TENTATIVE RULINGS FOR DEPARTMENT 5 CIVIL CALENDAR 11/18/2026

1. Barclay's Bank Delaware v. Yanine Lugo (CVL66893)
   This matter is before the Court on Plaintiff's motion to set aside the Notice of Settlement filed 3/9/26 and enter judgment pursuant to the terms of the Stipulation for (1) entry of judgment upon default and (2) court reservation of jurisdiction under CCP section 664.6. A copy of the executed Stipulation is attached as Exhibit 1 to the Notice of Motion and Notion and attached Memorandum of Points and Authorities and Declaration of Counsel for Plaintiff filed October 26, 2026.

   Having received and reviewed the aforementioned pleadings and the Stipulation, the Court intends to find good cause to set aside the Notice of Settlement filed 3/9/26 and to enter judgment as prayed, in accordance with the terms and conditions of the Stipulation.

2. Jane Doe 7033 v. Sonora Union high school district, a public entity, et al. (CV64763)
   This matter is before the Court on Plaintiff's motion for summary judgment or, in the alternative, summary adjudication. In order to allow the Court to give due time and attention to the voluminous filings with respect to this motion, the matter has been continued to December 2, 2026 at 8:30 a.m. and will be heard with the additional motions filed in this case that are already scheduled for that date.

3. Fawn B. Foster Harbour v. FCS US, LLC (CV66440)

   I. Summary of Facts / Pertinent Procedural History

   This matter is before the Court on Defendant FCA USA LLC's Motion for Summary Judgment or in the Alternative, Summary Adjudication, filed February 2, 2026. It is also before the Court on Plaintiff's apparent motion to continue or deny Defendant's Motion pursuant to Code of Civil Procedure section 473c(h) and to continue the trial date by at least 180 days due to unavailability of counsel. (It is also before the Court for trial setting, which is not the subject of this tentative ruling).

   Plaintiff brought this Lemon Law action against Defendant FCA US LLC for violation of four provisions of the Song-Beverly Consumer Warranty Act, Civil Code sections 1790 et seq. Plaintiff alleges that she purchased a 2022 Dodge Ram from Defendants on August 27, 2022, which came with a number of express warranties including a California Emission Warranty and a one-year limited warranty. Plaintiff further alleges that transmission, engine, electrical, and other defects manifested during the warranty period and that as a result Defendant had an affirmative duty to

offer to repurchase or replace the vehicle at the time the defects became obvious. She seeks to revoke acceptance of the vehicle and obtain a refund in addition to damages. Plaintiff alleges four causes of action: (1) violation of Civil Code §§ 1793.2(d) and 1793.1(a)(2); (2) violation of Civil Code § 1793.2(b); (3) violation of Civil Code § 1793.2(a)(3); and (4) breach of implied warranty of merchantability under Civil Code § § 1791.1, 1794, 1795.5). She contends that the statute of limitations was tolled under (1) Class Action Tolling, (2) Discovery Rule, and the (3) Repair Doctrine. Defendant does not address the statute of limitations in its motion, which relies entirely on the substance of the elements of each cause of action..

In its Answer, Defendant FCA US LLC entered a general denial to each allegation in the Complaint, and stated 39 affirmative defenses.

Defendant filed the instant motion on February 2, 2026. Trial in this case was originally set for October 6, 2025, but has since been postponed several times, as has Defendant's motion. No trial date is currently set.

II. Defendant's Motion for Summary Judgment:

Defendant FCA US LLC filed the instant motion for summary judgment or, in the alternative, summary adjudication on September 29, 2025, on the ground that Plaintiff cannot present any triable issue of material fact as to any of her four causes of action.

In support, Defendant proffers the declaration of Defendant's counsel, Christopher L. Brown, attaching (1) the purchase agreement for the car, dated August 27, 2022, (2) the repair order dated January 13, 2023, (3) the second repair order dated July 21, 2023; and (4) Plaintiff's responses, supplemental responses and further supplemental responses to Defendant's Special interrogatories, served, respectively, January 20, 2025, March 17, 2025, and June 26, 2025. Plaintiff does not dispute the veracity of these documents.

In opposition, Plaintiff proffers her own declaration to which she attaches copies of (1) the purchase agreement, (2) the warranty manual, and (3) repair records from January 2023, July 2023, and October 2024. She also proffers the declaration of her counsel, Rabiya Tirmizi, relating to Plaintiff's efforts to depose the Person Most Qualified (PMQ) with respect to various issues such as Defendant's knowledge of defects, efforts to understand and repair Plaintiff's vehicle, procedures "designed to ensure compliance with relevant consumer-protection statutes," parts necessary to repair Plaintiff's vehicle, and other, similar topics.

A. Legal Standard:

Summary adjudication is appropriate where a party contends that one or more causes of action has no merit. It should be granted only where it completely disposes of a cause of action (Civ. Code 473c(f)(1)).

Summary judgment is appropriate when all of the papers submitted show there are no triable issues of any material fact as to any cause of action and the moving party is entitled to a judgment as a matter of law. (§437c, subd. (c); *Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 841, 843 [107 Cal.Rptr.2d 841]). "'The purpose of a summary judgment proceeding is to permit a party to show that material factual claims arising from the pleadings need not be tried because they are not in dispute.' [Citations.]" (*Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 168 [92 Cal.Rptr.3d 696]; *see* §437c, subd. (a)).

A defendant moving for summary judgment has the burden of showing the plaintiff's causes of action have no merit (*Aguilar v. Atlantic Richfield Co.*, *supra* at pp. 849-850). A defendant meets this burden if it makes a *prima facie* showing that one or more elements of each cause of action cannot be established or is subject to a complete defense (*Id.* at p. 849). If the defendant makes this showing, the burden shifts to the plaintiff to produce evidence demonstrating the existence of a triable issue of material fact (*Id.* at pp. 849-850; Code Civ. Proc., § 437c, subd. (p)(2)). The court must view all evidence presented in the light most favorable to the non-moving party (*Id.* at 843).

A cause of action has no merit if either (a) one or more elements of the cause of action cannot be established, or (b) a defendant establishes an affirmative defense to that cause of action (Code Civ. Proc., § 437c, subd. (o)). If a triable issue is raised as to any of the facts in the separate statement, the motion may be denied (Weil & Brown (2017) ¶ 10:95.1; see *Nazir v. United Airlines, Inc.* (2009) 178 CA4th 243, 252).

B. Arguments/Analysis:

In support of its motion, Defendant argues that Plaintiff cannot meet its prima facie burden for any of its four causes of action. More specifically, Defendant argues as follows:

Issue No. 1: Breach of Express Warranty/Failure to Repurchase or Replace (Civil Code § 1793.2)

Defendant refers to Plaintiff's first cause of action as "breach of express warranty," although in the Complaint, Plaintiff titles it "Violation of Subdivision (D) of

Civil Code Section 1793.2" (and in paragraph 36 of the Complaint alleges failure to replace the defective vehicle under Civil Code sections 1793.1(a)(2) and 1793.2(d)).

In any event, Defendant argues that Plaintiff never presented the vehicle to Defendant for any of the alleged warrantable repairs prior to filing suit and thus her argument fails under *Silvio v. Ford Motor Co.* (2003) 109 Cal.App. 4th 1205, 1208 [135 Cal.Rptr.2d 846] because the obligation to repurchase is only triggered upon a failure to repair a substantial nonconformity to use/value/safety after a reasonable number of presentations for repair by the purchaser.

In opposition, Plaintiff refers to her declaration and attachments, arguing that she presented her vehicle for repairs at least three times to no avail during the warranty period. As to the first two repair orders, she states "The repair facility did not properly document my concerns" and "Nor, once again, do I know why the repair order does not reflect my reporting these issues again during this visit." (Harbour Decl. ¶¶ 12-13). She further attests to the third repair order from October 2024, which did document significant concerns, and avers that in addition to keeping the vehicle for 48 days Defendant never offered to repurchase the vehicle from her.

To establish a cause of action for failure to promptly repurchase or replace a new motor vehicle after a reasonable number of repair opportunities, a plaintiff must show that:

1. Plaintiff bought a vehicle from or manufactured by Defendant;
2. Defendant gave Plaintiff a written warranty;
3. The vehicle had defects that were covered by the warranty and that substantially impaired its use, value or safety to a reasonable person in Plaintiff's situation;
4. Plaintiff delivered the vehicle to Defendant or its authorized repair facilities for repair, and
5. Defendant or its authorized repair facility failed to repair the vehicle to match the represented quality after a reasonable number of opportunities to do so.

(Judicial Council of California Civil Jury Instructions (2026) (CACI 3200, 3201))

The parties agree that (1) Plaintiff purchased the vehicle from Defendant's authorized dealer on August 27, 2022; (2) at the time of purchase, Plaintiff entered into an express limited warranty with respect to the vehicle; (3) Plaintiff brought the vehicle in for routine maintenance and recall on a tailgate latch issue on January 13, 2024, which was repaired; and (4) Plaintiff brought the vehicle to the same dealer for routine maintenance on July 21, 2023, which was performed within a day. The parties disagree regarding Defendant's assertion that Plaintiff did not present the vehicle to the

authorized repair facilities for repair of warranted problems prior to filing the lawsuit or provide evidence that it was presented more than once for the same defect as required under *Silvio*, *supra*. Plaintiff claims in her declaration that the written repair record is incorrect because Defendant failed to document Plaintiff's concerns twice (in January 2023 and July 2023) before documenting them in a repair record in October 2024.

The sole evidence in support of Plaintiff's position is her declaration filed in opposition to Defendant's motion. Defendant argues that the repair records themselves as well as Plaintiff's original and supplemental interrogatory responses contradict Plaintiff's new declaration without explanation. In her Interrogatory responses, Plaintiff states that she "presented the Subject Vehicle to Defendant's authorized repair facility on at least two separate occasions with concerns about engine and transmission" (without specifying dates) and then specifies that on January 13, 2023, she presented the vehicle "with complaints about the tailgate and latch misalignment recall," which were verified and repaired, and on October 10, 2024 (with 35, 977 miles on the odometer), for a number of issues including engine and transmission concerns. She does not mention the second documented repair/maintenance invoice from July 2023 in these responses, and in her opposition, she submits only three invoices including the one from July 2023. Thus, at most, the evidence fr Plaintiff's own interrogatory responses shows that at most, she presented the car for concerns about the engine and transmission once (July 2023) before filing the Complaint. A party cannot manufacture a triable issue of material fact simply by submitting a declaration that, without explanation, contradicts earlier discovery responses. *Ahn v. Kumho Tire U.S.A., Inc.* (2014) 223 Cal.App.4th 133 [166 Cal. Rptr. 3d 852].

Defendant correctly asserts that Plaintiff's prima facie case fails because, other than her self-serving declaration, there is no evidence that she presented the vehicle for transmission and engine repairs more than once before filing her complaint. In fact, her responses to interrogatories contradict that declaration, referring only to the tailgate latch repair in January 2023 and general maintenance in January and July 2023. Moreover, Plaintiff attempts to raise a triable issue of fact by relying on her October 10, 2024, repair record regarding a presentation that only occurred after she filed the Complaint. Ordinarily, alleging material facts that occurred after the original complaint is filed would require Plaintiff to file a supplemental complaint. CCP § 464(a). Here, no such pleading has been filed, and therefore the Court cannot properly consider the October 10, 2024, repair visit and record in support of Plaintiff's opposition. The document demonstrates at most one attempt to repair the transmission and engine

prior to filing the Complaint, and this is insufficient to trigger the repair/replace obligation, an essential element of this cause of action.

The Court intends to find that Defendant has met its burden of showing that Plaintiff has not shown that she presented her vehicle for repair more than once (at most) prior to filing her Complaint, Because Plaintiff is missing an essential element, the Court intends to grant summary adjudication as to Plaintiff's first cause of action.

Issue No. 2: Failure to Begin Repairs within Reasonable Time or to Complete Repairs within 30 days (Civil Code § 1793.2(b))

Defendant next moves for summary adjudication of Issue No. 2, challenging Plaintiff's allegations that Defendant's authorized repair facilities failed to complete specified repairs within 30 days. In support, Defendant argues that Plaintiff herself authenticated repair orders indicating that no repair presentation of the vehicle lasted longer than a few days and the longest lasted 10 days. Defendant further argues that when asked for facts supporting her cause of action during discovery, Plaintiff simply listed the repair history, not identifying any repairs that took place prior to litigation which were either not commenced within a reasonable time or not completed within 30 days.

Plaintiff, on the other hand, argues that because she presented the vehicle at least twice for repairs, even if those repairs were for different nonconformities, those combined presentations suffice to satisfy the presentation element. Plaintiff alleges that she first presented the vehicle in January 2023 to commence repairs at least on the tailgate latch and that in October 2024, after keeping the vehicle for 48 days, Defendant still had not repaired it because she continues to experience issues to this day.

To establish a *prima facie* case for violation of Civil Code section 1793.2(b), Plaintiff must prove:

1. Plaintiff bought or leased a vehicle from Defendant
2. Defendant gave Plaintiff an express written warranty;
3. The vehicle had defects that were covered by the warranty,
4. Defendant failed to complete repairs within 30 days so as to conform to the applicable warranties.

As with the first cause of action, the parties agree that Plaintiff bought a vehicle from Defendant, and that Defendant gave Plaintiff an express warranty. The parties disagree as to the other two issues for the same reason stated with respect to Issue No. 1, namely, that the only evidence Plaintiff proffers in support of the third and fourth

elements are her declaration and the repair record from October 2024, generated after the Complaint was filed.

The Court finds that Plaintiff's assertions fail because Plaintiff cannot rely on documentary evidence in the form of the repair record from her October 2024 presentation and a declaration testifying to the events memorialized by the record, which occurred after she filed the Complaint, to establish an essential of a cause of action alleged in the Complaint.

For these reasons, the Court intends to grant summary adjudication in favor of Defendant as to Cause of Action No. 2.

Issue No. 3: Failure to Make Available to Authorized Service and Repair Facilities sufficient Literature and Replacement Parts (Civil Code § 1793.2(a)(3))

Defendant argues that it is entitled to summary adjudication as to Plaintiff's Third Cause of Action for Violation of Civil Code Section 1793.2(b) Plaintiff's allegations that Defendant failed to provide sufficient parts and service literature to its authorized repair facilities are factually unsupported. When asked for supporting evidence in discovery, Plaintiff responded "Plaintiff refers Defendants to the documents Plaintiff produced in response to Defendant's Request for Production of Documents to Plaintiiff, Set One." (Pltf. Resp to Special Interrog. No. 78, p. 62:10-12), referring Defendant to the repair orders without identifying the repairs at issue. Nor did she identify what service literature Defendant failed to provide its authorized repair facility, or what replacement parts it alleged Defendant had failed to make available. No repair order relied on in the Complaint mentioned these issues related to replacement parts or inadequate service literature. Nor are damages articulated or supported as a result of this alleged failure by Defendant.

In opposition, Plaintiff argues that evidence supports a reasonable inference that Defendant failed to make available to its authorized repair facilities sufficient service manuals or parts because after the October 2024 presentation, Defendant kept the vehicle for 48 days and was never able to successfully and permanently fix the vehicle's engine and infotainment syncing problems thereafter.

As stated previously, Plaintiff cannot rely on facts not in existence at the time of the Complaint to oppose the motion for summary judgment or adjudication. For this reason, the Court intends to grant summary adjudication in favor of Defendant as to Cause of Action No. 3.

Issue No. 4: Breach of Implied Warranty of Merchantability (Civ. Code § § 1791.1, 1794, 1795.5)

Defendant argues that is entitled to summary adjudication as to Plaintiff's Fourth Cause of Action for Breach of the Implied Warranty of Merchantability because Plaintiff cannot present any triable issue of material fact on that cause of action. In support, Defendant avers that Plaintiff never presented the vehicle for any kind of warrantable repairs before filing this lawsuit, and there is no evidence the vehicle suffered from defects that rendered it unfit or unmerchantable within its first year of use.

Civil Code section 1791.1(a) defines the "Implied warranty of merchantability" or "implied warranty that goods are merchantable" as a requirement that consumer goods (including vehicles) must: (1) pass without objection in the trade under the contract description. (2) be fit for the ordinary purposes for which such goods are used. (3) be adequately contained, packaged, and labeled, and (4) conform to the promises or affirmations of fact made on the container or label.

To establish breach the implied warranty of merchantability, a plaintiff must prove:

1. Plaintiff bought a vehicle
2. At the time of the purchase, Defendant was in the business of selling consumer goods to retail buyers
3. The vehicle was not of the same quality as those generally acceptable in the industry
4. Plaintiff was harmed
5. Defendant's breach of the implied warranty is a substantial factor in causing Plaintiff harm.

The implied warranty runs coextensive with any express warranty accompanying the consumer goods, at least 60 days and no more than one year (Civ Code §1791.1(c); *see also Mexia v Rinker Boat Co Inc.* (2009) 174 Cal App 4th 1297, 1310).

The parties agree that Plaintiff purchased a vehicle from Defendant, who was in the business of selling vehicles. The parties disagree on the last three elements.

Defendant argues that even if Plaintiff presented her vehicle twice for service during the warranty period, both visits were for routine maintenance and neither warrantable issues were identified.

Plaintiff argues in opposition that she did present the vehicle for repairs twice in the first year. As previously stated, Plaintiff declares in support of her opposition that she discussed repairs of latent defects including with the engine and

transmission, but that for some reason on both occasions the dealer did not make any note of her concerns and the repair receipt showed no documentation of any investigation with respect to those concerns. Only the latch defect is mentioned as a defect in the repair orders. Moerover, in her supplemental response to Special Interrogatory No. 62 ("Identify the date you took the vehicle for repairs and maintenance at FCA US LLC dealerships, including dealerships located outside the state of California"), Plaintiff listed the dates in January and July 2023 and October 2024 that correspond to the repair records she references in her opposition and produced to Defendant. (Pltf. Supp Resp. to Deft's Special Interrogs, p. 41:12-25 42:7-10). In her supplemental response to Special interrogatory No. 57 ("State the facts that support your contention that Defendant FCA US LLC failed to repair your vehicle") Plaintiff responded "On or about January 13, 2024… Plaintiff presented the Vehicle to Defendant's authorized repair facility with complaints about the tailgate and latch alignment recall… On or about October 10, 2024… Plaintiff presented the vehicle with complaints" about the engine and transmission and other problems (Pltf. Supp Resp. to Deft's Special Interrogs, p. 41:12-25). These responses indicate unequivocally that Plaintiff never presented the vehicle to Defendant for service on the engine and transmission prior to filing the Complaint, and only presented the vehicle to defendant for repair once for the tailgate latch repair (and not the engine and other described defects) prior to October 2024, after she filed her Complaint. Plaintiff's self-serving declaration that contradicts her own interrogatory responses is insufficient to create a triable issue of material fact as to this element.

For the foregoing reasons, the Court intends to grant summary adjudication as to the fourth cause of action.

III. Motion for Summary Adjudication

The Court intends to grant summary judgment as to the entire Complaint, because it intends to find that that each of the four causes of action is subject to summary adjudication.

IV. Motion for Continuance of Motion and Trial Date under Civil Code Section 437c(h) and Due to Unavailability of Counsel:

In its Points and Authorities in Support of Plaintiff's Opposition to Defendant's Motion for Summary Judgment or, in the Alternative, Summary Adjudication, and in Plaintiff's counsel Rabiya Tirmizi's Declaration in Support of Plaintiff's Opposition to Defendant's Motion for Summary Judgment or, in the Alternative, Summary Adjudication, Plaintiff asks the Court to deny Defendant's

motion under Civil Code section 437c(h) on the ground that Defendant has failed to produce a Person Most Qualified to testify "on a substantial portion of Plaintiff's noticed topics." The "Motion" is not separately noticed, but rather appears as an additional argument in Plaintiff's Opposition and in Plaintiff's counsel's declaration. Nonetheless, the Court finds as follows.

In support of her request, Plaintiff argues that she has attempted to depose the PMQ beginning in November 2024. Ultimately, this deposition took place on May 2, 2025, at which Defendant's PMQ only consented to testify to eight of the 51 listed topics, and refused to produce many requested documents. Some of the topics include alleged transmission and engine defects in Dodge Ram 1500 vehicles, the potential root cause of these issues, Defendant's efforts to understand and repair the defects, or Defendant's procedures to ensure compliance with relevant consumer protection statutes. Plaintiff also alleges that Defendant has refused to produce documents identifying warranted parts, FCA's internal analysis or investigation concerning the vehicle model's alleged engine and transmission defects, and other documents. Because so much discovery remains outstanding, Plaintiff argues, the Court should at a minimum postpone hearing on the Defendant's Motion as well as postponing the pending trial date.

In opposition, Defendant argues that Plaintiff deposed the individual produced as the Person Most Qualified. Plaintiff never took any steps to depose him further beyond that one date, never moved to compel in the months following the deposition, and in any event has not submitted a declaration showing the facts to be obtained would establish the existence of controverting evidence and therefore are essential to opposing the motion. Defendant further argues that Code of Civil Procedure 437c(h) is not intended as an end run around normal discovery.

The nonmoving party seeking a continuance under CCP 437c(h) "must show: (1) the facts to be obtained are essential to opposing the motion; (2) there is reason to believe such facts may exist; and (3) the reasons why additional time is needed to obtain these facts." (*Frazee v. Seeley* (2002) 95 Cal.App.4th 627, 633 [115 Cal. Rptr.2d 780]). Generally speaking, the party seeking the continuance must "provide supporting affidavits or declarations detailing facts that would establish the existence of controverting evidence" (*American Continental Ins. Co. v. C & Z Timber Co*. (1987) 195 Cal.App.3d 1271 [1280, 241 Cal.Rptr. 466]). The party seeking the continuance must justify the need, by detailing both the particular essential facts that may exist and the specific reasons why they cannot then be presented. When a continuance of a summary judgment motion is not mandatory, because of a failure

to meet the requirements of Code of Civil Procedure section 437c, subdivision (h), the court must determine whether the party requesting the continuance has nonetheless established good cause therefor. That determination is within the court's discretion *(Mahoney v. Southland Mental Health Associates Medical Group*, 223 Cal.App.3d at pp. 170-172 [272 Cal.Rptr. 602]).

In support of her request, Plaintiff cites, *inter alia*, *Bahl v. Bank of America*, (2001) 89 Cal.App.4th 389, 395 [107 Cal. Rptr. 2d 270] for the rule that "where a party opposing summary judgment presents a declaration showing even minimal diligence in pursuing discovery and that facts essential to the opposition may exist, the Court must grant a continuance under Section 437c(h)." The cases cited by Plaintiff do not, however, support mandatory continuance under the circumstances of this case. *Bahl* involved a party whose counsel was awaiting deposition transcripts and had not yet deposed the person most knowledgeable at all. In *Hamilton v. Orange County Sheriff's Dept*. (2017), the Appellate Court found the trial court had erred in refusing to continue the hearing upon the parties' stipulation. In *Denton v. City and County of San* Francisco (2017) 16 Cal.App.5th 779 [224 Cal. Reptr.3d 610], the hearing on defendant's motion for summary judgment was set a few days after the parties reached settlement, but plaintiff withdrew from settlement and discharged his attorney. Defendant then proceeded with hearing on its motion for summary judgment. The trial court denied plaintiff's request for continuance on the day of trial on the ground that he had not filed an opposition, and granted the unopposed motion. The Court of Appeals found the denial was an abuse of discretion because plaintiff found himself in circumstances that were not his fault.

None of the cases cited by Plaintiff is analogous to the situation in this case, where in the midst of discovery disputes about the Person Most Qualified, Plaintiff gave up after one day of deposition and failed for nine months to bring a motion to compel or otherwise proactively pursue the requested discovery. The witness' deposition took place in May 2025, and Defendant's Motion for Summary Judgment was filed in September 2025. It was postponed repeatedly and Plaintiff's Opposition was only filed in February 2026. Thus, between the time of the initial deposition and the date the opposition was filed, nine months had elapsed. In fact, having the benefit of Defendant's motion, Plaintiff could have actually tailored a motion to compel or a further deposition to evidence that might have rebutted Defendant's arguments in the instant motion. Plaintiff did not do so. After obtaining one day (albeit apparently recalcitrant) of deposition testimony, Plaintiff seems to have

simply given up trying to obtain the evidence it claims is essential to defend against Defendant's motion.

In any event, the discovery sought by Plaintiff all appears to relate to Defendant's alleged failure to meet its statutory duties as a vehicle vendor. But as discussed above, Plaintiff's claims all fail because Plaintiff provides no evidence that she presented the vehicle to Defendant during the warranty period or alerted Defendant to defects (other than the tailgate latch which was the subject of a voluntary recall) prior to October 2024, after filing the Complaint – except for her own self-serving declaration in opposition to the Defendant's motion. Thus, the evidence that Plaintiff believes she would obtain for the Person Most Qualified, such as common defects, availability of repair literature and parts, offers to refund or replace, etc., would not serve to rescue Plaintiff from summary judgment on those causes of action. Finally, without an affidavit that explains what *controverting* evidence Plaintiff expects to unearth, the Court is not required to deny or postpone the hearing on Defendant's motion. The Court intends to deny Plaintiff's request to continue or deny Defendant's motion.

V. Plaintiff's Motion to Continue Trial and all Related Dates

Finally, on September 16, 2026, Petitioner's counsel Larry Chae filed a declaration in which he requests the Court to set the trial date out at least 180 days due to the unavailability of trial counsel. Although the declarationis not a motion *per se,* the Court reviews this request in preparation for the November 18, 2026 hearing because the matter is set for trial setting in addition to Defendant's Motion for Summary Judgment.

Petitioner's request is well-taken, and the Court intends to set the trial out six months and set the matter for settlement conference or give the parties an opportunity to attend mediation before that time.

3. Juan Nunez vs. County of Tuolumne, a public entity et al. (CV68790)
This matter is before the Court on CDCR's demurrer. The date was reserved by counsel for CDCR. However, in the interim, Defendant CDCR did not file its demurrer and Plaintiff filed his First Amended Complaint, which has yet to be served. No motion having been filed, the matter will be taken off calendar.

4. Lee Pagni v. City of Sonora et al. (CV66705)
This case is a citizen's dispute regarding approvals and zoning adjustments authorized for a mixed-use commercial/residential project proposed for 956 Oregon

Street. Plaintiff raises height and density concerns and alleges that approvals were made without the required public meetings and CEQA reviews. Plaintiff filed a petition for administrative mandamus, seeking an order compelling the planning commission and/or the city to revisit the project and fulfill obligations relating to pre-approval vetting. This case is before the Court on Petitioner's motion(s) to augment the administrative record and Respondent's request to set a hearing on the merits of the Petition.

The long history of the administrative record is as follows: Although Petitioner had not formally requested it to do so, Respondent prepared a draft index and records, which it provided to Petitioner's counsel. Having received no objection or comment as to the completeness or accuracy of the record despite several attempts to meet and confer over a number of months, it certified the record and lodged the documents on March 6, 2026, in compliance with the Court's order of February 20, 2026. Petitioner filed its opening Brief on May 1, 2026. He then filed a Request to Augment on May 6, 2026, and lodged an "Updated Administrative Record" on May 20, 2026, apparently without notice to Respondent. Hearing on Petitioner's May 6 Request was continued several times for administrative reasons, and on September 29, 2026, while the original motion was awaiting assignment of a new court date, Petitioner filed a new Motion to Augment Contents of Record Required for Petition for Writ of Administrative Mandamus. The September 29, 2026, motion (and perhaps the May 6, 2026 motion) are now before the Court.

It is not clear whether the second motion is intended to renew or supplement to original Motion to Augment. Petitioner's Notice of Motion states that "[a] copy of the Petitioner's proposed augmentation is currently in possession of the Court," presumably referring to the documents lodged on May 20, 2026. In the Memorandum of Points and Authorities filed with his motion, Petitioner states "Petitioner believes that the evidence that he has presented to the Court for review has already been presented to the administrative agencies of the Respondent City of Sonora and, therefore, should be considered by the Court." A declaration by Petitioner's counsel filed September 29, 2026, states that "the reason for the submission is certain documents were discovered by Petitioner to have been omitted." Finally, Petitioner's declaration states that on May 20, 2026, he "delivered into the possession of the Clerk of the Court, County of Tuolumne, State of California, certain documents for the purposes of the augmentation of the administrative record in this matter. . . The purpose of this addition to the record is to complete the record for the Court." It appears to the Court from review of these

pleadings that Petitioner has abandoned the request set forth in his original motion and that he now seeks only to augment the record with the additional documents lodged May 20, 2026. The Court will therefore deny the May 6 motion as moot and address the merits of Petitioner's September 29 motion here.

Respondent opposes both motions on the following grounds: (1) Petitioner never met and conferred with Respondent regarding the omission of an item that is part of the record prior to filing this motion; (2) the motion does not identify with particularity a single document that was left out of the certified record lodged with the Court in March 2026; (3) Petitioner never served Respondent with any of the documents it lodged and now proposes to add to the already-certified administrative record; (4) Petitioner cites no valid authority for adding documents to a certified administrative record; and (5) augmenting the record after Petitioner filed his opening brief on May 1, 2026 would violate Rules of Court, rule 2225(c). The Court addresses each of Respondent's objections in turn.

Respondent is correct that Petitioner should have met and conferred prior to filing its new motion to augment, and Petitioner's counsel's ongoing failure to communicate is clearly problematic. Nonetheless, because the parties have already filed the motion and opposition (Petitioner had filed no reply brief as of November 16, 2026), the Court intends to hear the motion(s) on the merits. Respondent's substantive objections are addressed below.

Petitioner correctly argues that Petitioner fails to identify a single specific document that he claims was left out of the record. Petitioner merely refers to "certain documents for the purposes of the augmentation of the administrative record in this matter" and states that he believes the evidence "has already been presented to the administrative agencies of the Respondent City of Sonora." This reference does not meet the required standard for augmentation. (*See*, *Consolidated Irrigation Dist. V. City of Selma* (2012) 204 Cal.App.4th 187, 197-200 [138 Cal.Rptr.3d 428]). Moreover, Respondent avers that Petitioner never served the referenced documents on Respondent. Given that in a CEQA action all documents must be served electronically (Rules of Court, rule 3.2222(b)), to the extent that Petitioner did in fact serve the proposed documents on Respondent, it should be easy enough for him to refer to the electronic record to determine when and how that occurred and to file a declaration to that effect. In the absence of such a sworn statement, with only counsel's statement that he "believes" the documents were served, the Court has no basis on which to make a finding that Respondent has had

notice of the documents to which Petitioner refers. For these reasons, the Court intends to deny Petitioner's motion.

Respondent next argues that Petitioner forfeited any completeness objection by failing to object during the several months between the date Respondent sent a draft index and the date Respondent lodged the certified record pursuant to court order. The Court agrees that the time has come and gone for Petitioner to object to the completeness of the record, given the ample opportunity that Respondent provided for comments or objection to the draft record before it was certified and lodged on March 6, 2026. Respondent cannot be allowed to relitigate the record eight months later. In any event, as Respondent correctly points out, the request is untimely under Rules of Court, rule 3.2225(c)(1), which requires any request to augment or otherwise change the contents of the administrative record to be made by motion served and filed no later than the filing of the party's initial brief. Here, Petitioner filed his Opening Brief on May 1, 2026, filed his request to augment the record on May 6, 2026, and lodged the "updated administrative record" on May 20, 2026. Because the request was filed after Petitioner filed his opening brief, the Court intends to deny the motion as untimely.

Lastly, Respondent reiterates its request for sanctions as to the first Request to Augment the Record, and adds a request for sanctions with respect to the renewed motion under Code of Civil Procedure sections 128.5 and 128.7 and California Rules of Court, rule 2.30. Code of Civil Procedure section 128.5(e) empowers a trial court to order a party or his attorney to pay the reasonable expenses incurred as a result of tactics made in bad faith, that are frivolous or solely intended to cause unnecessary delay. The Court is not confident that the record demonstrates bad faith on the part of Petitioner or his counsel, and therefore declines to exercise its discretion to award sanctions under this provision. Code of Civil Procedure section 128.7 empowers a trial court to award sanctions against a party or his attorney where it finds that a pleading was presented primarily for an improper purpose or the legal contentions therein are not warranted by existing law. (CCP § 128.7(b)). The Court does not find that the Petitioner's request and renewed request were presented for an improper purpose. Although the request(s) are untimely under Rules of Court, rule 3.2225(c)(1), the Court declines to exercise its discretion to award sanctions at this time. The Court admonishes Petitioner's counsel to make himself aware of the procedural rules and substantive law governing this case. If his failure to give notice to Respondent and Respondent's

counsel continues, or his pleadings misstate the law and/or facts, the Court will consider awarding sanctions upon motion by Respondent in the future.