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United States District Court, C.D. California.

MEINEKE FRANCHISOR SPV LLC, a Delaware limited liability company; and Meineke Realty, Inc., a North Carolina corporation, Plaintiffs/Counterdefendants,

v.

CJGL, INC., a California corporation; Carl Douma, an individual; Jan Douma, an individual, Defendants/Counterplaintiffs.

Case No. 2:23-cv-00374
|
Signed July 24, 2024

Attorneys and Law Firms

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ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANTS' CROSS MOTION FOR SUMMARY JUDGMENT [ECF NO. 41]

SHERILYN PEACE GARNETT, UNITED STATES DISTRICT JUDGE

***1** Before the Court is Plaintiff and Counterdefendants Meineke Franchisor SPV LLC's and Meineke Realty's (collectively "Meineke") Motion for Summary Judgment (the "Motion") and Defendants and Counterclaimants CJGL, Inc., Carl Douma, and Jan Douma's (collectively, "CJGL") Cross-Motion for Summary Judgment (the "Cross Motion"). (ECF No. 41). Having considered the parties' submissions, the relevant law, and the record in this case, the Court finds this matter suitable for resolution without a hearing. *See* Fed. R. Civ. P. 78(b); C.D. Cal. R. 7-15. For the reasons set forth below, the Court hereby **GRANTS** Meineke's Motion and **DENIES** CJGL's Cross-Motion.

I. BACKGROUND

A. Factual Background [1]

The following facts are undisputed unless otherwise noted.

Plaintiff and Counterdefendant Meineke Franchisor SPV LLC ("Franchisor") is a franchisor of automotive repair centers that operate under the Meineke brand system and a subsidiary of Driven Brands, Inc. ("Driven"). (JAF 1). Plaintiff and Counterdefendant Meineke Realty ("Realty" and collectively with Franchisor, "Meineke") is an affiliate of Franchisor and subleases certain properties to Meineke franchisees. (JAF 2). One such Meineke franchisee to which Realty subleased property is Defendant and Counterclaimant CJGL, Inc., a now dissolved California corporation, which operated a "Meineke Car Care Center" in Santa Barbara. (JAF 3). Defendants and Counterclaimants Carl and Jan Douma (collectively, the "Doumas") are licensed California attorneys and the sole shareholders, officers, and directors of CJGL, Inc. (JAF 4–5).

1. The Initial Franchise and Sublease Documents

In 2014, CJGL purchased an existing Meineke Car Care Center franchise ("Meineke Center") located at 3956 State Street, Santa Barbara, California 93105 (the "Premises"). (JAF 7). On August 29, 2014, Franchisor and CJGL entered into a "Meineke Franchise and Trademark Agreement" to operate the Meineke Car Care Center at the Premises for a term of seven years, set to expire in June 2021. (JAF 8, 60). Also on August 29, 2014, CJGL and Realty entered into a Real Property Sublease (the "Sublease") for the Premises. (JAF 9). The Sublease provided that it would terminate on June 29, 2021, or upon the termination or expiration of an underlying "Master Lease," whichever occurred earlier. (JAF 11).

***2** The Master Lease is a July 1, 2011, lease between Realty's predecessor and the landowners, Maurice and Mary Sourmany, Trustees of the Sourmany 2006 Trust (the "Landowners" or "Sourmanys") as landlord (the "Landlord"), which was attached to and incorporated by reference into the Sublease. (JAF 10); *see also* (ECF No. 41-1 ("MSJ") at 22 (stating that the Master Lease made the Sourmanys Landlord)). The Master Lease's original term was set to expire on June 30, 2016, subject to options to extend the lease term for two additional 60-month terms. (JAF 12).

On June 30, 2016, when the original term of the Master Lease ended, Realty elected not to exercise its option to extend the lease term. (JAF 13). According to Meineke, the Master Lease was not terminated and continued month-to-month. (MSJ at 16 (citing Cal. Civ. Code § 1945)). Meineke, generally, has a policy to provide franchisees under subleases at least a one-year notice of Meineke's intent not to renew a master lease. (JAF 57). Meineke did not notify CJGL or the Doumas that it would exercise its option not to renew the Master Lease. (JAF 58–59). By January 18, 2018, however, the Doumas were aware that Realty had not exercised its option to renew the Master Lease. (JAF 14).

2. Disputes Arise Regarding Repairs at the Premises and Lease Negotiations

Beginning at least in 2018, the parties began to dispute whether CJGL or Realty was the party obligated under the Sublease to perform repairs at the Premises. On September 14, 2018, Jan Douma wrote to Meineke's counsel, stating: "We consider [Meineke] to be currently in breach of their obligations under the sublease, as [Meineke] ha[s] no ability to fulfill the terms of the sublease," and that "[w]e are also at risk of expulsion from the [Premises] if Driven Brands [2] does not fulfill its obligations under the lease, which to date it has not done, because the identified repairs were never performed when the lease was renewed in 2011." (JAF 15–16). CJGL also raised concerns about Meineke's failure to renew the Master Lease. (JAF 60). The dispute over repairs continued into 2021: on April 29, 2021, Jan Douma sent an email to a Meineke representative, Joe Robinson, stating it was Meineke's responsibility, not CJGL's, to finish a "list of needed repairs," including the "flooded parking lot and leaking storage room," as "required by the 2011-2016 lease with the landowners." (JAF 17).

3. CJGL and Meineke Discuss Renewing Franchise Relationship

By May 2021, as the termination of the 2014 Franchise Agreement approached in June 2021, and notwithstanding the various disputes between Meineke and CJGL, the parties began engaging in discussions about renewing the franchise relationship ("Franchise"). (JAF 32). As part of those discussions, Meineke (through Robinson) wrote to Jan Douma on May 11, 2021, that Robinson would "do [his] best to contact the [Landlord] and see what it will take to get you a master lease to match our 8 year [Franchise Agreement]." (*Id.*). According to CJGL, instead of pursuing possible legal claims against Meineke at that time, CJGL instead made "reasonable efforts" to enter into a new lease directly with the Landlord. (JAF 64).

4. Landlord Offers and Revokes a Direct Lease to Doumas

On or around June 7, 2021, a representative for the Landlord wrote to Meineke stating that he had told Jan Douma the Landlord was willing to directly lease the Premises "as Meineke corporate has agreed to guarantee the lease." (JAF 66). The Landlord's representative told Meineke that, as a condition of entering into the new lease, the Landlord would need "Meineke to address deferred maintenance issues from the list prepared by the inspector some 18 months ago." (Jan Douma Decl. ¶ 11, ECF No. 41-3 ("JAE") at 450). On June 8, 2021, Meineke responded asking for the list of repairs and providing no response regarding Meineke's purported guaranty of the lease. (JAF 67).

***3** On Friday June 25, 2021, Jan Douma asked Meineke to grant a 30-day extension of the 2014 Franchise Agreement to account for the direct lease negotiation. (JAF 68). On Monday, June 28, 2021, Joe Robinson wrote to Jan Douma denying the 30-day extension request but "congratulat[ing] CJGL on receiving final approval for [franchise] renewal." (JAF 68–69). Jan Douma responded and raised the issues with the lease, stating that the Landlord would not sign the lease "unless [Meineke] guarantee[d] it" and asking "[w]hat happens if I sign the franchise agreement and Meineke decides not [to] guarantee the lease?" (Jan Douma Decl. ¶ 12, JAE at 454). Robinson responded that he "underst[ood] why [Jan Douma] want[ed] both the lease and [franchise agreement] coinciding with each other, one down, one to go." (*Id.*).

On June 30, 2021, the Landlord emailed Jan Douma and Robinson a proposed direct lease for CJGL to sign and a guaranty of the lease for Meineke to sign. (JAF 71). Meineke did not respond. On July 12, 2021, the Landlord sent the guaranty again to Meineke, asking whether it was ready to execute the guaranty and represented that "Jan [Douma] is ready to execute the new lease." (JAF 74). Also on July 12, 2021, Jan Douma electronically executed "via DocuSign" the franchise renewal agreement and the accompanying papers to operate the Meineke Center for an additional eight years (the "Franchise Renewal Agreement"). Carl Douma and Meineke did not execute the Franchise Renewal Agreement at that time. *See* (JAF 75).

On August 25, 2021, the Landlord sent to Robinson, as " 'Director of Real Estate' for Driven Brands," a "formal demand" that Meineke's parent company make certain repairs. (JAF 79). On or around September 8, 2021, the Landlord withdrew the proposed direct lease with CJGL. (JAF 80).

5. Meineke's Denial of Guaranty and Execution of the Franchise Renewal Agreement

After the Landlord withdrew the proposed direct lease, CJGL retained outside counsel in the "ongoing issues" over possession of the Premises and Meineke's failure to exercise its option to renew the Master Lease. (JAF 81). The Landlord would not enter a direct lease with CJGL until specified repairs were completed. (JAF 90). CJGL and the Doumas believed that Meineke was responsible for the repairs, (JAF 16), and engaged in discussions with Meineke over the disputed repairs and direct lease throughout the first few weeks of September 2021. (JAF 17).

On September 21, 2021, Meineke's counsel wrote to CJGL's counsel, stating that CJGL is "also responsible for making repairs to the property" but "refus[es] to do so [and] ... argu[es] that Meineke is responsible for them." (JAF 35). Meineke's counsel responded that Meineke will "support" CJGL's "efforts," but suggested that CJGL " 'right the wrong' and pay all outstanding amounts and make all repairs as soon as possible." (JAF 35). On September 24, 2021, CJGL's counsel wrote to Meineke's counsel asking if Meineke would agree to guarantee the lease "as part of keeping this franchisee in business in Santa Barbara in her current location" and also wrote that he needed to know the answer to that question before he could make a "formal proposal to [the Landlord's counsel] on Ms. Douma's behalf." (JAF 36). Meineke's counsel responded that same day, stating "Meineke is exiting the business of guaranteeing its franchisees' leases and is no longer agreeing to provide guarantees for them." (JAF 37).

On September 29, 2021, CJGL's counsel wrote to the Landlord's representative, offering various terms for a direct lease, representing that Jan Douma would guarantee the lease, and stating that CJGL's counsel had "asked Meineke to guaranty the

lease, but [counsel] ha[d] not yet heard back on whether they are willing to do so." (JAF 38). Also on September 29, 2021, Meineke executed the Franchise Renewal Agreement and sent it to the Doumas but did not send it to CJGL's counsel. (JAF 84). The same day, Carl Douma executed the Franchise Renewal Agreement. *See* (JAF 39–40). The Renewal agreement included a "Release," that provides, in pertinent part:

> ***4** Franchisee [CJGL], its heirs, executors, administrators, successors and assigns, hereby releases Meineke, and its past and present, direct or indirect, parents, subsidiaries, members, affiliates, officers, directors, managers, current and former employees, agents, representatives, successors and assigns of and from any and all rights, duties, responsibilities, claims or causes of action whatsoever ... arising from, or in any manner growing out of or resulting from the franchise relationship and the Agreement governing that relationship.

(JAF 41).

6. CJGL's Failed Negotiations for a Direct Lease After Executing the Franchise Renewal Agreement

The Doumas' negotiations for a direct lease to the Premises continued into December 2021, but the Landlord would not renew the terms negotiated in June and July of 2021. On October 29, 2021, CJGL's counsel offered a new lease proposal from the Doumas to the Landlord's representative and confirmed that Meineke agreed to provide a three-month lease guaranty. (JAF 42). The Landlord, through counsel, rejected the Doumas' lease proposal and made a counterproposal on November 5, 2021. (JAF 43). On December 7, 2021, CJGL's counsel rejected the Landlord's counterproposal, and counteroffered a proposal for a 10-year lease. (JAF 44). The negotiations did not result in a lease. *See* (JAF 45). Throughout the Doumas' negotiations for a direct lease, Meineke was searching for an alternate location in Santa Barbara to relocate the Meineke Center. (*Id.*).

7. CJGL Vacates the Premises

In June 2022, the Landlord placed a large sign on the Premises and advertised the property for lease. (JAF 91). On August 6, 2022, CJGL ceased operating the Meineke Center and vacated the Premises. (JAF 46). CJGL did not notify Meineke before doing so. *See* (*id.*). According to Meineke, the condition of the Premises after CJGL vacated was "very poor," and the Landlord provided Meineke with a report of an environmental inspection that revealed significant environmental issues. (JAF 48). Meineke was also notified that CJGL's closing of the Meineke Center "triggered an inspection" by the Certified Unified Program Agency ("CUPA") that enforces California's Health and Safety Code. (JAF 49). CUPA's inspection revealed "numerous violations of storage and handling of hazardous materials" at the Premises. (JAF 50). The Landlord remedied the violations identified by CUPA and performed "additional environmental testing." (JAF 51).

On July 13, 2023, the Landowners and Meineke entered into a settlement agreement, in which Meineke agreed to pay $117,860 to settle disputes over the condition of the Premises. (*Id.*; Winchester Decl. ¶ 2, JAE at 270–76).

B. Procedural History

On January 18, 2023, Meineke filed a civil complaint against CJGL and Jan and Carl Douma. (ECF No. 1 ("Compl.")). The Complaint asserts three causes of action: (1) breach of franchise documents, including the Franchise Renewal Agreement; (2) breach of Sublease; and (3) breach of personal guaranty, asserted only against the Doumas. *See* (*id.*). CJGL and the Doumas were served between January 23 and 24, 2023. (ECF Nos. 15–17).

On March 15, 2023, CJGL and the Doumas timely filed their Countercomplaint, asserting nine counterclaims against Meineke: (1) breach of the implied covenant of good faith and fair dealing; (2) intentional misrepresentation; (3) negligent misrepresentation; (4) fraudulent inducement of the Franchise Renewal Agreement; (5) rescission and restitution; (6) a violation of the California Franchise Investment Law ("CFIL"); (7) intentional interference with prospective economic advantage; (8) negligent interference with prospective economic advantage; and (9) violations under California's Unfair Competition Law ("UCL"). (ECF No. 20 ("Countercompl.")).

***5** On March 13, 2024, Meineke filed its motion for summary judgment on the Countercomplaint, and CJGL filed its cross motion for summary judgment on its sixth counterclaim under CFIL. (ECF No. 42-1 ("MSJ")).

II. LEGAL STANDARD

Summary judgment is appropriate where the pleadings, discovery, and affidavits show there is "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Material facts are those that may affect the outcome of the case. *See Nat'l Ass'n of Optometrists & Opticians v. Harris*, 682 F.3d 1144, 1147 (9th Cir. 2012). A dispute over a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The moving party bears the burden of establishing the absence of any genuine issues of material fact, *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986), and the court must view the facts and draw reasonable inferences in the light most favorable to the nonmoving party, *Scott v. Harris*, 550 U.S. 372, 378 (2007).

"When the party moving for summary judgment would bear the burden of proof at trial, it must come forward with evidence which would entitle it to a directed verdict if the evidence went uncontroverted at trial. In such a case, the moving party has the initial burden of establishing the absence of a genuine issue of fact on each issue material to its case." *Miller v. Glenn Miller Productions, Inc.*, 454 F.3d 975, 987 (2006) (citation omitted). In contrast, when the non-moving party bears the burden of proving the claim or defense, the "[t]he moving party may produce evidence negating an essential element of the nonmoving party's case, or, after suitable discovery, the moving party may show that the nonmoving party does not have enough evidence of an essential element of its claim or defense to carry its ultimate burden of persuasion at trial." *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1106 (9th Cir. 2000).

Once the moving party satisfies its burden, the nonmoving party cannot simply rest on the pleadings or argue that generic disagreement or "metaphysical doubt" about a material issue of fact precludes summary judgment. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Instead, "the nonmoving party must come forward with 'specific facts showing that there is a genuine issue for trial.' " *Id.* at 587 (quoting Fed. R. Civ. P. 56(e)) (emphasis omitted). The nonmoving party cannot rely on speculative or self-serving declarations that "state[ ] only conclusions and not facts that would be admissible evidence." *Nigro v. Sears, Roebuck and Co.*, 784 F.3d 495, 497 (9th Cir. 2015). Instead, the nonmoving party, by citing to documents, depositions, declarations, admissions, interrogatory answers, or other material, must make an affirmative showing on all matters placed in issue by the motion as to which it has the burden of proof at trial. *See* Fed. R. Civ. P. 56(c); *Celotex*, 477 U.S. at 322; *Anderson*, 477 U.S. at 252. "This burden is not a light one. The nonmoving party must show more than the mere existence of a scintilla of evidence." *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 387 (9th Cir. 2010) (citing *Anderson*, 477 U.S. at 252). No genuine issue for trial exists "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party." *Matsushita Elec.*, 475 U.S. at 587.

***6** In resolving a summary judgment motion, the court does not weigh the evidence, determine the truth, or make credibility determinations. *See Anderson*, 477 U.S. at 255. The court construes the evidence and draws reasonable inferences in the light most favorable to the nonmoving party. *Scott v. Harris*, 550 U.S. 372, 378 (2007) (citations omitted).

III. DISCUSSION [3]

Meineke moves for summary judgment on each of CJGL's nine counterclaims, arguing that such claims are (1) barred due to the parties' Mutual Release; (2) untimely under the pertinent statute of limitations; or (3) substantively deficient. CJGL cross-moves for summary judgement on its sixth counterclaim under the CFIL.

A. Implied Covenant of Good Faith and Fair Dealing

Meineke challenges CJGL's first counterclaim, alleging Meineke breached the implied covenant of good faith and fair dealing by failing to exercise its options to renew the Master Lease, which CJGL asserts prevented CJGL from receiving benefits under the Sublease. (Countercompl. ¶¶ 40–41). Meineke argues that this claim is barred by the four-year statute of limitations because CJGL knew of Meineke's decision not to renew the Master Lease as early as January 18, 2018, and Jan Douma expressly claimed a breach of the Sublease on September 14, 2018, (MSJ at 29), but did not initiate this case until January 18, 2023. [4] (*Id.* at 29–30).

CJGL opposes the Motion, arguing that the statute of limitations did not begin to run until CJGL experienced "actual and appreciable harm." (*Id.* at 31). They assert their injury occurred "no earlier than June 2021 at the time of Meineke's representation and inducement of renewal" and that their claims accrued in August 2022, when CJGL was "forced to cease operations and vacate the [P]remises." (*Id.*). CJGL also argues that the Court should equitably estop Meineke from asserting its statute of limitations defense because "Meineke's conduct induced CJGL and the Doumas to delay filing suit within the limitations period." (*Id.*). The Doumas and CJGL do not dispute that they knew of Meineke's decision not to renew the Master Lease in January 2019 and that Jan Douma stated that Meineke was in breach of the Sublease in September 2019. *See* (JAF 14–16).

***7** Generally, under California law, "a cause of action accrues at the time when the cause of action is complete with all of its elements." *Fox v. Ethicon Endo-Surgery, Inc.*, 35 Cal. 4th 797, 806 (2005) (internal quotation marks and citations omitted). The "discovery rule" is an exception to this general rule. Under the "discovery rule," time will begin to run on a cause of action when "the plaintiff discovers, or has reason to discover, the cause of action." *Id.* at 807. For a typical breach of contract claim, the discovery rule will not apply where "the buyer is immediately aware of the breach upon delivery of nonconforming goods, or [ ] the seller knows of the breach when payment is delinquent." *El Pollo Loco, Inc. v. Hashim*, 316 F.3d 1032, 1039 (9th Cir. 2003). When, however, "[t]he injury or the act causing the injury, or both, have been difficult for the plaintiff to detect;" the "defendant has been in a far superior position to comprehend the act and the injury;" or "the defendant had reason to believe the plaintiff remained ignorant [that] he had been wronged," the discovery rule may be applied to a contract claim. *Starz Ent., LLC v. MGM Domestic Television Distribution, LLC*, 510 F. Supp. 3d 878, 890 (C.D. Cal. 2021) (internal quotation marks omitted) (citing *El Pollo Loco*, 316 F.3d at 1039), *aff'd*, 39 F.4th 1236 (9th Cir. 2022). [5]

"It is the burden of the plaintiff to show a triable issue of fact" under the discovery rule. *Rustico v. Intuitive Surgical, Inc.*, 424 F. Supp. 3d 720, 737 (N.D. Cal. 2019) (internal quotation marks and citation omitted). "A plaintiff is held to her actual knowledge as well as knowledge that could reasonably be discovered through investigation of sources open to her." *Jolly v. Eli Lilly & Co.*, 44 Cal. 3d 1103, 1109 (1988). "While resolution of the statute of limitations issue is normally a question of fact, where the uncontradicted facts established through discovery are susceptible of only one legitimate inference, summary judgment is proper." *Id.* at 1112; *see also Choi v. Sagemark Consulting*, 18 Cal. App. 5th 308, 323–24 (2017) (same). [6]

Here, the question is whether the statute of limitations accrued in 2018 upon CJGL's awareness of Meineke's decision not to renew the Master Lease, or, sometime between 2021 and 2022 when CJGL signed the Franchise Renewal Agreement and subsequently vacated the Premises, respectively. There is no dispute that in January 2018, CJGL knew that Meineke had not exercised its option to renew the Master Lease. (JAF 14). Further, there is no dispute that on September 14, 2018, Jan Douma sent the following email to Meineke's counsel:

> We are willing to enter into a lease with the landowner, but not on terms worse than the current arrangement. We consider [Meineke] to currently be in breach of their obligations under the [S]ublease, as they have no ability to fulfill the terms of the [S]ublease. Should we attempt to transfer the property

> for instance, the [S]ublease has no value, and therefore our franchise has no value. We are also at risk of expulsion from the property if [Meineke] does not fulfill its obligations under the lease, which to date it has not done, because the identified repairs were never performed when the lease was renewed in 2011.

(Pfeiffer Decl. ¶ 2; JAE at 63; JAF 16).

Jan Douma's statement indicates that by September 14, 2018, or, at the earliest, January 18, 2018, she (1) knew of the alleged breach of the Sublease; and (2) believed such breach caused CJGL's franchise, in her words, to "ha[ve] no value" and also allegedly left CJGL at risk of expulsion due to Meineke's actual failure to perform repairs. *See* (*id.*). While CJGL may have suffered further injuries flowing from Meineke's decision not to renew the Master Lease, CJGL has not shown how any later injuries tolled the commencement of its counterclaim. *See Jolly*, 44 Cal. 3d at 1110–11 ("Once the plaintiff has a suspicion of wrongdoing, and therefore an incentive to sue, she must decide whether to file suit or sit on her rights.").

***8** Although CJGL's argues Meineke should be estopped from asserting a statute of limitations defense because it purportedly "induced" CJGL to delay filing suit, CJGL has not pointed to any evidence in the record to support its position beyond statements from Meineke representatives that they would assist the Doumas with arranging a direct lease between CJGL and the Landlord. [7] *See* (MSJ at 31). CJGL's reliance on *Lantzy v. Centex Homes*, 31 Cal. 4th 363, 384 (2003), [8] *as modified* (Aug. 27, 2003), to argue that Meineke's assurances to help the Doumas with obtaining a direct lease "le[d] the Doumas to believe that it was unnecessary to sue earlier, if at all," is misplaced. (MSJ at 31). *Lantzy* held that when someone "potentially liable" represents that the underlying issue has been resolved, or will be resolved, making it "unnecessary to sue," that person may be equitably estopped from a statute of limitations defense if: (1)"the plaintiff reasonably relie[d] on this representation to refrain from bringing a timely action," (2) the "representation proves false after the limitations period has expired," and (3) the plaintiff "proceeds diligently once the truth is discovered." *Lantzy*, 31 Cal. 4th at 384. Even assuming it was reasonable for the Doumas to rely on Meineke's representations that it would help CJGL obtain a direct lease with the Landlord, CJGL's estoppel argument still fails because CJGL asserts that it learned of the alleged "falsity" of Meineke's representation in September of 2021, which was still within the four-year statute of limitations period. *See Lantzy*, 31 Cal. 4th at 384 (estoppel can apply if "the representation proves false *after* the limitations period has expired" (emphasis added)). CJGL has therefore provided no factual or legal basis to estop Meineke from asserting a statute of limitations defense.

Thus, CJGL has failed to raise a triable issue of material fact that the statute of limitations does not bar its implied covenant claim. Accordingly, the Court GRANTS Meineke's Motion as to the first counterclaim. [9]

B. Fraud-based Counterclaims

The Countercomplaint asserts four causes of action premised on CJGL's reliance on Meineke's allegedly false representation that it would help CJGL obtain a direct lease with the Landlord for the Premises: intentional misrepresentation, fraudulent inducement, negligent misrepresentation, and a violation of the CFIL. *See* (Countercompl. ¶¶ 47–74). Meineke moves for summary judgment on all four counterclaims. Under California law, the "indispensable elements of a fraud claim include a false representation, knowledge of its falsity, intent to defraud, justifiable reliance, and damages." *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1105 (9th Cir. 2003). Because each of the fraud-based counterclaims have overlapping factual bases and legal elements, the Court takes up these claims together.

1. Fraudulent Inducement: Intentional Misrepresentation/False Promise

CJGL's fraudulent inducement and intentional misrepresentation counterclaims assert Meineke induced CJGL to renew the Franchise Renewal Agreement by falsely "promis[ing] to guaranty the direct lease" with the Landlord for the renewal period.

(MSJ at 43); *see also* (Countercompl. ¶¶ 48, 64). Meineke contends CJGL failed to produce affirmative evidence evincing Meineke's "intent not to perform" its promise to help CJGL with the direct lease. (MSJ at 32).

In support of its argument, Meineke sets forth several undisputed facts which it contends preclude CJGL's theory of intentional misrepresentation. Specifically, Meineke asserts that, while Robinson, Meineke's representative, [10] told the Doumas that he would "***do [his] best to contact the [Landlord]*** and see what it will take to get [CGJL] a master lease" to match the 8-year Franchise Renewal Agreement, CJGL cannot point to any evidence that indicates an explicit promise to ensure or confirm the direct lease. *See* (MSJ at 32–33 (emphasis in motion); JAF 32). Meineke also acknowledges that its representatives offered to "assist" CJGL which Jan Douma testified Meineke, in fact, did. *See* (JAF 33). Additionally, Meineke contends that it informed CJGL that it would not guarantee the direct lease at least five days before Carl Douma and CJGL executed the Franchise Renewal Agreement on September 29, 2021. (JAF 37, 39–40).

***9** CJGL responds that Meineke made "affirmative misrepresentations that Meineke would assist and arrange a direct lease" with the Landlord to renew the franchising relationship. (MSJ at 43). CJGL argues that, because the promise to guaranty had already induced Jan Douma to sign the Franchise Renewal Agreement in July 2021, it is irrelevant that Meineke informed CJGL on September 24, 2021, of its refusal to guaranty the direct lease. (*Id.*). CJGL does not cite to any evidence to support its arguments.

"An action for promissory fraud may lie where a defendant fraudulently induces the plaintiff to enter into a contract." *Lazar v. Superior Ct.*, 12 Cal. 4th 631, 638 (1996). "A promise to do something in the future can give rise to fraud when the promise is made with no intention to perform." [11] *Parapluie, Inc. v. Mills*, 555 F. App'x 679, 681 (9th Cir. 2014) (citing *Downey Venture v. LMI Ins. Co.*, 66 Cal. App. 4th 478 (1998)). To maintain an action for fraudulent inducement based on a false promise, "one must specifically allege and prove, among other things, that the promisor did not intend to perform at the time he or she made the promise and that it was intended to deceive or induce the promisee to do or not do a particular thing." *Tarmann v. State Farm Mut. Auto. Ins. Co.*, 2 Cal. App. 4th 153, 159 (1991). "Affirmative evidence is necessary to avoid summary judgment because mere nonperformance is not enough to show intent to defraud." *Fanucchi & Limi Farms v. United Agri Prod.*, 414 F.3d 1075, 1088 (9th Cir. 2005); *see also Tenzer v. Superscope, Inc.*, 39 Cal. 3d 18, 30 (1985) ("[S]omething more than nonperformance is required to prove the defendant's intent not to perform his promise." (quoting *People v. Ashley*, 42 Cal. 2d 246, 263 (1954))).

Here, CJGL has not submitted or pointed to any affirmative evidence demonstrating Meineke's intent to defraud. [12] Although the Court is not required to scour the record on summary judgment, [13] the Court has reviewed the record and has identified evidence associated with Meineke's representations that it would assist the Doumas in obtaining a direct lease between CJGL and the Landlord, including the following evidence that is uncontroverted unless otherwise stated:

(1) On August 30, 2018, Meineke's counsel emailed Jan Douma, stating "[W]e'll approach [Landlord] about the repairs, termination, and a direct lease with the subtenant." (Douma Decl. ¶ 6, JAE at 437–38).

(2) On May 11, 2021, Joe Robinson emailed Jan Douma, stating, "I will do my best to contact the [Landlord] and see what it will take to get you a master lease to match our 8 year FTA." (Douma Decl. ¶ 8, JAE at 445), and sent a follow-up email on May 13, 2021, in which he stated: "I did contact the [Landlord] (Mary), she plans to have her attorney contact me tomorrow for further discussions about getting you a master lease." (*Id.*; JAF 63).

(3) On June 7, 2021, counsel for the Premises' Landlord emailed Robinson stating, "I spoke to Jan [Douma] and told her that [Landlord] is willing to lease to her directly as Meineke corporate has agreed to guarantee the lease. She is excited about moving forward." (JAF 65; JAE at 450). [14]

***10** (4) On June 28, 2021, Robinson emailed Jan Douma, asking "how are your negotiations with the [Landlord], do you need assistance?" (JAE at 454). And, in response to Jan Douma's question, "[w]hat happens if I sign the franchise agreement and Meineke decides not to guarantee the lease," Robinson stated: "The lease should be done using a LOI, that way you

know your terms going into the lease ... I understand why you want both the lease and the FTA coinciding with each other, one down, one to go. Another note on the lease, your negotiations for the T.I's need to go into the LOI." (*Id.*).

(5) On June 30, 2021, the Landlord sent an email to Robinson and Jan Douma with the direct lease and a guaranty addendum. (JAF 71). Robinson did not respond. (JAF 72).

(6) On July 12, 2021, the Landlord sent a follow up email stating: "Jan [Douma] is ready to execute the new lease. Is Meineke ready to execute the guaranty and move this process forward? Please advise." (JAF 74). Jan Douma signed the Franchise Renewal Agreement that same day; Meineke, Carl Douma, and CJGL did not sign the agreement at that time. (JAF 75).

(7) In her declaration, Jan Douma represents that sometime in September 2021, "[o]n a call with Mr. Robinson around this time, he again informed [Jan Douma] that Meineke would not arrange or assist in securing the direct lease for the Franchise Premises if the renewal was not signed by Carl [Douma]." (Jan Douma Decl. ¶ 23). [15]

(8) On September 24, 2021, counsel for Meineke wrote to counsel for the Doumas, stating "Meineke is exiting the business of guaranteeing its franchisees' leases and is no longer agreeing to provide guarantees for them," and that counsel would inquire with Meineke corporate regarding this specific location, but did "not expect different instruction." (JAF 37; Leone Decl. ¶ 3, [16] JAE at 248).

***11** Drawing all reasonable inferences in CJGL's favor, nothing in the record demonstrates that Meineke's failure to guarantee the lease in September of 2021 was anything other than Meineke's "mere nonperformance" of its alleged promise—even assuming any of Meineke's representations (through Robinson or counsel) were actual promises to secure and/or guarantee the direct lease. *See Fanucchi*, 414 F.4d at 1088 (affirming summary judgment on promissory fraud claim when the plaintiff did not "present any evidence supporting its claim that [the defendant] intended to defraud). CJGL also does not identify any evidence regarding Meineke's alleged fraudulent intent, stating in its opposition brief that "Meineke compounded the Doumas' mistake, *whether intentionally or negligently*, by agreeing to guaranty the direct lease in June and July 2021." [17] (MSJ at 43 (emphasis added)). Without CJGL producing affirmative evidence that Meineke "did not intend to perform at the time [it] made the promise," summary judgment is proper. *Tarmann*, 2 Cal. App. 4th at 159; *Fanucchi*, 414 F.3d at 1088 ("Affirmative evidence is necessary to avoid summary judgment ...."); *see also Netbula, LLC v. BindView Dev. Corp.*, 516 F. Supp. 2d 1137, 1157 (N.D. Cal. 2007) (granting summary judgment because there was no evidence of intent to deceive); *Wang v. EHang Holdings Ltd.*, No. 20-CV-00569-BLF, 2022 WL 5264648, at *6 (N.D. Cal. Oct. 6, 2022) (granting summary judgment when nonmoving party "did not identify any evidence of [the defendant's] intent").

The Court thus GRANTS Meineke's Motion as to CJGL's intentional misrepresentation and fraudulent inducement counterclaims.

2. Negligent Misrepresentation

Under California law, a claim for negligent misrepresentation requires an affirmative "false statement of a past or existing material fact." *Shamsian v. Atlantic Richfield Co.*, 107 Cal. App. 4th 967, 984 (2003). A false promise is not the same as a false statement of a past or existing material fact. *See Tarmann*, 2 Cal. App. 4th at 159 (noting that the intent requirement for a false promise action "precludes pleading a false promise claim as a negligent misrepresentation" (emphasis in original)); *Moncada v. W. Coast Quartz Corp.*, 2 Cal. App. 4th 153, 159 (1991) ("The specific intent requirement for fraud [ ] precludes pleading a false promise claim as a negligent misrepresentation[.]"). To survive summary judgment, CJGL must point to some misrepresentation of a "past or existing material fact" because CJGL cannot rely upon Meineke's alleged promises to guarantee or secure the lease.

Meineke argues that CJGL cannot point to any misrepresentation of a past or existing material fact, and because false promises are not actionable under negligent misrepresentation, summary judgment must be granted. CJGL provides no substantive

response to this argument, instead merely incorporating its argument regarding intentional misrepresentation that Meineke "made affirmative misrepresentations that Meineke would assist and arrange a direct lease with the [Landlord] for the [ ] Premises for renewal of the [Franchise Renewal Agreement]," and "promise[d] to guaranty the direct lease." (MSJ at 42–43, 45).

Considering the allegations of CJGL's counterclaim, CJGL bases its negligent misrepresentation claim upon the same allegations as its intentional misrepresentation claim, namely that Meineke's alleged representations that it "would assist, ensure, and confirm [CJGL] obtained a lease directly with the Landlord for the renewal period ... [with] no intention of doing the repairs that the Landlord required" were "false representations of a material fact." (Countercompl. ¶ 56). This theory depends on Meineke's alleged representations that it *would* assist in securing a direct lease, i.e., perform an action in the future. *See, e.g., Fall v. Bank of New York Mellon*, No. CV 17-00771-BRO (EX), 2017 WL 7806593, at *11 (C.D. Cal. May 5, 2017) ("The alleged misrepresentation is not one of an existing or past material fact, but a misrepresentation ... of what 'would' (or would not) occur in the future ...."); *Wittenbrink v. Cont'l Cas. Co.*, No. C 04-5425 MJJ, 2005 WL 8162984, at *4 (N.D. Cal. Mar. 21, 2005) ("The allegations do not relate to an existing or past material fact at the time [the plaintiff] made the promise, but rather relate to [the] [d]efendant's promise to perform at some future time."). Therefore, CJGL cannot assert its false promise theory under a negligent misrepresentation claim. *See, e.g., Tarmann*, 2 Cal. App. 4th at 158–59. CJGL's failure to identify any evidence in the record of a misrepresentation of past or existing fact and failure to make any other arguments beyond those in opposition to its intentional misrepresentation claim is thus fatal to its negligent misrepresentation counterclaim. The Court therefore GRANTS Meineke's Motion on CJGL's negligent misrepresentation counterclaim.

3. California Franchise Investment Law

***12** Both Meineke and CJGL move for summary judgment on CJGL's sixth counterclaim alleging a violation of CFIL under California Corporations Code section 31201. *See* (Countercompl. ¶¶ 90–102). Section 31201 makes it unlawful for any person to offer or sell a franchise by a written or oral communication containing an untrue statement of material fact. *See* Cal. Corp. § 31201.

The primary dispute between the parties as to the CFIL counterclaim is whether CJGL's CFIL counterclaim is barred by the statute of limitations. However, the parties also dispute the scope of CJGL's counterclaim; specifically, Meineke argues that CJGL raises a new theory of liability not asserted in the Countercomplaint. The Court takes this issue up before turning to the remaining question of timeliness.

(a) New Theories of CFIL Violations

CJGL argues that the Court should grant summary judgment in its favor on the CFIL counterclaim based on two theories. First, CJGL argues that Meineke made "oral and written untrue statements of material facts" concerning the "renewal term" that CJGL would "maintain the right to possession" of the Meineke Center, in violation of section 31201. (CJGL Reply at 8). Second, CJGL argues that when Meineke refused to guarantee the direct lease, Meineke unilaterally modified a possessory term within the Franchise Renewal Agreement without any notice or written disclosures, in violation of section 31125. Meineke argues that the latter theory is not alleged in the Countercomplaint and CJGL should not be permitted to amend its Countercomplaint through its summary judgment brief. The Court agrees with Meineke.

CJGL's Countercomplaint does not set forth a theory that Meineke "effectively modified" a material term of the Franchise Agreement based on Meineke's decision not to guarantee the direct lease. In fact, the Countercomplaint makes no mention of section 31125 at all. CJGL's claim that this theory is alleged in the Countercomplaint because CJGL incorporated all other factual allegations is inapposite. The underlying legal violation is different: the Countercomplaint only alleges that Meineke violated Section 31201 when Meineke "offered and sold a franchise to [CJGL] by means of oral communications containing untrue statements or omissions of material fact...." (Countercompl. ¶ 93). The Court thus rejects the section 31125 theory raised

for the first time in CJGL's motion for summary judgment. [18] *See Pickern v. Pier 1 Imps. (U.S.), Inc.*, 457 F.3d 963, 968–69 (9th Cir. 2006) (affirming district court's disallowance of the plaintiff's new theory raised for the first time in response to the defendant's summary judgment motion because the allegations in support were not included in the complaint and the plaintiff had not amended or sought to amend the complaint to include them); *Wasco Prods., Inc. v. Southwall Techs., Inc.*, 435 F.3d 989, 992 (9th Cir. 2006) ("The necessary factual averments are required with respect to each material element of the underlying legal theory.... Simply put, summary judgment is not a procedural second chance to flesh out inadequate pleadings." (internal quotation marks, alteration, and citation omitted)); *Fernandez v. McKnight*, No. 1:12-cv-557-BAM, 2014 WL 352238, at *2, n.7 (E.D. Cal. Jan. 31, 2014) ("[N]ew argument or allegations in a summary judgment opposition do not raise triable issues of fact.").

(b) Whether CJGL's Section 31201 Counterclaim is Barred by the Statute of Limitations

***13** Section 31201 claims are subject to the statute of limitations set forth in section 31304. Section 31304 provides that a section 31201 claim is only timely if brought before the *earlier* of "the expiration of two years after the violation upon which it is based," or "one year after the discovery by the plaintiff of the facts constituting such violation." Cal. Corp. Code § 31304; *see also Dos Beaches, LLC v. Mail Boxes Etc., Inc.*, No. 09CV2401-LAB RBB, 2012 WL 506072, at *17 (S.D. Cal. Feb. 15, 2012). The equitable "discovery rule," discussed in Section III.B, does not apply because Section 31304 provides for a discovery period within the statute. *See JB Bros., Inc v. Poke Bar Ga Johns Creek I, LLC*, No. 2:21-cv-01405-CBM-MRWx, 2022 WL 3012822, at *3 (C.D. Cal. June 6, 2022) ("There is no equitable tolling of either statute of limitations, no delayed accrual based on when damage was sustained or because of fraud or conspiracy, and a plaintiff's delayed discovery of the facts constituting the violation does not extend the limitations period."). Therefore, the two-year period in section 31304—the longest of the limitations periods described in Section 31304—imposes an "absolute limit[ ]." *People ex rel. Dep't of Corps. v. SpeeDee Oil Change Sys., Inc.*, 95 Cal. App. 4th 709, 726 (2002), *as modified* (Feb. 1, 2002), *as modified* (Feb. 8, 2002). [19]

Here, CJGL argues Meineke violated CFIL by allegedly misrepresenting that Meineke would "assist the Doumas and arrange for the direct lease" with the Landlord "in connection with the renewal [of the Franchise]." (MSJ at 57). Based on CJGL's theory, execution of the Franchise Renewal Agreement is the "act or transaction constituting the violation" for purposes of the two-year period in section 31304. *Full Tilt Boogie, LLC v. Kep Fortune, LLC*, No. 2:19-cv-09090-ODW (KESx), 2022 WL 3018055, at *8 (C.D. Cal. July 29, 2022) (the "act or transaction constituting the violation" is the sale/transaction associated with the untrue statement); *see also Tilted Kilt Franchise Operating, LLC v. Helper*, No. CV-10-1951-PHX-DGC, 2011 WL 1526951, at *2 (D. Ariz. Apr. 22, 2011) (sale for purposes of section 31201 occurred on the date the parties executed their franchise agreement). The Franchise Renewal Agreement was executed on September 29, 2021, [20] and CJGL filed its Countercomplaint on March 15, 2023. *See* (Countercompl.). Therefore, CJGL asserted its CFIL claim within the two-year period set forth in Section 31304 and is not time-barred on this basis. Under the one-year "discovery" period, however, CJGL's claim may still be time-barred if CJGL discovered "the fact constituting the [CFIL] violation" before March 15, 2022—one year before CJGL filed its Countercomplaint. *See* Cal. Corp. Code § 31304.

According to Meineke, every communication alleged to contain an "untrue" statement or an omission was known to CJGL at the time of renewal on September 29, 2021. By contrast, CJGL argues that it learned "of the facts giving rise to the CFIL violation no earlier than February 2022 or June 2022, when it became abundantly clear Meineke's actions were to thwart and not assist CJGL in securing a direct lease." (CJGL Reply at 13–14). Citing a February 15, 2022, email, CJGL argues that the negotiations over the direct lease "ultimately failed no earlier than February 2022." (*Id.* at 14).

***14** CJGL's argument does not preclude summary judgment on its section 31201 claim. Notwithstanding CJGL's failure to identify the specific Meineke communication(s), [21] the Court's review of the record indicates that the Doumas knew at renewal, or very shortly thereafter, that Meineke was not going to guarantee the lease as CJGL believed throughout June and July of 2021. (JAF 82 ("Meineke 'blew it' by refusing to guarantee to lease," citing a September 24, 2021, email)). According to the record,

the latest the Doumas learned that Meineke would not be serving as a guarantor is October 19, 2021, when counsel for CJGL informed the Landlord that Meineke would provide only a 3-month guarantee for the lease, rather than the entirety of the lease.

Furthermore, CJGL assumes without explaining that CJGL only discovered the falsity of Meineke's "promise" to "assist the Doumas and arrange for the direct lease" when negotiations over the direct lease "ultimately failed." (MSJ at 57; CJGL Reply at 14). [22] The only evidence CJGL cites in support of this contention is the following email sent from CJGL's counsel to Meineke's counsel on February 15, 2022:

> Your call reminded me that I needed to call [counsel for the Landlord] on the Jan Douma matter. The receptionist says he is "semi-retired" but she gave me his cell phone number. I called and left him a message. It may be that he no longer does this work. If so, maybe we get a more flexible person to deal with?

(Leone Decl. ¶ 4, JAE at 255). CJGL does not explain to the Court why this email suggests negotiations failed on February 15, 2022, or, even if it does, why this email indicates CJGL discovered new information about the truth of Meineke's pre-renewal communications.

Accordingly, Meineke has demonstrated that CJGL learned of the facts underlying the CFIL violation before March 15, 2022, and therefore CJGL's CFIL counterclaim is time barred. [23]

C. Rescission and Restitution

Meineke also moves for summary judgment on CJGL's fifth counterclaim that demands rescission of the Franchise Renewal Agreement, and all related agreements, based on mutual and/or unilateral mistake and an alleged failure of consideration. (Countercompl. ¶¶ 75–89).

Section 1689(b) of the California Civil Code allows rescission of a contract under certain circumstances including, as relevant here, if the consent of the party rescinding was given by mistake or obtained through fraud, or if consideration for the obligation of the rescinding party fails in some material respect. *See* Cal. Civ. Code § 1689(b)(1), (2), (4); *see also Vill. Northridge Homeowners Assn. v. State Farm Fire & Cas. Co.*, 50 Cal. 4th 913, 923 (2010) ("[A] party who is fraudulently induced to execute a contract can either rescind the contract and restore the consideration, or can affirm the contract and recover damages for fraud."). However, "to escape from its obligation the aggrieved party must *rescind* by prompt notice and offer to restore the consideration received, if any." *Citicorp Real Estate, Inc. v. Smith*, 155 F.3d 1097, 1103 (9th Cir. 1998) (quoting 1 B.E. Witkin, Summary of California Law, Contracts § 403 (9th ed. 1987, Supp. 1997); and then citing Cal. Civ. Code § 1691(a)) (emphasis in original). California courts have interpreted the "promptness" requirement strictly, "demanding action by the aggrieved party within a month of discovery of the breach unless an adequate explanation for delay is provided." *In re Checkmate Staffing, Inc.*, 359 F. App'x 736, 739 (9th Cir. 2009); *see also Campbell v. Title Guar. & Trust Co.*, 121 Cal. App. 374, 377 (1932); *Gedstad v. Ellichman*, 124 Cal. App. 2d 831, 834 (1954). A party who "delays in seeking the remedy of rescission may forfeit the right to rescind where the delay substantially prejudiced the other party." *Citicorp Real Est.*, 155 F.3d at 1103 (section 1691 is subject to the substantial prejudice requirement in section 1693). [24]

***15** According to Meineke, there is no evidence to support that CJGL entered the Franchise Renewal Agreement based upon a mistake because CJGL knew that Meineke would not guarantee the lease when the Franchise Renewal Agreement was executed. (MSJ at 46–47). For the same reasons, Meineke argues CJGL cannot demonstrate that the guaranty of the lease was consideration for the Franchise Renewal Agreement. Finally, Meineke claims it suffered prejudice from CJGL's delay in demanding rescission because had Meineke known that CJGL was not going to keep the Meineke Center open, it would have

actively sought a replacement franchisee. (JAF 55; JAE at 232–33). Instead, Meineke had to contend with the environmental issues on the Premises and pay $117,860 to settle related disputes with the Landlord. *See, e.g.*, (JAF 51; Winchester Decl. ¶ 3).

In opposition, CJGL argues that "undisputed evidence establishes failure of consideration." (MSJ at 49). Without citing to evidence in the record, CJGL argues that, during a franchise renewal, there is a "mutual understanding" that the franchisee's agreement to renew a franchise term is "conditioned on" the franchisee having a right of possession of the premises for such term. (*Id.*). According to CJGL, because CJGL had no right of possession under the Sublease after Meineke failed to renew the Master Lease, to "effectuate renewal," Meineke had "to arrange a master lease," which was "part and parcel, and integral to CJGL's renewal of the franchise." (*Id.* at 49–50). CJGL does not address Meineke's challenge to CJGL's mistake allegations or directly respond to Meineke's delay argument. Instead, CJGL asserts that it sufficiently gave notice to Meineke by asserting rescission in CJGL's pleading in the action.

The Court addresses the promptness issue first because CJGL operated under the Franchise Renewal Agreement for nearly one year. Here, there is no dispute that CJGL only provided notice to Meineke of rescission of the Franchise Renewal Agreement on March 15, 2023, when CJGL filed its Countercomplaint. *See* (Countercompl.). As also discussed above, the record supports that CJGL knew that Meineke would not guarantee the lease, which is the basis of both the purported "failure of consideration"[25] and/or "mistake," before Carl Douma and Meineke executed the Franchise Renewal Agreement. *See* (Leone Decl. ¶ 3, JAE at 248). And because CJGL continued to negotiate with Meineke and the Landlord after renewal (throughout October, November, and December 2021), CJGL indisputably knew that Meineke had not, in fact, guaranteed the direct lease before the Franchise Renewal Agreement was executed. *See* (JAF 89; Leone Decl. ¶ 5, JAE at 256–57). Therefore, the record reflects an approximately 12-to 15-month delay between discovering CJGL's grounds for rescission and CJGL's notification of rescission. CJGL offers no justification or explanation for this delay. *In re Checkmate Staffing, Inc.*, 359 F. App'x at 739 (section 1691 "deman[ds] action by the aggrieved party within a month of discovery of the breach unless an adequate explanation for delay is provided" (citing *Campbell*, 121 Cal. App. at 377; and *Gedstad*, 124 Cal. App. 2d at 834)). More importantly, during those 12 to 15 months during which CJGL *knew* there was no direct lease, CJGL continued to operate the Meineke Center. *See, e.g., Carpenter v. First Tr. & Sav. Bank of Pasadena*, 11 Cal. App. 2d 668, 672 (1936) (a party may rescind "notwithstanding delay occasioned by negotiations with reference to the cancellation of the contract ... but not where, after discovery of the facts justifying a rescission, he conducts himself as though the contract were still subsisting").

***16** Meineke has shown that CJGL's unexplained delay of rescission caused Meineke prejudice. After renewal, CJGL continued to operate the Meineke Center, use Meineke's trademarks and systems, and rely upon Meineke's support in finding alternate locations. (MSJ at 48); *see generally Petrella v. Metro-Goldwyn-Mayer, Inc.*, 695 F.3d 946, 953 (9th Cir. 2012) (prejudice exists where "during the delay, [the defendant] invested money to expand its business or entered into business transactions based on its presumed rights" (internal quotation marks and alteration omitted)), *overruled on other grounds by Petrella v. Metro-Goldwyn-Mayer, Inc.*, 134 S. Ct. 1962 (2014). It is undisputed that CJGL vacated the Premises on August 2, 2022, without notice to Meineke and that, in the wake of CJGL's departure, Meineke responded to regulatory enforcement investigations and ultimately paid $117,860 to the Landlord to settle claims involving the condition of the Premises. (JAF 49–51; JAE at 268–76). CJGL provides no response to these assertions and undisputed facts.

Thus, CJGL cannot establish that it promptly provided notice of its rescission in accordance with Sections 1691 and 1693. CJGL's delay that caused Meineke prejudice is sufficient on its own to warrant summary judgment. The Court therefore GRANTS Meineke's Motion as to CJGL's rescission counterclaim and does not reach the parties' remaining arguments regarding grounds for rescission.

D. Intentional Interference with Prospective Economic Advantage

Meineke moves for summary judgment on CJGL's seventh counterclaim for intentional interference with prospective economic advantage ("IIPEA"). CJGL's IIPEA counterclaim asserts Meineke wrongfully interfered with CJGL's "past, future, repeat, and prospective customers" when Meineke failed to exercise its option to renew the Master Lease and subsequently failed to

notify CJGL of its decision; when Meineke made "material misrepresentations of assurances" regarding Meineke's securing of the direct lease; and when Meineke fraudulently induced CJGL to renew the Franchise Renewal Agreement without a direct lease. *See* (Countercompl. ¶¶ 104–09). Based upon the same reasons Meineke challenges CJGL's other counterclaims, Meineke contends that the underlying alleged conduct is not wrongful; for example, that Meineke did not engage in negligent or intentional misrepresentation. (MSJ at 53–54). In opposition, CJGL only incorporates the same paragraph-long argument as used to oppose summary judgment on several other counterclaims and fails to cite to the record.

The elements of the claim for IIPEA are: "(1) an economic relationship between the plaintiff and another, containing a probable future economic benefit or advantage to plaintiff, (2) defendant's knowledge of the existence of the relationship, (3) defendant's intentional conduct designed to interfere with or disrupt the relationship, (4) actual disruption, and (5) damage to the plaintiff as a result of defendant's acts." *Marin Tug & Barge, Inc. v. Westport Petroleum, Inc.*, 271 F.3d 825, 831 n.8 (9th Cir. 2001) (citing *Della Penna v. Toyota Motor Sales, U.S.A., Inc.*, 11 Cal. 4th 376, 380 n.1 (1995)). The defendant's interference must be "wrongful by some measure beyond the fact of the interference itself." *Della Penna*, 11 Cal. 4th at 393. "[A]n act is independently wrongful if it is unlawful, that is, if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard." *Ixchel Pharma, LLC v. Biogen, Inc.*, 9 Cal. 5th 1130, 1142 (2020) (quoting *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1159 (2003)).

Here, summary judgment is appropriate because CJGL cannot establish Meineke engaged in wrongful conduct. CJGL alleges that Meineke acted unlawfully when it (1) failed to renew the Master Lease, (2) engaged in material misrepresentations or (3) fraudulently induced CJGL to renew the Franchise, fail for the same reasons as discussed above. To the extent CJGL contends that Meineke engaged in wrongful conduct when it failed to provide notice of its decision not to renew the Master Lease, that argument similarly fails. Though it is undisputed that Meineke has a policy to provide its franchisees under sublease at least "a one-year notice" of Meineke's intent not to renew a master lease, (JAF 57), CJGL has not demonstrated that the violation of Meineke's policy is conduct proscribed by "constitutional, statutory, regulatory, common law, or other determinable legal standard." *Ixchel Pharma*, 9 Cal. 5th at 1142. The Court therefore grants Meineke's Motion on CJGL's IIPEA counterclaim.

1. Negligent Interference with Prospective Economic Advantage

***17** A claim for negligent interference with prospective economic advantage ("NIPEA") has similar elements as IIPEA. The elements for a NIPEA claim are: "(1) the existence of an economic relationship between the plaintiff and a third party containing the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) the defendant's knowledge (actual or construed) that the relationship would be disrupted if the defendant failed to act with reasonable care; (4) the defendant's failure to act with reasonable care; (5) actual disruption of the relationship; and (6) economic harm proximately caused by the defendant's negligence." *See Redfearn v. Trader Joe's Co.*, 20 Cal. App. 5th 989, 1005 (2018) (listing the NIPEA elements), *as modified on denial of reh'g* (Mar. 16, 2018), *and disapproved of by Ixchel Pharma*, 9 Cal. 5th 1130.

CJGL's Countercomplaint alleges that the pertinent relationship for its NIPEA counterclaim is CJGL's relationship with its prospective customers. CJGL does not, however, allege or otherwise argue how Meineke "failed to act with reasonable care." (Countercompl. ¶ 119). CJGL also provided no substantive opposition to Meineke's argument, again incorporating its boilerplate opposition paragraph that argues, without the support of evidence in the record, that genuine disputes of material fact preclude summary judgment.[26] CJGL cannot avoid summary judgment by simply stating that "[g]enuine [d]isputes of [m]aterial [f]acts [e]xist." (MSJ at 42). CJGL must instead point to specific facts showing that Meineke, in fact, failed to act with reasonable care. Fed. R. Civ. P. 56(e). As CJGL has failed to do so, the Court GRANTS Meineke's Motion on CJGL's eighth counterclaim.

E. Unfair and Fraudulent Business Practices

Finally, Meineke moves for summary judgment on CJGL's ninth counterclaim that alleges a violation under the UCL. The UCL prohibits "any unlawful, unfair, or fraudulent business act or practice." Cal. Bus. & Prof. Code § 17200. The UCL "borrows violations of other laws and treats them as unlawful practices that the unfair competition law makes independently actionable." *Cel-Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co.*, 20 Cal. 4th 163, 180 (Cal. 1999). The UCL does not only proscribe underlying claims: "[t]he statutory language referring to 'any unlawful, unfair *or* fraudulent' practice makes clear that a practice may be deemed unfair even if not specifically proscribed by some other law." *Id.* (emphasis in original) (citation omitted). In other words, "[b]ecause [the UCL] is written in the disjunctive, it establishes three varieties of unfair competition—acts or practices which are unlawful, or unfair, or fraudulent." *Hodsdon v. Mars, Inc.*, 891 F.3d 857, 865 (9th Cir. 2018) (quoting *Cel-Tech*, 20 Cal. 4th at 180)). Here, CJGL's Countercomplaint discusses only unlawful and fraudulent conduct under the UCL. *See* (Countercompl. ¶ 129).

CJGL asserts that Meineke engaged in unlawful and fraudulent business practices under the UCL by engaging in the statutory violations asserted in the Countercomplaint, "including by not limited to violations of CFIL." (*Id.* ¶ 129). As such, CJGL expressly predicates its UCL claim on its other claims for relief. Because CJGL's underlying claims fail, its claim under the UCL fails as well.[27] *See Aleksick v. 7-Eleven, Inc.*, 205 Cal. App. 4th 1176, 1185 (2012) ("When a statutory claim fails, a derivative UCL claim also fails."); *Krantz v. BT Visual Images*, L.L.C., 89 Cal. App. 4th 164, 178 (2001), *as modified* (May 22, 2001) (holding that derivative UCL claims "stand or fall depending on the fate of the antecedent substantive causes of action"). Because CJGL's UCL claim is predicated on its statutory and common law claims, which fail for the reasons stated herein, the Court GRANTS Meineke's Motion on CJGL's UCL counterclaim.

IV. CONCLUSION

***18** For the reasons stated above, the Court GRANTS Meineke's Motion, Denies CJGL's Motion, and DISMISSES CJGL's Countercomplaint.

All Citations

Slip Copy, 2024 WL 4004998

Footnotes

1 When deciding a motion for summary judgment, the Court only considers evidence admissible at trial, though the form may differ at the summary judgment stage. *Godinez v. Alta–Dena Certified Dairy LLC*, No. CV 15–01652 RSWL (SSx), 2016 WL 6915509, at *3 (C.D. Cal. Jan. 29, 2016). The Court has reviewed the entire record, including the parties' JAF, objections, and evidence. The Court discusses only the facts that are relevant to its decision. In those instances where a party has failed to properly address the other party's assertion of fact or failed to properly support an asserted fact with evidence, as is required by Rule 56(c), the Court considers the fact undisputed for purposes of the motions. *See* Fed. R. Civ. P. 56(e)(2); L.R. 56-3. Further, it is not the Court's practice to rule on each objection individually, nor is it required to do so. To the extent that the Court relies on evidence that is the subject of an objection, the Court overrules the objection for purposes of ruling on the motions. To the extent the Court does not rely on evidence objected to by the parties, the objections are overruled as moot for purposes of the motions.

2 Franchisor is a subsidiary of Driven Brands, Inc. *See* (MSJ at 15 (citing JAF 1)). The parties treat references to Driven Brands as also referring to Franchisor.

3 CJGL requests that the Court decline to consider any arguments by Meineke challenging the sufficiency of the evidence, asserting that the challenge "came as a surprise" because the only grounds raised by Meineke during the parties' meet

and confer over the Motion was that the Mutual Release bars CJGL's claims. (MSJ at 42). CJGL contends that had Meineke conferred with CJGL, the parties could have come to a resolution on most issues and avoided briefing. Meineke does not dispute CJGL's representations but, instead, argues that discovery has long been closed and that the Court's resolution of the Motion will prevent a waste of resources that could result from taking insufficient claims to trial. The Court has exercised its discretion to consider the entirety of Meineke's Motion. Although Local Rule 7-3 does not have a "prejudice" standard, the Court notes that Meineke's arguments regarding the sufficiency of CJGL's claims should not come as a prejudicial surprise, especially after the close of fact discovery. And although CJGL says the briefing could have been avoided, it opposes all Meineke's challenges in the Motion.

4 CJGL's counterclaim for breach of the implied covenant of good faith and fair dealing was not filed until March 15, 2023. *See* (Countercompl.). The filing of a complaint ordinarily tolls the statute of limitations during the pendency of the action for counterclaims filed in the action, but it does not toll the statute of limitations period for such counterclaims if the limitations period for them had already run when the complaint was filed. *Luna Records Corp., Inc., v. Alvarado*, 232 Cal. App. 3d 1023, 1026–28 (1991); *City of Oakland v. Hassey*, 163 Cal. App. 4th 1477, 1495–96 (2008).

5 Breach of the implied covenant, as is asserted here, sounds in contractual remedies, rather than tort remedies. *Foley v. Interactive Data Corp.*, 47 Cal. 3d 654, 683–84 (1988).

6 Neither party disputes that the statute of limitations for the implied covenant claim is four years. *See* Cal. Code Civ. Proc. § 337(1); *Perez-Encinas v. AmerUs Life Ins. Co.*, 468 F. Supp. 2d 1127, 1133–34 (N.D. Cal. 2006); *Krieger v. Nick Alexander Imports, Inc.*, 234 Cal. App. 3d 205, 220–21 (1991).

7 The Court notes that the parties dispute the extent to which these representations induced the Doumas to take various actions. But on the issue of the statute of limitations defense, whether any representation as a matter of law induced the Doumas into any particular action is irrelevant for the reasons set forth above.

8 CJGL also cites to *Vaca v. Wachovia Mortg. Corp.*, 198 Cal. App. 4th 737, 745, (2011), which held a "defendant may be equitably estopped from asserting the statute of limitations when, as the result of intentional concealment, the plaintiff is unable to discover the defendant's actual identity." (emphasis omitted). The record here does not demonstrate any intentional concealment and, in any event, the record demonstrates Defendants discovered the facts giving rise to Defendants' counterclaim by January 18, 2018. *See* (JAF 14).

9 Because the statute of limitations bars this claim, the Court does not reach the parties' arguments regarding the Mutual Release.

10 There is a dispute of fact as to whether Joe Robinson, the individual from Meineke working with the Doumas, had authority to represent anything regarding Meineke corporate's ability or decision to guarantee leases for subtenants. Notwithstanding, summary judgment is proper based on the absence of a genuine issue of material fact as to Meineke's intent. Therefore, the Court does not rule upon whether Robinson's representations were an actual promise to do what CJGL alleges.

11 There is no apparent dispute that CJGL's intentional misrepresentation claim asserts liability based on a false promise, instead of a misrepresentation of existing or past fact. *See* (MSJ at 43 (CJGL opposing summary judgment on intentional misrepresentation counterclaim and discussing "Meineke's promises to guaranty the direct lease")).

12 Nor has CJGL substantively opposed Meineke's argument, submitting only one paragraph in opposition that generally contends that Meineke "made affirmative misrepresentations that Meineke would assist and arrange a direct lease with the [Landlord] for the [ ] Premises for renewal of the [Franchise Renewal Agreement]," and "promise[d] to guaranty the direct lease." (MSJ at 42–43). This paragraph is similarly submitted as the basis for CJGL's opposition to Meineke's Motion as to CJGL's second, third, fourth, seventh, eighth, and ninth counterclaims.

13 "A party opposing a summary judgment motion must produce *specific* facts showing that there remains a genuine factual issue for trial and evidence significantly probative as to any material fact claimed to be disputed." *Jespersen v. Harrah's Operating Co., Inc.* 444 F.3d 1104, 1111 (9th Cir. 2006) (emphasis in original) (citation omitted); *see also Forsberg v. Pacific N.W. Bell Tel. Co.*, 840 F.2d 1409, 1418 (9th Cir.1988) ("The district judge is not required to comb the record to find some reason to deny a motion for summary judgment.").

14 The Court notes Meineke does not dispute this is what the Landlord told Jan Douma and has not disputed whether it was an accurate statement, but disputes that "the decision of whether to issue a corporate guaranty is within the actual or apparent authority of a mid-level Renewal Manager." (JAF 65–67).

15 CJGL, however, has not pointed to any other evidence, and Meineke denies that the statement was ever made to Carl Douma, though admits that "Meineke would not have engaged in efforts to secure a lease for premises without a franchisee to occupy the premises." (JAF 83).

16 The declaration for Dennis Leone, Meineke's outside counsel for the events alleged here, can be found at ECF No. 41-3 at 237–38.

17 The Court notes that the record contains no affirmative representations from anyone at Meineke in June or July of 2021 agreeing to guarantee the direct lease—CJGL's position that Meineke agreed to guaranty the lease is based on (1) the Landlord's statement that Meineke agreed to guarantee the lease; and (2) the Landlord's emailing of the guarantee to Meineke and Meineke's subsequent silence as to these emails and representations from the Landlord. *See* (JAF 65, 72, 74; JAE at 450).

18 Even though it is possible that "addition of new issues during the pendency of a summary judgment motion *can* be treated as a motion for leave to amend the complaint," the Court sees no basis to treat CJGL's new theory of liability in this way. *Kaplan v. Rose*, 49 F.3d 1363, 1370 (9th Cir. 1994) (emphasis added) (when considering whether to grant leave to amend, district courts are to balance "the strong policy in favor of allowing amendment" with "four factors: bad faith, undue delay, prejudice to the opposing party, and the futility of amendment"), *overruled on other grounds by City of Dearborn Heights Act 345 Police & Fire Ret. Sys. v. Align Tech., Inc.*, 856 F.3d 605 (9th Cir. 2017). CJGL gave no prior indication to this Court or to Meineke that they sought to rely on new theories of liability, nor have they ever requested leave to amend their counterclaims. The deadline to move to amend the pleadings—August 2, 2023—has long since passed. (ECF No. 28-1). Fact discovery in this action closed on February 6, 2024, and expert discovery closed on March 20, 2024. (ECF No. 40). As a result, allowing CJGL to now advance its new theory of liability would prejudice Meineke. Furthermore, for the reasons discussed herein, amendment would be futile given the statute of limitations bar on this claim. *Kaplan*, 49 F.3d at 1370.

19 The *Speedee Oil Change* court provided a statutory interpretation of Section 31304: "[The] statut[e] specifically state[s] an action must be brought before the expiration of ... two years 'after the act or transaction constituting the violation' or 'the expiration of one year after the discovery by the plaintiff of the fact constituting the violation ... *whichever shall first expire.*' [ ] Once the ... two-year period expires, a plaintiff's belated discovery of the fact constituting the violation cannot serve to extend the statute of limitations. In other words, ... the two-year limit in section 31304 [is] absolute." *Speedee Oil*, 95 Cal. App. 4th at 726–27.

20 The Franchise Renewal Agreement provides the agreement is "made and entered into as of the date appearing below our signature line at the end of this Agreement." (Jan Douma Decl. ¶ 16, JAE at 491). The Franchise Renewal Agreement defines "we" as Meineke, and "you" as CJGL. (*Id.*).

21 This glaring deficiency in CJGL's briefing makes it incredibly difficult for the Court to discern (1) what was untrue about the communication, and (2) when CJGL learned that any communications contained an untrue statement of material fact. The Countercomplaint also does not allege a specific communication which, on a motion to dismiss, would likely fail Rule 9(b)'s requirement that claims sounding in fraud are pleaded with particularity.

22 CJGL cites to "JAF 101–104" in support of its conclusory statement that Meineke promised to "assist the Doumas and arrange for the direct lease," but the Joint Appendix of Facts does not go beyond JAF 98. *See* (ECF No. 41-2 at 47–48).

23 Even if the Court had permitted CJGL to add its other CFIL theory, because it was premised on the same facts, the "effective modification" theory would have been time-barred for the same reasons.

24 California Civil Code Section 1693 provides that where "relief based upon rescission is claimed in an action or proceeding," as it was here, "such relief shall not be denied because of delay in giving notice of rescission unless such delay has been substantially prejudicial to the other party." *Id.* § 1693.

25 This theory also assumes that Meineke's guaranty of the lease was, in fact, consideration for the Franchise Renewal Agreement. The record reflects a dispute, however, as to whether Meineke's guarantee of the lease was a condition to the renewal of the parties' franchising relationship. *See, e.g.*, (Jan Douma Decl. ¶ 8, JAE at 446 ("We need a long-term lease as we were promised when we took over the shop in 2014 ... Since Meineke was the primary lessor before, we are asking that you sign a new lease. *If you can't or don't want to, let us know.*" (emphasis added))).

26 *See Resolution Trust Corp. v. Dunmar Corp.*, 43 F.3d 587, 599 (11th Cir. 1995) ("There is no burden upon the district court to distill every potential argument that could be made based upon the materials before it on summary judgment. Rather, the onus is upon the Parties to formulate arguments; grounds alleged in the complaint but not relied upon in summary judgment are deemed abandoned." (citations omitted)).

27 As with its other claims, CJGL provides no specific opposition to Meineke's argument and, instead, incorporates its general opposition statement.

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