. Delay caused by conditions beyond the control of the manufacturer or its representatives shall serve to extend this 30-day requirement. Where delay arises, conforming goods shall be tendered as soon as possible following termination of the condition giving rise to the delay." (Civ. Code, § 1793.2, subd. (b).)

Defendant BMW asserts the second cause of action fails because Plaintiff does not allege that any repair of a specific purported nonconformity took longer than 30 days. Here, the statute requires goods to be serviced or repaired so as to conform to applicable warranties within 30 days. Plaintiff alleges BMW violated the statute by failing to service or repair the vehicle so as to conform to applicable warranties within 30 days which is sufficient to defeat a pleading challenge on demurrer. (See Complaint at ¶¶ 27, 30.)

In the alternative, defendant BMW argues the claim fails as Plaintiff does not allege any out-of-pocket losses. In support, BMW relies on *Bishop v. Hyundai Motor Am.* (1996) 44 Cal.App.4th 750 (*Bishop*), a decision from the Fourth Appellate District. *Bishop* however is distinguishable as the appellate court declined to award damages for emotional distress or "loss of use" not involving actual monetary loss under the Song-Beverly Act. (*Bishop, supra,* at p. 753 [judgment modified striking awards for "loss of use" and emotional distress].) Plaintiff does not seek those damages here but rather pursues restitution, consequential and incidental damages, and civil penalties which are permissible under the statute. (See Complaint at ¶¶ 29-30, Prayer for Relief; *Bishop, supra,* at p. 754 [proper measure of damages].) The second cause of action therefore survives demurrer as to these grounds.

Fifth Cause of Action

The fifth cause of action is a breach of the implied warranty of merchantability under Civil Code section 1792 which provides:

> "Unless disclaimed in the manner prescribed by this chapter, every sale of consumer goods that are sold at retail in this state shall be accompanied by the manufacturer's and the retail seller's implied warranty that the goods are merchantable. The retail seller shall have a right of indemnity against the manufacturer in the amount of any liability under this section." (Civ. Code, § 1792.)

The elements of a claim for breach of implied warranty of merchantability are: (1) that plaintiff bought the vehicle from or manufactured by defendant; (2) that at the time of purchase defendant was in the business of selling or manufacturing that vehicle; (3) that the vehicle (a) was not of the same quality as those generally acceptable in the trade; or (b) was not fit for the ordinary purposes for which the goods are used; (4) that plaintiff was harmed; and (5) that the defendant's breach was a substantial factor in causing that harm. (See CACI 3210; Civ. Code, § 1791.1.)

On demurrer, defendant BMW argues there is no cause of action stated for breach of the implied warranty as such claims apply only to manufacturers and retail sellers. BMW contends it is neither but instead merely a distributor.

“ ‘Manufacturer’ means any individual, partnership, corporation, association, or other legal relationship that manufactures, assembles, or produces consumer goods.” (Civ. Code, § 1791, subd. (j).)

“ ‘Retail seller,’ ‘seller,’ or ‘retailer’ means any individual, partnership, corporation, association, or other legal relationship that engages in the business of selling or leasing consumer goods to retail buyers.” (Civ. Code, § 1791, subd. (l).)

“ ‘Distributor’ means any individual, partnership, corporation, association, or other legal relationship that stands between the manufacturer and the retail seller in purchases, consignments, or contracts for sale of consumer goods.” (Civ. Code, § 1791, subd. (e).)

Here, Plaintiff alleges defendant BMW was engaged in the design, manufacture, construction, assembly, marketing, sale, and distribution of automobiles, motor vehicles and other related components and services in Santa Clara County. (Complaint at ¶ 4.) Plaintiff further alleges he purchased the vehicle manufactured or distributed by BMW. (Id. at ¶¶ 6, 9.) Thus, on the face of the pleading, taken as true on demurrer, BMW is a manufacturer, seller, and distributor for purposes of the Song-Beverly Act. (See *Turner v. Victoria* (2023) 15 Cal.5th 99, 109 [at the demurrer stage, court takes as true all properly pleaded material facts].)

To overcome these allegations, defendant BMW directs the court to its Statement of Information submitted in support of its request for judicial notice. (See RJN at Ex. 1.) The Statement provides in part that BMW’s business is designated as “Importer/wholesale of motor vehicles, motorcycles, parts, and accessories.” (Ibid.) BMW contends this description of its business equates to being simply a “distributor.” But, as the opposition points out, this excerpt from the Statement of Information does not affirmatively establish that BMW is only a “distributor.” (See OPP at p. 8:3-15.) Nor does BMW submit any legal authorities which prohibit plaintiffs from seeking claims for breach of the implied warranty of merchantability against distributors. Therefore, the allegations of the complaint control over the request for judicial notice and the demurrer is not sustainable on this ground.

Disposition

The demurrer to the first, second, third and fifth causes of action is OVERRULED in its entirety.

The court will prepare the Order.

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Calendar Line 3

Calendar Line No. 3
Case Name: *James Atkins v. Good Samaritan Hospital, L.P.*
Case No.: 24CV438629

Motion for Summary Judgment by Defendant Good Samaritan Hospital, L.P.

Factual and Procedural Background

This is a medical negligence action by plaintiff James Atkins ("Plaintiff") against defendant Good Samaritan Hospital, L.P. ("Defendant" or "Good Samaritan Hospital").

On May 21, 2023, Plaintiff went to the emergency department at Good Samaritan Hospital for pain in his right flank. (Complaint, ¶ 11.) After reviewing Plaintiff's CT scan, Dr. Rudra Barua concluded Plaintiff must have passed a kidney stone and prescribed Dilaudid and Toradol. (*Ibid*.) On May 28, 2023, Plaintiff returned to Good Samaritan with shortness of breath and diffuse pain in his elbows, shoulders, ankles, and feet. (*Id*. at ¶ 12.) Plaintiff was given antibiotics and treated for severe sepsis. (*Ibid*.) Plaintiff later learned that he had contracted a staph infection at the intravenous site of his right arm when he was treated on May 21, 2023. (*Id.* at ¶ 13.)

On May 8, 2024, Plaintiff filed a Complaint for Medical Negligence, alleging a single cause of action for professional negligence against Defendant.

On July 10, 2025, Defendant filed the present motion for summary judgment. Plaintiff filed a timely opposition, and Defendant filed a timely reply.

Motion for Summary Judgment

Defendant moves for summary judgment on the ground there is no triable issue of material fact and thus judgment should be granted as a matter of law.

Legal Standard

Any party may move for summary judgment. (Code Civ. Proc., § 437c, subd. (a); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843 (*Aguilar*).) The motion "shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c); *Aguilar, supra,* 25 Cal.4th at p. 843.) The object of the summary judgment procedure is "to cut through the parties' pleadings" to determine whether trial is necessary to resolve the dispute. (*Aguilar, supra,* 25 Cal.4th at p. 843.)

The "party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact…" (*Aguilar, supra,* 25 Cal.4th at p. 850; see Evid. Code, § 110.) "A prima facie showing is one that is sufficient to support the position of the party in question." (*Aguilar, supra,* 25 Cal.4th at p. 851.)

If the moving party makes the necessary initial showing, the burden of production shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. (Code Civ. Proc., § 437c, subd. (p)(2); see *Aguilar, supra,* 25 Cal.4th at p. 850.)

A triable issue of material fact exists "if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar, supra,* 25 Cal.4th at p. 850, fn. omitted.) If the party opposing summary judgment presents evidence demonstrating the existence of a disputed material fact, the motion must be denied. (*Id.* at p. 856.)

Throughout the process, the trial court "must consider all of the evidence and all of the inferences drawn therefrom." (*Aguilar, supra,* 25 Cal.4th at p. 856.) The moving party's evidence is strictly construed, while the opponent's is liberally construed. (*Id.* at p. 843.)

Professional Negligence

"The elements of a cause of action for negligence are well established. They are '(a) a legal duty to use due care; (b) a breach of such legal duty; and (c) the breach as the proximate or legal cause of the resulting injury.'" (*Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917.)

> With respect to professionals, their specialized education and training do not serve to impose an increased duty of care but rather are considered additional "circumstances" relevant to an overall assessment of what constitutes "ordinary prudence" in a particular situation. Thus, the standard for professionals is articulated in terms of exercising "the knowledge, skill and care ordinarily possessed and employed by members of the profession in good standing …." [Citation.] For example, the law "'demands only that a physician or surgeon have the degree of learning and skill ordinarily possessed by practitioners of the medical profession in the same locality and that he [or she] exercise *ordinary care* in applying such learning and skill to the treatment of [the] patient.' [Citation.]" [Citation.].

(*Flowers v. Torrance Memorial Hospital Medical Center* (1994) 8 Cal.4th 992, 997-998.)

In moving for summary judgment, Defendant denies (1) any breach of the standard of care afforded to Plaintiff while he was a patient; and (2) any act and/or omission by Defendant caused Plaintiff injury.

<u>Breach of the Standard of Care</u>

"Because the standard of care in a medical malpractice case is a matter 'peculiarly within the knowledge of experts' [Citation], expert testimony is required to 'prove or disprove that the defendant performed in accordance with the standard prevailing of care' unless the negligence is obvious to a layperson. [Citation.]" (*Johnson v. Superior Court* (2006) 143 Cal.App.4th 297, 305.)

"'California courts have incorporated the expert evidence requirement into their standard for summary judgment in medical malpractice cases. When a defendant moves for summary judgment and supports his motion with expert declarations that his conduct fell within the community standard of care, he is entitled to summary judgment unless the plaintiff comes forward with conflicting expert evidence.' [Citations.]" (*Munro v. Regents of the University of California* (1989) 215 Cal.App.3d 977, 984-985; see also *Borrayo v. Avery* (2016) 2 Cal.App.5th 304, 310 ["When a defendant health care practitioner moves for summary judgment and supports his motion with an expert declaration that his conduct met the standard of care, the defendant is entitled to summary judgment unless the plaintiff comes forward with conflicting expert evidence."].) The opposing expert's declaration need not be as detailed as expert testimony presented in support of the motion, but must be based on reliable matter with evidentiary supporting and reasoned explanation. (See *Sanchez v. Kern Emergency Medical Transportation Corp.* (2017) 8 Cal.App.5th 146, 155-156 (*Sanchez*).)

Defendant relies on the declarations of Janis Provinse, RN ("Nurse Provinse") and Kim Erlich, MD ("Dr. Erlich") to carry its initial burden of production on summary judgment. Nurse Provinse declares that based on, *inter alia*, her 26 years of experience as an emergency department and trauma nurse, she is qualified to comment on the care given to Plaintiff. (See Provinse Decl., ¶¶ 1-2.) Nurse Provinse opines:

> Based upon my review of the above materials[2], and on my training, education, and experience, it is my overall opinion that the nursing care and treatment provided by the [Good Samaritan Hospital] nursing staff to Plaintiff while Plaintiff was a patient at [Good Samaritan Hospital] on May 21, 2023, met the standard of care at all times, and in all respects, including, but not limited to, placement of an IV, monitoring such, and administration of ordered medications.

(*Id.* at ¶ 4.) Specifically, Nurse Provinse attests that the emergency room nurse, Donato Aves, RN, appropriately or properly (1) followed the PA/physician's orders to administer IV medications; (2) placed the IV inside Plaintiff's right elbow (a common area for IV placement in the emergency room); (3) washed his hands and put on gloves before administering the IV; (4) cleaned and sterilized the area where the IV was to be placed with chlorhexidine/alcohol; (5) inserted the IV without touching the area of insertion; and (6) checked for blood return, connected primed extension tubing and flushed the IV with sterile saline. (See *id.* at ¶¶ 8-9; see generally Declaration of Donato Aves.)

Dr. Erlich declares that based on his experience as a physician who has specialized in infectious diseases for over 35 years, he is qualified to comment on the care given to Plaintiff. (See Erlich Decl., ¶¶ 1-2.) Dr. Erlich similarly opines:

> Based upon my review of the above materials[3], and on my training, education, and experience, it is my overall opinion that the care and treatment provided by [Good Samaritan Hospital] while Plaintiff was a patient at [Good Samaritan Hospital] on May 21, 2023 met the standard of care from an infectious disease perspective. It is also my opinion that the care and treatment that Plaintiff received while a patient at [Good Samaritan Hospital] during the May 28, 2023 admission, from an infectious disease perspective and related to the treatment of the Staphylococcus infection and resultant bacteremia/sepsis, was within the standard of care.

(*Id.* at ¶ 4.) Dr. Erlich similarly attests that the emergency room nurse appropriately or properly washed his hands, put on gloves, and sterilized the area before placing the IV. (*Id.* at ¶ 10.) Dr. Erlich further declares that from an infectious disease perspective, "Plaintiff was appropriately evaluated/examined and appropriate diagnostic tests were performed to identify the cause of his symptoms, including appropriate blood work and cultures. Once it was determined that Plaintiff had a Staphylococcus aureus infection he was passed on appropriate IV antibiotics and provided with appropriate supportive care." (*Ibid.*)

The declarations of Nurse Provinse and Dr. Erlich are sufficient to meet Defendant's initial burden on summary judgment. The burden now shifts to Plaintiff to raise a triable issue of material fact.

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[2] To prepare her declaration, Nurse Provinse reviewed the following: (1) Plaintiff's Complaint, (2) Plaintiff's medical and imaging records from Good Samaritan Hospital, (3) Plaintiff's discovery responses, (4) Defendant's discovery responses, (5) the deposition transcripts of Plaintiff, his wife, and Ashlee Atkins, and (6) Declaration of Donato Aves, RN. (Provinse Decl., ¶ 3.)

[3] To prepare his declaration, Dr. Erlich reviewed the following: (1) Plaintiff's Complaint, (2) Plaintiff's medical and imaging records from Good Samaritan Hospital, (3) Plaintiff's discovery responses, (4) Defendant's discovery responses, (5) the deposition transcripts of Plaintiff, his wife, and Ashlee Atkins, and (6) Declaration of Donato Aves, RN. (Elrich Decl., ¶ 3.)

In opposition, Plaintiff offers the declaration of Dawn Padley, RN ("Nurse Padley") to establish that Defendant breached the standard of care. Nurse Padley declares that she is qualified to testify as a nursing expert in court within the State of California, and that she has "over 44 years of experience in acute care hospital settings, including direct patient care, infection, prevention, IV therapy, and adherence to hospital infection control." (Padley Decl., ¶¶ 1-2.) Nurse Padley opines that the emergency room nurse did not properly disinfect the needleless port when he administered the three medications via the IV catheter. (*Id.* at ¶ 5.) Nurse Padley attests:

> In hospital nursing practice, when an IV line is accessed to administer medications, the standard of care includes performing proper IV hub disinfection ("scrub the hub") using an appropriate antiseptic and adequate mechanical scrubbing time, followed by allowing sufficient time for the disinfectant to dry, prior to accessing the IV line for medication administration.

(*Id.* at ¶ 6.) After reviewing Plaintiff's medical records for the timing of when the three medications were administered, Nurse Padley declares that "it was not possible to have provided proper [disinfection] technique." (*Id.* at ¶ 9.) Nurse Padley further states, "failure to properly scrub the hub – meaning failure to adequately disinfect the hub prior to medication administration and allow adequate 'drying time' – significantly increases the risk of bloodstream contamination and subsequent infection, including infections caused by Staphylococcus aureus." (*Id*. at ¶ 8.)

In its reply, Defendant raises objections to Nurse Padley's declaration, contending that her opinion lacks foundation, is speculative or conclusory, and unsupported by evidence. The argument is well-taken. While Nurse Padley states that she has reviewed, *inter alia*, Plaintiff's medical records from Defendant, she attaches no exhibits to her declaration and cites no specific records or page numbers to the documents forming the basis for her opinion. (Padley Decl., ¶ 4.) The record before the Court does not include all of Plaintiff's medical records for his May 21, 2023 admittance, and Plaintiff does not submit this evidence. While Defendant's presentation includes portions of Plaintiff's medical records in support of its motion, the majority of the records document his hospital stay from May 28, 2023 through June 2, 2023. (See e.g., Defendant's Appendix of Evidence, Ex. A, p. 0101-0115[4].) Furthermore, the only documentation of Plaintiff's May 21, 2023 admittance reflects only Plaintiff's intake, there is no reference to the administration of Zofran, Toradol, or Dilaudid. (See *id.* at p. 0630.) Accordingly, the Court agrees with Defendant that the opinions are conclusory and lacking foundation. (See *Garibay v. Hemmat* (2008) 161 Cal.App.4th 735, 742-743 (*Garibay*) [finding medical expert declaration without evidentiary basis where the hospital records were not properly before the court].)

The Court SUSTAINS Defendant's objections to Nurse Padley's declaration on the ground of lack of foundation. Given the dispositive nature of the foundation objection, the Court declines to rule on the remaining objections.

Plaintiff has not met his burden to demonstrate a triable issue of material fact as to the standard of care.

<u>Causation</u>

"[O]ne of the essential elements of a cause of action for medical malpractice is 'a proximate causal connection between the negligent conduct and the injury.' [Citation.] 'The law is well settled that in a personal injury action causation must be proven within a reasonable medical probability based upon competent expert testimony. Mere possibility alone is insufficient to establish a prima facie case.' [Citation.]" (*Lattimore v. Dickey* (2015) 239 Cal.App.4th 959, 969.) To overcome a motion for summary judgment on causation, "the plaintiff must offer an expert opinion that contains a reasoned explanation illuminating why the facts have convinced the expert, and therefore should convince the

[4] For ease of reference, the Court uses the Bates numbering of Exhibit A for pagination.

jury, that it is *more probable than not* the negligent act was a cause-in-fact of the plaintiff's injury." (*Jennings v. Palomar Pomerado Health Systems, Inc.* (2003) 114 Cal.App.4th 1108, 1118 (*Jennings*), emphasis in original; see *Bushling v. Fremont Medical Center* (2004) 117 Cal.App.4th 493, 509-510 (*Bushling*) [applying *Jennings* to summary judgment motions].)

In support of its argument on causation, Defendant again relies on the declaration of Dr. Erlich, wherein he attests:

> I agree that the [right bursa joint] was a possible source for the Staphylococcus aureus bacteremia, but the infection could have just as likely started in Plaintiff's foot, which was noted to have evidence of cellulitis, and then traveled to the bursa during subsequent bacteremia. However, even if the original source of the infection was the bursa, the bursa is anatomically located in the area behind the elbow, not in the ante-cubital space where the IV had been placed approximately a week prior. In addition, if the IV site was in fact the site and original cause of the Staphylococcus aureus infection, this area would have been obviously infected as the Plaintiff would have had a visible cellulitis in that area on May 28, which the Plaintiff did not.

(Erlich Decl., ¶ 11.) Dr. Erlich also opines to a reasonable degree of medical probability, that Plaintiff's subsequent complications (e.g., osteomyelitis and deterioration of bone) were a result of the staph infection, rather than a consequence of the care and treatment Plaintiff received as Defendant's patient on May 21, 2023 or May 28, 2023. (*Id.* at ¶ 12.)

Dr. Erlich's declaration is again sufficient to meet Defendant's burden on a motion for summary judgment. Having met its initial burden, the burden now shifts to Plaintiff to raise a triable issue of material fact.

In opposition, Plaintiff relies on the declaration of Irving Posalski, MD ("Dr. Posalski") to establish that Plaintiff contracted the staph infection through the IV port on May 21, 2023. Dr. Posalski is licensed physician in the State of California and has practiced in the field of infectious diseases for several decades. (Posalski Decl., ¶ 1.) Dr. Posalski opines:

> Based upon my education, training, experience, and review of the records, it is my opinion, to a reasonable degree of medical probability that:
>
> (a) Plaintiff did not have a systemic infection during the May 21, 2023 admission and that the infection diagnosed during the May 28, 2023 admission developed thereafter;
>
> (b) aside from the IV placement, there is no other documented or identifiable breach of Plaintiff's skin during the May 21, 2023 encounter that would account for the subsequent development of Staphylococcus aureus bacteremia;
>
> (c) the IV placement during the May 21, 2023 encounter appears to be the most likely and was a substantial factor in the development of Plaintiff's Staphylococcus aureus bacteremia and subsequent sepsis; and
>
> (d) the timing of the infection, the absence of alternative portals of entry, and the known risks associated with the IV access support these conclusions.

(*Id.* at ¶ 10.) Dr. Posalski further attests to a reasonable degree of medical probability that Plaintiff's treatment at Good Samaritan Hospital led to his clinical deterioration, including sepsis, and was a substantial factor in causing his alleged injuries and damages. (*Id.* at ¶ 11.)

In its reply, Defendant raises objections to Dr. Posalski's declaration, contending that it is conclusory, speculative, and devoid of reasoned explanation concerning causation. Specifically, Defendant argues that Dr. Posalski's declaration is solely based on the observation that there was no other documented breach of Plaintiff's skin during the May 21, 2023 visit other than the IV placement. In support, Defendant cites *Bushling, supra,* 117 Cal.App.4th at pp. 510-511, wherein the appellate court held the declarations of two medical experts were of no evidentiary value because they lacked a factual basis. The declarations attested that a plaintiff's injury was "more probably than not" because the plaintiff had been dropped, improperly positioned in surgery, or had his arm stretched, but the medical record did not reflect that any of the events existed. (*Id.* at p. 510.) Here, the Court is unable to determine whether the medical record actually reflects that the only documented breach of Plaintiff's skin on May 21, 2023 was the IV placement. Just as with Nurse Padley's declaration, Dr. Posalski's declaration does not include the May 21, 2023 medical records forming the basis of his declaration, and the record before the Court does not contain this information. (See *Garibay, supra,* 161 Cal.App.4th at pp. 742-743.)

Assuming Dr. Posalski provided the May 21, 2023 medical records, the opinion is still conclusory in nature. At best, the testimony indicates that the IV site is possibly*,* but not probably the original site of the infection. (See *Jennings, supra,* 114 Cal.App.4th at p. 1118 ["the plaintiff must offer an expert opinion that contains a reasoned explanation illuminating why the facts have convinced the expert, and therefore should convince the jury, that it is *more probable than not* the negligent act was a cause-in-fact of the plaintiff's injury."]) After restating Plaintiff's medical history, Dr. Posalski testifies that the IV placement "appears to be the most likely and was a substantial factor" in Plaintiff's infection. (Posalski Decl., ¶ 10(c).) While Dr. Posalski states he reviewed Plaintiff's medical records, Plaintiff's deposition testimony, Defendant's motion for summary judgment, and Dr. Elrich's declaration in support of the motion for summary judgment, Dr. Posalski does not address the cellulitis of Plaintiff's left foot, nor Dr. Elrich's observation that the IV site had visible cellulitis in the area. (See *id.* at ¶ 3; see also Elrich Decl., ¶ 11; Undisputed Material Fact, No. 29.) Dr. Posalski also does not address Dr. Elrich's observation that the drained bursa was located behind the elbow, and not inside the elbow, where the IV was placed. (Elrich Decl., ¶ 11.) Without a reasoned explanation in his declaration connecting the facts to his ultimate conclusion on causation, Dr. Posalski's testimony is conclusory, lacking reasoned explanation and therefore, inadmissible. (See *Sanchez, supra,* 8 Cal.App.5th at p. 166 [finding no reasoned explanation where expert declaration did not address or contradict defendant's timeline evidence before concluding a patient's stroke was a result from a delay in transport]; *Lowery v. Kindred Healthcare Operating, Inc.* (2020) 49 Cal.App.5th 119, 125 [finding insufficient medical expert's two-page declaration making vague reliance on "documented medical literature" but not producing the same].)

The Court SUSTAINS Defendant's objection to paragraphs 10 and 11 of Dr. Posalski's declaration on the grounds of improper expert opinion and lack of foundation. The Court declines to reach the merits of the remaining grounds for Defendant's evidentiary objection.

Plaintiff has not met his burden to demonstrate a triable issue of material fact as to the standard of care.

Disposition

The motion for summary judgment to the Complaint is GRANTED.

The court will prepare the Order.

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