

SUPERIOR COURT OF CALIFORNIA
COUNTY OF VENTURA

Tentative Ruling

**2024CUBC031403: PENNY L LENNEMANN WHIGHAM vs FORD MOTOR
COMPANY, et al.**

**05/28/2026 in Department 44
Motion for Summary Judgment**

Effective **January 5, 2026**, Judge Charmaine H. Buehner and all cases previously assigned to Department J4 at the Juvenile Justice Center in Oxnard transferred to Department 44, located at the Hall of Justice, 800 South Victoria Avenue, Ventura, California 93009.

Department Rules. Parties and counsel shall follow the Department 44 rules and Zoom protocols, available at <https://www2.ventura.courts.ca.gov/Courtroom/C44>.

Remote Appearances. The Court allows Zoom appearances as a courtesy to parties and counsel. The Court does not accommodate Court Call appearances. **You MUST register by 4:00 p.m. the court day before your hearing or you will be DENIED entry to the hearing:**

ZOOM Registration Link:

<https://ventura-courts-ca.zoom.us/meeting/register/iqN7uhQSQMuOqs-9TQXgEQ>

No advance notice is required to appear in person.

Tentative Rulings. Oral argument should address the tentative decision. To submit on the tentative decision, email courtroom44@ventura.courts.ca.gov before 8:00 a.m. on the hearing date, copying all other parties, Use the subject line “SUBMISSION ON TENTATIVE”, [Case Number], [Case Title] and [Party]. If not all parties submit, the hearing will proceed, and the tentative ruling may change.

The Court may adopt, modify or reject the tentative ruling after hearing. The tentative ruling has no legal effect unless and until adopted by the Court.

Motion: Defendant Ford Motor Company’s Motion for Summary Judgment or, Alternatively, Summary Adjudication

Tentative Ruling:

Defendant Ford Motor Company’s Motion for Summary Judgment or, Alternatively, Summary Adjudication is DENIED.

I. Preliminary Matters

A. Judicial Notice

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The Court, on its own, takes judicial notice of its Minute Orders of December 16, 2024, and February 18, 2025. (Evid. Code, § 452, subd. (d).)

B. Plaintiff's Objections to the Declaration of Nathan J. Rodriguez

In support of its motion, Defendant offers the declaration of Nathan J. Rodriguez, who is an associate and Defendant's counsel's firm. (Rodriguez Decl., ¶ 1.) Mr. Rodriguez asserts that the matters stated in his declaration are based upon his personal knowledge "unless otherwise stated, the record in the action, and the matters of public record[.]" (*Ibid.*)

Plaintiff objects to paragraph 3 and Exhibit 2 of the Declaration of Nathan J. Rodriguez offered in support of Defendant's motion. Paragraph 3 states, in its entirety, as follows: "Attached hereto as **Exhibit 2** is a true and correct copy of relevant portions of Ford's Document Production, referenced in Defendant's Separate Statement." (Rodriguez Decl., ¶ 3.)

Plaintiff also objects to Exhibit 2, which, upon review, is a large exhibit comprised of many different types of documents. The Court summarizes the documents as follows:

- Two pages that appear to be printouts of computer screens (Bates-numbered FMC_WHIGHAM_000001 - FMC_WHIGHAM_000002).
- An apparent five-page document titled "Vehicle Information Report" (Bates-numbered FMC_WHIGHAM_000003 - FMC_WHIGHAM_000007).
- An apparent single-page document titled "Standard Claims List" (Bates-numbered FMC_WHIGHAM_000008).
- Two documents each titled "Claim Detail" (FMC_WHIGHAM_000009 - FMC_WHIGHAM_000010).
- An untitled apparent two-page document dated July 7, 2025 (Bates-numbered FMC_WHIGHAM_000011 - FMC_WHIGHAM_000012).
- An apparent two-page letter dated July 2024 that states "Customer Satisfaction Program 24N01" at the top (FMC_WHIGHAM_000013 - FMC_WHIGHAM_000014).
- An apparent two-page memo dated October 15, 2024, to "All U.S. Ford and Lincoln Dealers" (FMC_WHIGHAM_000015 - FMC_WHIGHAM_000016).
- An apparent four-page document titled "Customer Satisfaction Program 24N01-Supplement #1" (FMC_WHIGHAM_000017 - FMC_WHIGHAM_000020).
- Another apparent four-page document titled "Customer Satisfaction Program 24N01-Supplement #1" (FMC_WHIGHAM_000021 - FMC_WHIGHAM_000024).
- An apparent eight-page list dated July 7, 2025, in the top right corner (FMC_WHIGHAM_000025 - FMC_WHIGHAM_000033).
- An apparent one-page document that appears to be a printout of a computer screen (FMC_WHIGHAM_000034).
- A single-page document that appears to be a receipt. (FMC_WHIGHAM_000035).
- A several-hundred-page document titled "2021 Explorer Owners Manual" (FMC_WHIGHAM_000036 - FMC_WHIGHAM_000612).
- A document titled "2021 Model Year Ford Warranty Guide" (FMC_WHIGHAM_000613 - FMC_WHIGHAM_000658).
- A document titled "Ford Sales & Service Agreement" (FMC_WHIGHAM_000659 - FMC_WHIGHAM_000690).

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- A single document dated titled “GUDB” and dated “10/18/2024” in the top left corner. This document is not Bates-numbered but appears to be the document referred to as “FMC_WHIGHAM_000691” by Defendant in its separate statement.

Counsel for Defendant, Mr. Rodriguez, does not explain what the documents are in Paragraph 3 or elsewhere in his declaration. Some of the documents by their title are self-explanatory.

Plaintiff objects to Paragraph 3 and Exhibit 2 on grounds that “only admissible evidence” is permitted, citing Code of Civil Procedure section 437c, subdivision (d); on grounds that Mr. Rodriguez lacks personal knowledge, citing Evidence Code sections 403 and 702; on grounds that the documents have not been authenticated, citing Evidence Code sections 1400 and 1401; and on grounds that the documents are hearsay and do not fall within the business records exception, citing Evidence Code sections 1200 and 1271.

The Court OVERRULES the objections insofar as they are directed to the quoted language comprising Paragraph 3. The Court finds that counsel has sufficiently alleged personal knowledge that the documents comprising Exhibit 2 are copies of documents produced in Ford’s document production and referenced in Defendant’s separate statement.

Plaintiff’s authentication objection to the documents is likewise OVERRULED.

Finally, the Court SUSTAINS Plaintiff’s hearsay objection to the documents comprising Exhibit 2; these documents are inadmissible to the extent they are being offered to prove the truth of the material facts set forth in Defendant’s separate statement.

C. Defendant’s Undisputed Material Facts (“UMF”)

UMF 1 and 9 are undisputed and established for purposes of this motion.

UMF 2, 3, 4, 5, 6, 7, 8, 24, and 25 are not established for purposes of this motion.

UMF 10, 11, 12, 13, 14, 15, 16, 17, 18, 22, and 23 are also not established for purposes of this motion. (*Bayramoglu v. Nationstar Mortgage LLC* (2020) 51 Cal.App.5th 726, 736 [“[A] defendant cannot contend a plaintiff’s discovery responses are factually devoid for purposes of summary judgment merely because they include only improper objections.”]; see also *Gaggero v. Yura* (2003) 108 Cal.App.4th 884, 893 [improper privacy objection to deposition question not equivalent to a factually devoid interrogatory response].)

UMF 26 is immaterial for purposes of this motion.

D. Plaintiff’s Additional Material Facts (“AMF”)

AMF 1 through 9 are undisputed and established for purposes of this motion.

AMF 10 through 27 are not established for purposes of this motion. Plaintiff’s counsel has not submitted a request for judicial notice in support of Exhibits 1 through 18 attached to his declaration. Even if the Court were to take judicial notice of the documents, the Court would not

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take judicial notice of the contents of the documents or their truth. (See generally *Sosinsky v. Grant* (1992) 6 Cal.App.4th 1548; *Steed v. Department of Consumer Affairs* (2012) 204 Cal.App.4th 112, 122 [trial court properly took judicial notice of minute order, i.e., that it was issued on specified date, but could not take judicial notice of the “truth of the factual findings on which that minute order is based”].)

II. Relevant Background

This lemon law action arises out of Plaintiff’s purchase of an alleged defective 2021 Ford Explorer on January 26, 2021. Plaintiff alleges that the purchase was accompanied by various warranties, including a 3-year/36,000-mile bumper-to-bumper warranty, a 5-year/60,000-mile powertrain warranty, and other warranties. (Complaint, ¶¶ 7-8 and Ex. A [pp. 8-36].)

Plaintiff further alleges that various defects manifested themselves during the applicable express warranty period, including, but not limited to “transmission defects, engine defects, electrical defects,” among others. Such defects impaired “the use, value, or safety” of the subject vehicle. Defendant had an affirmative duty to repurchase or replace the subject vehicle after a reasonable number of repair attempts but failed to do so. (*Id.*, ¶¶ 12-13.)

The Complaint was filed on October 2, 2024, alleging several claims against Defendant for violation of the Song-Beverly Act, including failure to repurchase or replace after a reasonable number of repair attempts (Civ. Code, § 1793.2, subd. (d)); failure to commence repairs within a reasonable time or complete repairs within 30 days (Civ. Code, § 1793.2, subd. (b)); failure to provide service literature and replacement parts (Civ. Code, § 1793.2, subd. (a)(3)); and breach of the implied warranty of merchantability (Civ. Code, §§ 1791.1, 1794, 1795.5).

Plaintiff also alleges a claim for negligence against Defendant Envision Ford Lincoln of Oxnard, alleging it fell below industry standards in storing, preparing, and repairing the vehicle. (Complaint, ¶¶ 58-62.)

Finally, Plaintiff also alleges a claim for fraudulent concealment against Defendant grounded on Defendant’s alleged concealment of a known defect, described in the Complaint as a defective transmission that would exhibit one or more of the following symptoms: hesitation or delayed acceleration, harsh or hard shifting, and jerking, shuddering, or juddering, all of which Plaintiff alleges presented a safety hazard affecting Plaintiff’s ability to control the vehicle’s speed, acceleration, deceleration, and/or overall responsiveness. (Complaint, ¶¶ 63-77.)

Trial was initially set for June 15, 2026, in Department 42. That same day, defendant Envision was dismissed without prejudice pursuant to a stipulation in open court. (Minutes of February 18, 2025.) The case was reassigned to Department J4 on June 2, 2025, then to Department 44 on January 5, 2026. On January 12, 2026, the Court rescheduled trial to June 25, 2026. On February 19, 2026, the Court advanced trial to June 22, 2026. The instant motion was filed on March 2, 2026. Plaintiff’s opposition was filed on May 8, 2026. Defendant has not filed a reply. On April 22, 2026, the Court found good cause for the motion to be heard fewer than 30 days before trial and affirmed the June 22, 2026, trial date.

III. Legal Standard: Summary Judgment and Summary Adjudication

“A party may move for summary judgment in an action or proceeding if it is contended that the action has no merit or that there is no defense to the action or proceeding.” (Code Civ. Proc., § 437c, subd. (a).) “A cause of action has no merit if either of the following exists: (1) One or more of the elements of the cause of action cannot be separately established, even if that element is separately pleaded. (2) A defendant establishes an affirmative defense to that cause of action.” (Code Civ. Proc., § 437c, subd. (o).)

“The motion shall be supported by affidavits, declarations, admissions, answers to interrogatories, depositions, and matters of which judicial notice shall or may be taken. The supporting papers shall include a separate statement setting forth plainly and concisely all material facts that the moving party contends are undisputed. Each of the material facts stated shall be followed by a reference to the supporting evidence. The failure to comply with this requirement of a separate statement may in the court’s discretion constitute a sufficient ground for denying the motion.” (Code Civ. Proc., § 437c, subd. (b)(1); Cal. Rules of Court, rule 3.1350, subds. (d), (h).)

“The motion for summary judgment 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. In determining if the papers show that there is no triable issue as to any material fact, the court shall consider all of the evidence set forth in the papers, except the evidence to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence, except summary judgment shall not be granted by the court based on inferences reasonably deducible from the evidence if contradicted by other inferences or evidence that raise a triable issue as to any material fact.” (Code Civ. Proc., § 437c, subd. (c).) What issues are “material” is determined by the pleadings and substantive law. (*Joseph E. Di Loreto, Inc. v. O’Neill* (1991) 1 Cal.App.4th 149, 156; *Seibert Security Services, Inc. v. Superior Court* (1993) 18 Cal.App.4th 394, 404, fn. 2.)

“A defendant moving for summary judgment has the initial burden[.]” (*Dollinger DeAnza Associates v. Chicago Title Ins. Co.* (2011) 199 Cal.App.4th 1132, 1144.) “For purposes of motions for summary judgment and summary adjudication: . . . (2) A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action.” (Code Civ. Proc., § 437c, subd. (p)(2).) “[A] moving defendant need not support his motion with affirmative evidence negating an essential element of the plaintiff’s case; instead, the defendant may point to the absence of evidence in support of the plaintiff’s case.” (*Padilla v. Rodas* (2008) 160 Cal.App.4th 742, 752.)

“If the defendant fails to make this initial showing, it is unnecessary to examine the plaintiff’s opposing evidence and the motion must be denied.” (*Dollinger DeAnza Associates v. Chicago Title Ins. Co.*, *supra*, 199 Cal.App.4th at p. 1144.)

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“[I]f the moving papers make a prima facie showing that justifies a judgment in the defendant's favor, the burden shifts to the plaintiff to make a prima facie showing of the existence of a triable issue of material fact.” (*Id.*)

“Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto. The plaintiff or cross-complainant shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto.” (Code Civ. Proc., § 437c, subd. (p)(2).) “A party cannot avoid summary judgment by asserting facts based on mere speculation and conjecture, but instead must produce admissible evidence raising a triable issue of fact.” (*LaChapelle v. Toyota Motor Credit Corp.* (2002) 102 Cal.App.4th 977, 981.) A statement in the separate statement that a material fact is not disputed is a conclusive admission of fact for purposes of the summary judgment motion only, which a court is entitled to rely upon in deciding the motion. (*City of San Diego v. DeLeeuw* (1993) 12 Cal.App.4th 10, 14; *Myers v. Trendwest Resorts, Inc.* (2009) 178 Cal.App.4th 735, 747, *as modified* (Nov. 20, 2009).)

“Inasmuch as summary judgment is a drastic procedure and should be used with caution [citation], the moving party's papers are strictly construed, while the opposing party's papers are liberally construed [citations].” (*Murillo v. Rite Stuff Foods, Inc.* (1998) 65 Cal.App.4th 833, 840 [internal citation omitted].) “Courts deciding motions for summary judgment or summary adjudication may not weigh the evidence but must instead view it in the light most favorable to the opposing party and draw all reasonable inferences in favor of that party.” (*Weiss v. People ex rel. Dept. of Transportation* (2020) 9 Cal.5th 840, 864.)

“If any triable issue of fact exists, it is error for the trial court to grant a party's motion for summary judgment.” (*Robinson v. City and County of San Francisco* (1974) 41 Cal.App.3d 334, 337.) “[A]ny doubts about the propriety of summary adjudication must be resolved in favor of the party opposing the motion.” (*See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 900.) “[S]ummary judgment law turns on issue finding rather than issue determination.” (*Diep v. California Fair Plan Assn.* (1993) 15 Cal.App.4th 1205, 1207 [19 Cal.Rptr.2d 591, 592], *as modified* (June 10, 1993).)

“A summary adjudication motion is subject to the same rules and procedures as a summary judgment motion.” (*Lunardi v. Great-West Life Assurance Co.* (1995) 37 Cal.App.4th 807, 819; see also Code Civ. Proc., § 437c, subd. (f)(2) [“A motion for summary adjudication may be made by itself or as an alternative to a motion for summary judgment and shall proceed in all procedural respects as a motion for summary judgment.”].)

IV. Application

In light of the Court’s sustaining of Plaintiff’s objections to Defendant’s Exhibit 2, Defendant has established two of the twenty-six facts on which it relies in support of its motion. Those facts in turn establish only that Plaintiff purchased the subject vehicle, a 2021 Ford Explorer, on January 26, 2021, from Ford of Ventura and that Plaintiff filed a Complaint in this matter

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alleging the specified causes of action. (UMF 1, 9.) Such facts are insufficient to shift the burden to Plaintiff on any of the causes of action alleged by Plaintiff in this matter. Accordingly, Defendant's motion is DENIED in its entirety.

The Court DENIES the motion as to the fifth cause of action for negligent repair for an independent reason. Both parties submit argument concerning the fifth cause of action. (Moving Papers at 19:15 – 21:9; Opp. at 15:5 – 16:11.) Plaintiff alleged the fifth cause of action against Defendant Envision Only. (Complaint, ¶¶ 58-62.) The Court's records indicate that Plaintiff stipulated to the dismissal of Defendant Envision without prejudice after Plaintiff failed to file an amended complaint within twenty days of the Court's sustaining of a demurrer to the fifth cause of action on December 16, 2024. (See Minutes of December 16, 2024, and February 18, 2025.) The general rule is that once a person has been dismissed from an action, he or she is no longer a party and a court lacks jurisdiction to conduct any further proceedings as to that person. (*Frank Annino & Sons Construction, Inc. v. McArthur Restaurants, Inc.* (1989) 215 Cal.App.3d 353, 357; *Wong v. Jing* (2010) 189 Cal.App.4th 1354, 1364 [citing *Frank Annino & Sons*].) Exceptions do exist. Generally, if a plaintiff dismisses a complaint, a party, or a cause of action to avoid an adverse ruling, a court may proceed to make a ruling anyway or reject the plaintiff's attempted dismissal. (See, e.g., *Cravens v. State Bd. of Equalization* (1997) 52 Cal.App.4th 253, 255-257 [no error for trial court to rule on summary judgment motion where plaintiff had dismissed defendant the day before the hearing]; *Hartbrodt v. Burke* (1996) 42 Cal.App.4th 168, 176 [plaintiff cannot avoid terminating sanctions by dismissing defendant without prejudice "just prior to the hearing"]; *Miller v. Marina Mercy Hospital* (1984) 157 Cal.App.3d 765, 770 [rejecting plaintiff's attempt to dismiss case without prejudice where court had previously deemed matters admitted and such deemed admissions had effectively disposed of the case by resolving all issues].)

Here, since the stipulated dismissal of Defendant Envision occurred more than a year before Defendant Ford had even filed its motion for summary judgment, the Court does not perceive it to be a tactical maneuver on Plaintiff's part to avoid an inevitable adverse summary judgment ruling. Accordingly, the Court finds the dismissal to be valid; that the Court has no jurisdiction over Defendant Envision; and that the fifth cause of action, being alleged against Defendant Envision only, is therefore moot. (See *City of Coronado v. Sexton* (1964) 227 Cal.App.2d 444, 451 ["As stated above, the State of California is no longer a party to the third, fourth and fifth causes of action by reason of these counts having been dismissed by appellants as to the State. These causes of action are therefore moot as to all parties."].) Defendant Ford would not be entitled to judgment as a matter of law on the fifth cause of action because it is not alleged against Defendant Ford. (Code Civ. Proc.. § 437c, subd. (c).)

For these reasons, the Court denies the motion as to the fifth cause of action for negligent repair on this independent ground.

V. Disposition

For the reasons stated herein, the motion is denied in its entirety.

Counsel for Plaintiff is to give notice of the Court's ruling.