November 8, 2024
Dept. 9
Tentative Rulings

1.	**24CV0710**	**JONES v. MARR-JONES**
Motion for Sanctions		

Defendant requests sanctions against Plaintiff pursuant to California Code of Civil Procedure ("CCP") §128.7, which allows the court to impose sanctions if the court finds that subsection (b) has been violated. CCP §128.7(b) provides:

> (b) By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met:
>
> > (1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
> >
> > (2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.
> >
> > (3) The allegations and other factual contentions have evidentiary support or, if specifically, so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.
> >
> > (4) The denials of factual contentions are warranted on the evidence or, if specifically, so identified, are reasonably based on a lack of information or belief.

Defendant argues that Plaintiff has brought baseless and malicious claims, with no legal merit or factual basis. However, Defendant fails to provide sufficient evidence to support these allegations.

TENTATIVE RULING #1:

MOTION DENIED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO

COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

2.	**24CV0574**	**T.O. ET AL v. EL DORADO COUNTY OFFICE OF ED., ET AL**
Motion for Leave to Depose Prisoner		

Plaintiffs bring this Motion for Leave to Depose Prisoner Tarik Manasrah. Plaintiffs allege that Tarik Manasrah committed sexual misconduct against them while he was employed as a van driver for El Dorado County Office of Education. The Court notes that the Notice of Motion does not comply with Local Rule 7.10.05.

Pursuant to California Code of Civil Procedure section 1995, "if [a] witness [is] . . . confined in a jail within [California], an order for his examination in the jail upon deposition . . . may be made . . . [b]y the court itself in which the action . . . is pending. . .." Cal. Civ. Proc. Code § 1995. Pursuant to California Code of Civil Procedure section 1996, a court may grant leave to depose a prisoner "on the motion of a party, upon affidavit showing the nature of the action or proceeding, the testimony expected from the witness, and its materiality." Cal. Civ. Proc. Code § 1996; *Cadiz Land Co. v. Rail Cycle, L.P.,* (2000) 83 Cal.App.4th 74, 121.

The deposition of Tarik Manasrah is extremely material to the case. Defendant El Dorado County Office of Education does not oppose the motion, but requests that the deposition be set on a date selected after the parties meet and confer.

TENTATIVE RULING #2:

MOTION IS GRANTED. PARTIES TO MEET AND CONFER TO SELECT A DEPOSITION DATE.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

3.	**24CV0417**	**RUDAS, ET AL v. THD AT-HOME SERVICES, INC.**
Motion to Strike, Demurrers (2)		

Defendant Home Depot U.S.A., Inc. ("Home Depot" or "Defendant") demurs to Plaintiff's First Amended Complaint ("FAC") and brings this Motion to Strike ("Motion"). The Court will address the Demurrer first. This case involves roof and gutter work completed on Plaintiffs' home by Defendants.

Standard of Review - Demurrer

A demurrer tests the sufficiency of a complaint by raising questions of law. *Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 20. In determining the merits of a demurrer, all material facts pleaded in the complaint and those that arise by reasonable implication, but not conclusions of fact or law, are deemed admitted by the demurring party. (*Moore v. Conliffe,* 7 Cal.4th 634, 638; *Interinsurance Exchange v. Narula,* 33 Cal.App.4th 1140, 1143. **The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded. *Flynn v. Higham* (1983) 149 Cal.App.3d 677, 679**

Rodas v. Spiegel (2001) 87 Cal. App. 4th 513, 517

The Complaint includes 4 causes of action: (1) Breach of Contract/Warranty; (2) Negligence; (3) Fraud and Misrepresentation; and (4) Unfair and Deceptive Business Acts and Practices, Business and Professions Code §§17200 et. seq.[1]

Home Depot demurs to all four causes of action on the following grounds:

1. Pursuant to Code of Civil Procedure ("CCP") §430.10(e) all causes of action are barred by the statute of limitations, because the statute started to run by May 2015, based on the Plaintiffs' allegation that they reported the defects within one year from the completed installation.
2. Pursuant to CCP §431.10(e) and (f), Plaintiffs failed to plead facts based in fraud with sufficient specificity and only alleged nonperformance in an effort to establish fraudulent intent.

Meet and Confer Requirement

Code of Civil Procedure §430.41(a) provides: Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer.

The Court finds sufficient efforts by Home Depot to meet and confer with Plaintiffs.

[1] The Fourth cause of action is brought against Home Depot only.

Argument

Statute of Limitations for Breach of Contract or Breach of Prospective Warranty

"An action upon any contract, obligation or liability founded upon an instrument in writing" must be commenced within four years. (Code Civ. Proc., § 337, subd. (1).)

Plaintiffs allege in their Complaint that "[i]n or about May, 2014 Defendants completed the installation of the new roof and gutters at Plaintiffs' home. After installation of the roof and gutters, Plaintiffs state they complained to Defendant that the roof and/or gutters leaked water into their home." (FAC at ¶¶ 8-9) Therefore, Defendant argues that the tender of delivery and alleged breach occurred "in or about May, 2014... after installation of the roof and gutters," at which point the applicable statutes of limitations began to run. Defendants argue that the four-year statute of limitations expired nearly 6 years before Plaintiffs filed their complaint, and Plaintiffs' first cause of action for breach of contract/warranty is time-barred.

Statute of Limitations for an Action to Recover Damages Related to Construction

As a baseline rule, "Sections 337.1 and 337.15 apply to actions for damages against persons involved in the construction of improvements to real property . . . and establish four year and 10-year statutes of limitation for patent and latent defects, respectively. (*Mills v. Forestex Co.* ("*Mills*") (App. 5 Dist. 2003) 108 Cal.App.4th 625, 643, citing *Winston Square Homeowner's Assn. v. Centex West, Inc.* (1989) 213 Cal.App.3d 282, 290.) Defendants argue that "[t]he limitation periods in sections 337.1 and 337.15 start to run upon 'substantial completion' of the improvement and establish the outside limit within which an action must be filed, regardless of when the defect is discovered. (*Id.,* at p. 644, citing *Roger E. Smith, Inc. v. SHN Consulting Engineers & Geologists, Inc.* (2001) 89 Cal.App.4th 638, 649).

Defendant argues that in this case, substantial completion occurred in or about May 2014. (FAC, ¶ 8) and discovery of the alleged defect also occurred in or about May 2014. (*Id.* ¶¶8-9.) Therefore, Defendant argues the alleged defects at issue were patent defects that were obvious upon completion of construction, and thus under Code of Civil Procedure section 337.1, the four-year statute of limitations expired in or about May 2018, nearly six years before Plaintiffs filed their Complaint on March 4, 2024, and this action is time-barred.

Alternatively, Defendant argues that under Code of Civil Procedure section 337.15, the discovery of the alleged defect in or about May 2014, triggers the statutes of limitations under either section 337 (four years) or section 338 (three years) – which expired in May 2017 or May 2018 – nearly six or seven years prior to the filing of this action. As such, Defendant argues that all four of Plaintiffs' claims, which all arise out of alleged defects in the construction of the roof and gutters, are time-barred.

Statute of Limitations for an Action for Negligence, Fraud, or Misrepresentation

There is a three-year statute of limitations for "an action for trespass upon or injury to real property." (Code Civ. Proc., § 338, subd. (b).) A claim for injury to real property based on fraud is subject to a three-year statute of limitations. (Code Civ. Proc., § 338, subd. (d).) Defendants argue that Plaintiffs allege in their FAC that "[i]n or about May, 2014 Defendant's DOES 1-40 and each of them completed the installation of the above referenced new roof and gutters at Plaintiffs' home. At all times herein mentioned, after installation of the roof and gutters, Plaintiffs complained to Defendant HOME DEPOT[,] DOES 1-40 and each of them the roof and/or gutters leaked water into their home." (FAC at ¶¶ 8-9.) Therefore, Defendant argues that the alleged injury, whether based in negligence or fraud, occurred in or about May 2014. As such, Defendant argues that the three-year statute of limitations expired nearly seven years before Plaintiffs filed their complaint, and thus Plaintiffs' second and third causes of action for negligence and fraud/misrepresentation are time-barred.

Statute of Limitations for Violation of CA Business and Professions Code

"Any action to enforce any cause of action pursuant to this chapter shall be commenced within four years after the cause of action accrued." (Cal. Bus. & Prof. Code, § 17208.) Plaintiffs allege Home Depot violated Business & Professions Code ("BPC") sections 17200 et seq. by violating their "duty to disclose they knew the new roof and/or gutters [were] leaking and knew they were obligated to repair or replace the roof and gutters." (FAC, ¶¶ 34-35.) Defendant argues that the violation of the duty to disclose, as alleged by Plaintiffs, occurred at the time the parties entered into a written home improvement contract, or in March 14, 2014 and April 13, 2014. (FAC, ¶ 6.) Therefore, Defendant alleges that the four-year statute of limitations expired nearly six (6) years before Plaintiffs filed their Complaint, and thus Plaintiffs' fourth cause of action for violations of BPC sections 17200 et seq. is time-barred.

Failure to Plead and Prove Discovery Exception to Statute of Limitations

The "discovery rule," an exception to this principle, provides that a cause of action does not accrue until the plaintiff discovers, or reasonably should discover, the existence of the cause of action. (*Krieger*, supra, at p. 205, 221, citing *Neel*, supra, at p. 194.) Since the doctrine of discovery is an exception to the statute of limitations, Defendant argues that Plaintiffs must justify their failure to discover the alleged facts within three years by alleging facts showing that they were not negligent in failing to make the discovery sooner and that they had no actual or presumptive knowledge of facts sufficient to put them on inquiry notice. (*Hobart v. Hobart Estate Co.* (1945) 26 Cal.2d 412, 437.

Defendants argue that the word "discovery" as used in the statute is not synonymous with "knowledge"; the Court must determine as a matter of law when, under the facts pled, there was a discovery by the plaintiff, in the legal sense of that term. (*Bainbridge v. Stoner* (1940) 16 Cal.2d 423, 430.) A complaint seeking equitable relief on the ground of fraud or mistake which shows on its face that the fraud was perpetrated or the mistake occurred more

than three years prior to the commencement of the action must contain full and complete showing of the times and circumstances under which the facts constituting the fraud or mistake were brought to plaintiff's knowledge so that a court may determine whether the discovery of the facts was within the time alleged. (*Goodfellow v. Barritt* (1933) 130 Cal.App. 548, 559.)

Defendant argues that where an action is brought more than three years after the commission of the fraud, the plaintiff must plead and prove: (1) when and how the facts concerning the fraud became known to him; (2) lack of knowledge prior to that time; and (3) that he had no means of knowledge or notice that, followed by inquiry, would have shown at an earlier date the circumstances upon which the cause of action is founded. (*People v. Zamora* (1976) 18 Cal.3d 538, 562.) The "statute of limitations precluded an action for latent defect in construction of retaining wall, in light of owner's discovery of drainage problem more than three years before filing suit." (*North Coast*, supra, at p. 22.)

Here, as alleged in the Complaint, Defendant argues that Plaintiffs discovered the alleged facts giving rise to all causes of action in or about May 2014. (FAC, ¶¶ 8-9.) Defendant asserts that to the extent there were any other facts that were unknown to Plaintiffs at that time, which Plaintiffs have not alleged, Plaintiffs allege no facts to justify their failure to discover the alleged facts within the applicable statute of limitations.

Plaintiffs' allege that "[i]n or about September, 2023, Plaintiffs discovered the aforementioned new roof and gutters leaked water . . . ." (FAC, ¶ 10.) Defendant argues that this statement is inconsistent with the admission that the roof and gutter leaks were discovered in or about May 2014. (Complaint, ¶¶ 8-9.) Defendant asserts that Plaintiffs' Complaint does inform the Court when and how the facts concerning the fraud became known to Plaintiffs, and that was shortly after completion of installation in or about May 2014.

In sum, Defendant argues that Plaintiffs alleged that they discovered the facts giving rise to their causes of action in or about May 2014. (FAC, ¶ 10.) According to Defendant, even if there were any other facts unknown to Plaintiffs in or around May 2014, which Plaintiffs have not alleged, Plaintiffs allege no facts to justify their failure to discover such facts within the applicable statute of limitations.

The Court agrees that Plaintiffs admitted they discovered the defects in or around May 2014.

Failure to Plead Claims Based in Fraud with Specificity

Defendant argues that Plaintiffs must plead fraud allegations with specificity because such claims "involve a serious attack on character," and therefore "[g]eneral and conclusory allegations are insufficient." (*Cansino v. Bank of Am.* (2014) 224 Cal.App.4th 1462, 1469.) As the California Supreme Court has explained in *Lazar v. Superior Court* (1996) 12 Cal. 4th 631, 632:

> This particularity requirement necessitates pleading facts that show how, what, when, to whom, and by what means the representations were tendered. A plaintiff's burden in

asserting a fraud claim against a corporate employer is even greater. In such a case, the plaintiff must allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written.

Defendant argues that Plaintiffs merely alleged nonperformance in an effort to establish fraudulent intent. (Complaint at ¶¶ 25-26; 34-35.) Defendant notes Plaintiffs' allegation that Home Depot warranted that they would make repairs and later failed to make repairs, yet Plaintiffs do not support this conclusory allegation by any actual underlying facts, which they are required to do. Defendant argues that on the face of the Complaint, an allegation that Home Depot warranted that they would make repairs and later failed to make repairs is, on its own, insufficient to satisfy the particular pleading requirement for an action based in fraud.

Opposition & Reply

Plaintiffs oppose the demurrer, arguing that Defendant modified the statute of limitations or waived the defense. Plaintiffs then argue that Home Depot and Donahoo Roofing, LLC are the agents, partners, joint venturers, co-conspirators, and/or employees of the remaining Defendants, that these allegations are ultimate facts and sufficient against demurrer. *Perkins v. Superior Court* (1981) 117 Cal.App.3rd 1, 6 (Only necessary for a plaintiff to plead ultimate facts); *Skopp v. Weaver* (1976) 16 Cal.3rd 432, 437 ("Allegation of agency is an allegation of ultimate fact and is, of itself, sufficient to avoid a demurrer.") However, *Skopp* involved a general demurrer, and the trial court was still directed to rule on the special demurrers.

Next, Plaintiffs argue that Home Depot told Plaintiffs there was a fifty-year warranty on the roof and gutters, based on an email from a sales representative, and that Plaintiffs notified Defendant within 1 year from the completion of installation that it leaked water. Plaintiffs rely on correspondence from Sedgwick (the claims administrator) to argue that the statute of limitations was three years from the date of loss, and that the date of loss was dated May 11, 2023 (seemingly the date Plaintiffs complained). Plaintiffs argue that Home Depot offered the resolve the complaints for $28,113.22, which they argue further demonstrated Home Depot believed the statute had not run. Plaintiffs also argue that the Sedgwick letter modified the statute of limitations, relying on *Wind Dancer Prod. Grp. V. Walt Disney Pic.* (2017) 10 Cal.App.5th 56, 74.

Plaintiffs further argue that Home Depot waived the statute of limitations defense based on the email from the Sedgwick claims adjuster and the Sedgwick letter identifying the date of loss with reference to a 3-year statute of limitations. Waiver "may be either express, based on the words of the waiving party, or implied, based on conduct indicating an intent to relinquish the right." *Wind Dancer supra*, 10 Cal.App.5th at 78. ("Courts will find waiver when a party intentionally relinquishes a right or when that party's acts are so inconsistent with an intent to enforce the right as to induce a reasonable belief that such right has been relinquished."]

Defendant replies, arguing that Home Depot took no action to modify or waive the statute of limitations. No waiver shall bar a defense to any action that the action was not commenced within the time limited by this title unless the waiver is in writing and signed by the person obligated." Code Civ. Proc. § 360.5. Plaintiffs claim that Defendant's claims administrator's attempt to settle to in May 2023 modified or waived the statute of limitations but cites to no written agreement made to this effect as required by Code of Civil Procedure section 360.5. The Court agrees that Home Depot did not agree to modify or waive the statute of limitations.

Plaintiffs argue that the FAC alleges an adhesion contract, and an interpretation should not defeat the reasonable expectations of the parties. The contract (FAC, Ex. "A") was written by Home Depot and presented to Plaintiffs on a "take it or leave it" basis. Thus, Plaintiffs argue it's a contract of adhesion. *Izzi v. Mesquite Country Club* (1986) 186 Cal.App.3rd 1309, 1317 ["Contract of adhesion has been defined as a standardized contract, which, imposed and drafted by the party of superior bargaining strength, relegates to the subscribing party only the opportunity to adhere to the contract or reject it."] Plaintiffs argue that the warranty does not provide a "conspicuous, plain and clear" statement when it expires and doesn't provide a "conspicuous, plain and clear" statement when the notification period ends and thus, the court should hold the statute of limitations is consistent with the May 18, 2023, Sedgwick letter; 3 years from the "Date of Loss" or May 11, 2026. The warranty should not be conflated with the statute of limitations, as Plaintiffs do in their Opposition. Defendant does not seem to suggest that Plaintiffs failed to notify them about the defects within the notification period, but instead that the claims were not filed until years after the statute of limitations expired.

Defendant replies, arguing that Home Depot made no written agreement or representations beyond the contractual one-year warranty and an offer to compromise, and that Plaintiffs cannot use these to claim an adhesion contract. The Court agrees that the agreement may constitute an adhesion contract but does not agree that the terms were uncertain.

Plaintiffs' next argument is that equitable estoppel or equitable tolling extended or tolled the statute of limitations. Equitable estoppel "comes into play only after the limitations period has run and addresses itself to the circumstances in which a party will be estopped from asserting the statute of limitations a as a defense to an admittedly untimely action because [their] conduct has induced another into, forbearing suit within the applicable limitations period." *Battuello v. Battuello* (1998) 64 Cal.App.4th 842, 847. Here, Plaintiffs argue that they complained about a leaking roof and based on their belief they had a fifty-year warranty, they waited for performance under the warranty. Plaintiffs argue that Defendants, including Home Depot, never rejected any complaint based on the statute of limitations, and in fact, acknowledged the complaint and said the statute of limitations had not run, by asserting the statute of limitations would expire no earlier than May 11, 2026. However, a 50-year warranty is separate from the statute of limitations and does not alter the statute of limitations.

Equitable tolling is "a judge-made doctrine which operates independently of the literal wording of the Code of Civil Procedure to suspend or extend a statute of limitations as necessary to ensure fundamental practicality and fairness. Courts apply equitable tolling ...to prevent the unjust technical forfeiture of causes of action, where the defendant would suffer no prejudice. The effect of equitable tolling is the limitations period stops running during the tolling event and begins to run again only when the tolling event has concluded." *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 384. [To allege equitable tolling a plaintiff only need to allege defendant's conduct actually misled them and they reasonably relied on that conduct. "Bad faith or an intent to mislead is not required."] Plaintiffs argue the evidence of equitable tolling includes: (1) the contract and "Limited Warranty" (2) the email from the Home Depot sales representative telling Plaintiffs they had a fifty-year warranty; (3) the May 18, 2023 email accepting a leaking roof complaint; (4) May 18, 2023 Sedgwick letter showing a "Date of Loss" and a statute of limitations 3 years from that date; and, (5) September 28, 2023 settlement offer referencing roof services with a demand to release liability for all Defendants. Plaintiffs argue they justifiably relied on misleading statements and conduct from Defendants. <u>The statements Plaintiffs seemingly relied on came from Sedgwick, the claims administrator, and not Home Depot itself. Plaintiffs do not provide authority that the correspondence from Sedgwick is sufficient to alter the state of limitations.</u>

Defendant replies, arguing that "'To establish that equitable tolling applies, a plaintiff must prove the following elements: (a) fraudulent conduct by the defendant resulting in concealment of the operative facts, (b) failure of the plaintiff to discover the operative facts that are the basis of its cause of action within the limitations period, and (c) due diligence by the plaintiff until discovery of those facts."' *Sagehorn v. Engle* (2006) 141 Cal.App.4th 452, 460-461. Since the doctrine of discovery is an exception to the statute of limitations, Defendant argues that Plaintiffs must justify their failure to discover the alleged facts within three years by alleging facts showing that they were not negligent in failing to make the discovery sooner and that they had no actual or presumptive knowledge of facts sufficient to put them on inquiry notice. *Hobart v. Hobart Estate Co.* (1945) 26 Cal.2d 412, 437. <u>The Court is unpersuaded that Plaintiffs have pled facts to establish fraudulent conduct by Home Depot for equitable tolling to apply.</u>

Plaintiffs argue that Home Depot had a duty to speak and that the May 18, 2023, Sedgwick letter and the September 28, 2023, offer to settle are misleading. Plaintiffs argue that if Defendants knew the statute of limitations had run, they had a duty to disclose that fact, and not tell Plaintiffs time would expire in 3 years. *Welch v. State of California* (1983) 139 Cal.App.3rd 546, 556. A duty to disclose arises when (1) the material fact is known to, or accessible only to, defendant; and (2) defendant knows plaintiff is unaware of the fact and cannot reasonably discover the undisclosed fact. *Reed v. King* (1983) 145 Cal.App.3" 261, 265. <u>The Court is not persuaded that Home Depot had a duty to speak, because the Court is not persuaded that Plaintiffs could not have reasonably discovered the alleged undisclosed fact.</u>

Plaintiffs' final argument is that they pled fraud with specificity, pointing to paragraphs 32 through 39 of the FAC. The Court finds that fraud has not been pled with specificity.

For all the reasons outlined above, the Court sustains the demurrer as to all four causes of action, without leave to amend, as the statute of limitations bars all claims brought by Plaintiffs. Home Depot's Motion to Strike will not be addressed since the demurrer is sustained without leave to amend.

***

Defendant Donahoo Roofing, LLC ("Donahoo" or "Defendant") demurs to Plaintiff's First Amended Complaint ("FAC"). This case involves roof and gutter work completed on Plaintiffs' home by Defendants. The Court notes that the Notice does not comply with Local Rule 7.10.05.

Standard of Review - Demurrer

A demurrer tests the sufficiency of a complaint by raising questions of law. *Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 20. In determining the merits of a demurrer, all material facts pleaded in the complaint and those that arise by reasonable implication, but not conclusions of fact or law, are deemed admitted by the demurring party. (*Moore v. Conliffe,* 7 Cal.4th 634, 638; *Interinsurance Exchange v. Narula,* 33 Cal.App.4th 1140, 1143. **The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded. *Flynn v. Higham* (1983) 149 Cal.App.3d 677, 679**

Rodas v. Spiegel (2001) 87 Cal. App. 4th 513, 517

The FAC includes 3 causes of action: (1) Breach of Contract/Warranty; (2) Negligence; and (3) Fraud and Misrepresentation. Donahoo generally and specifically demurs to Plaintiffs' FAC on the grounds that every cause of action is barred by the statute of limitations.

Meet and Confer Requirement

Code of Civil Procedure §430.41(a) provides: Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer. The Court finds sufficient meet and confer efforts took place.

Argument

Donahoo's argument centers on the fact that Plaintiffs discovered the alleged defects/fraud/damages within one year from the completed installation and that the statute of limitations had expired years before the Complaint was filed. Donahoo further argues that Plaintiffs' reliance on the May 18, 2023, letter from Sedgwick to argue an extended statute of

limitations is misplaced, as Sedgwick does not relate to Donahoo in any way, and that Genpact's settlement offer was also an action on behalf of Home Depot and not Donahoo.

The facts and applicable statutes in Donahoo's demurrer are the same as those addressed above in the demurrer by Home Depot and will not be repeated. However, in terms of Plaintiffs' equitable estoppel claims, Donahoo argues that Plaintiffs do not make any allegations that Donahoo made any representations, and that Plaintiffs only point to Sedgwick. Donahoo has no relation to Sedgwick, who is only the claims administrator for Home Depot.

Plaintiffs' opposition does not present any new arguments either. While the opposition continues to argue that Home Depot and Donahoo are "the agents, partners, joint venturers, co-conspirators, and/or employees of each of the remaining Defendants", the Court does not find that an allegation of agency is sufficient to avoid a demurrer grounded on statute of limitations violations. The cases cited by Plaintiffs do not provide authority that allegation of agency is sufficient for overruling a demurrer brought based on the statute of limitations.

The Court reviewed Donahoo's reply, and it does not change the analysis.

TENTATIVE RULING #3:

1. **HOME DEPOT'S DEMURRER IS SUSTAINED AS TO ALL CAUSES OF ACTION, WITHOUT LEAVE TO AMEND.**
2. **DONAHOO'S DEMURRER IS SUSTAINED AS TO ALL CAUSES OF ACTION, WITHOUT LEAVE TO AMEND.**
3. **HEARING ON MOTION TO STRIKE IS VACATED.**

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

4.	**23CV0418**	**ETHICS OF LIBERTY, LLC v. STONEBARGER, ET AL**
Demurrer		

Cross-Defendant Joshua Rodriguez ("Cross-Defendant") demurrers to the Cross-Complaint filed by Gene Stonebarger ("Cross-Complainant"). This case involves alleged breach of contracts.

Standard of Review - Demurrer

A demurrer tests the sufficiency of a complaint by raising questions of law. *Rader Co. v. Stone* (1986) 178 Cal.App.3d 10, 20. In determining the merits of a demurrer, all material facts pleaded in the complaint and those that arise by reasonable implication, but not conclusions of fact or law, are deemed admitted by the demurring party. (*Moore v. Conliffe,* 7 Cal.4th 634, 638; *Interinsurance Exchange v. Narula,* 33 Cal.App.4th 1140, 1143. **The complaint must be construed liberally by drawing reasonable inferences from the facts pleaded. *Flynn v. Higham* (1983) 149 Cal.App.3d 677, 679**

Rodas v. Spiegel (2001) 87 Cal. App. 4th 513, 517

A defendant can file a demurrer as an initial pleading. (Code Civ. Proc., § 422.10.) A demurrer is used to "test the legal sufficiency of a complaint." (*Donabedian v. Mercury Ins. Co.* (2004) 116 Cal.App.4th 968, 994, citations omitted.) This is accomplished by challenging defects which appear on the face of the pleading under attack, or from matters outside the pleading that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; Evid. Code, §§ 451, 452; Code Civ. Proc., § 430.30.) A party against whom a complaint has been filed may object by demurrer on the grounds that the pleading does not state facts sufficient to constitute a cause of action. (Code Civ. Proc., §430.10(e)). A party against whom a complaint has been filed may object by demurrer on the grounds that the pleading is uncertain. (Code Civ. Proc., §430.10(f)). As used in this subdivision, "uncertain" includes ambiguous and unintelligible.

The Cross-Complaint includes 5 causes of action: (1) Fraudulent Inducement; (2) Intentional Misrepresentations; (3) Breach of Good Faith and Fair Dealing; (4) Equitable Indemnification; and (5) Equitable Contribution.

Cross-Defendant demurs to the First, Second, and Third causes of action on the following grounds:

1. The First cause of action fails to state facts sufficient to constitute a cause of action based upon the statute of limitations and is uncertain.
2. The Second cause of action fails to state facts sufficient to constitute a cause of action based upon the statute of limitations and is uncertain.
3. The Third cause of action fails to state facts sufficient to constitute a cause of action based upon the statute of limitations and is uncertain.

Meet and Confer Requirement

Code of Civil Procedure §430.41(a) provides: Before filing a demurrer pursuant to this chapter, the demurring party shall meet and confer in person or by telephone with the party who filed the pleading that is subject to demurrer for the purpose of determining whether an agreement can be reached that would resolve the objections to be raised in the demurrer.

Code of Civil Procedure §430.41(a)(3):

> The demurring party shall file and serve with the demurrer a declaration stating either of the following:
>
> (A) The means by which the demurring party met and conferred with the party who filed the pleading subject to demurrer, and that the parties did not reach an agreement resolving the objections raised in the demurrer.
>
> (B) That the party who filed the pleading subject to demurrer failed to respond to the meet and confer request of the demurring party or otherwise failed to meet and confer in good faith.

Dumas v. Los Angeles County Bd. of Supervisors (2020) 45 Cal. App. 5th 348 ("If, upon review of a declaration under section 430.41, subdivision (a)(3), a court learns no meet and confer has taken place, or concludes further conferences between counsel would likely be productive, it retains discretion to order counsel to meaningfully discuss the pleadings with an eye toward reducing the number of issues or eliminating the need for a demurrer, and to continue the hearing date to facilitate that effort").

The Court finds that counsel for Cross-Defendant engaged in sufficient meet and confer efforts.

Argument

First Cause of Action – Fraudulent Inducement

Cross-Defendant argues that the statute of limitations for claims involving fraud is three-years and that the Cross-Complaint does not state facts sufficient to constitute a cause of action is uncertain. California Code of Civil Procedure ("CCP") 338 provides for a three-year statute of limitations for "[a]n action for relief on the ground of fraud or mistake"; however, it qualifies that: "The cause of action in that case is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake." The Complaint was filed March 28, 2023, and the Cross-Complaint was filed on November 16, 2023. Cross-Defendant argues that Cross-Complainant's allegations of misrepresentations incurred in October 2017, December 2017, and August 2018, and that therefore the statute of limitations started in 2017 and 2018.

Cross-Defendant argues that facts constituting each element of fraud must be alleged with particularity, so a claim cannot be saved by referring to the policy favoring liberal construction of pleading. (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 216.) Cross-Defendant argues that it is clear that the statute of limitations has run on the fraud cause of action since all of the allegations of fraud incurred in 2017 and 2018, however, Cross-Complainant Stonebarger deceivingly failed to allege when he discovered the fraud, knowing that if he plead that he discovered the fraudulent representations in 2018 or 2019, the statute of limitations clearly bars the cause of action.

Second Cause of Action – Intentional Misrepresentations

Cross-Defendant argues that the statute of limitations for claims involving fraud is three-years and that the Cross-Complaint does not state facts sufficient to constitute a cause of action is uncertain. California Code of Civil Procedure ("CCP") 338 provides for a three-year statute of limitations for "[a]n action for relief on the ground of fraud or mistake"; however, it qualifies that: "The cause of action in that case is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake." The Complaint was filed March 28, 2023, and the Cross-Complaint was filed on November 16, 2023. Cross-Defendant argues that Cross-Complainant's allegations of misrepresentations incurred in October 2017, December 2017, and August 2018, and that therefore the statute of limitations started in 2017 and 2018.

Cross-Defendant argues that facts constituting each element of fraud must be alleged with particularity, so a claim cannot be saved by referring to the policy favoring liberal construction of pleading. (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 216.) Cross-Defendant argues that it is clear that the statute of limitations has run on the intentional misrepresentations cause of action since all of the allegations of fraud incurred in 2017 and 2018, however, Cross-Complainant Stonebarger deceivingly failed to allege when he discovered the fraud, knowing that if he plead that he discovered the fraudulent representations in 2018 or 2019, the statute of limitations clearly bars the cause of action.

Third Cause of Action – Breach of Good Faith and Fair Dealing

Cross-Defendant argues that the statute of limitations for claims involving breach of good faith and fair dealing based upon misrepresentations is three-years (CCP §338), unless it is based on an oral agreement when the limitations period is two-years (CCP §339(1)). The Complaint was filed March 28, 2023, and the Cross-Complaint was filed on November 16, 2023. Cross-Defendant argues that Cross-Complainant's allegations of misrepresentations incurred in October 2017, December 2017, and August 2018, and that therefore the statute of limitations started in 2017 and 2018.

Cross-Defendant argues that on or about April 2, 2019, Ethics of Liberty issued a notice of default relating to the delinquent amount due and owing under the Promissory Note and that the statute would start as of that date.

Opposition

Cross-Complainant replies, arguing that Cross-Defendant asserts that the first three causes of action are uncertain, but does not explain any alleged uncertainty. "The objection of uncertainty does not go to failure to allege sufficient facts but to doubt as to what the pleader means by the facts alleged." *Brea v. McGlashan* (1934), 3 Cal. App. 2d 454, 459. "Uncertainty arising out of legal effect of facts alleged is not ground for demurrer." *James v. Herbert* (1957), 149 Cal. App. 2d 741, 750. Cross-Complainant responds that Cross-Defendant's arguments fail because a "Demurrer on ground of bar of statute of limitations does not lie where complaint merely shows that action may have been barred, but it must appear affirmatively that, upon facts stated, right of action is necessarily barred." *Pike v. Zadig* (Cal. 1915), 171 Cal. 273, 6-7. Cross-Complainant argues that he has pled detailed and specific facts as to the fraudulent conduct of Cross-Defendant and has sufficiently alleged that he reasonably and justifiably relied on the false and misleading representations made by Cross-Defendant.

Reply

Cross-Defendant replies, arguing that the parties entered into contracts on August 27, 2018, and September 5, 2018, and that the default, which serves as the basis for the Complaint, occurred on April 1, 2019. The Complaint was filed on March 28, 2023, and Cross-Complainant did not file his Cross-Complaint until November 16, 2023.

Cross-Defendant argues that the opposition did not address the demurrer to the third cause of action and therefore should be sustained without leave to amend. While the opposition did not separate its arguments by cause of action, it cannot be said that the third cause of action was not addressed.

The Court agrees that Cross-Complainant does not state when he discovered the alleged fraudulent statements, which is when the statute would begin to run.

TENTATIVE RULING #4:

DEMURRER SUSTAINED WITH LEAVE TO AMEND.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING.

IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.