UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RAUL ZAMUDIO and SOLEDAD ZAMUDIO

Plaintiffs,

v.

FMC CORPORATION and DOES 1 through 20, inclusive,

Defendants.

No. 2:16-cv-02693-TLN-DB

ORDER

This matter is before the Court on Defendant FMC Corporation's ("Defendant") Motion for Summary Judgment. (ECF No. 21.) Plaintiffs Raul Zamudio and Soledad Zamudio (collectively, "Plaintiffs") filed an opposition. (ECF No. 26.) Defendant filed a reply. (ECF No. 28.) For the reasons set forth below, the Court GRANTS in part and DENIES in part Defendant's motion.

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I. FACTUAL AND PROCEDURAL BACKGROUND[1]

This case arises from a workplace injury that took place at Escalon Premier Brands (the "Facility"), a tomato processing facility in Escalon, California. (ECF No. 26-1 at 2.) The Facility receives raw tomatoes, processes the fruit in its facility, and turns the fruit into an end product for consumption. (Id.) The Facility uses machines called "pulpers" to adjust the size of tomato finish before it is added to a final product. (Id.) The Facility numerically identifies its pulpers 1 through 18. (Id.) On July 2, 2015, Plaintiff Raul Zamudio ("Mr. Zamudio") was seriously injured while cleaning a pulper designated Pulper 16. (Id. at 10–11.) More specifically, Plaintiffs allege Pulper 16 started suddenly while in the off position and caused bi-lateral amputation to both of Mr. Zamudio's arms. (Id. at 11.) Plaintiffs allege Defendant originally manufactured Pulper 16. (ECF No. 8 at 2.)

On November 14, 2016, Plaintiffs filed the instant personal injury action against Defendant. (ECF No. 1.) Plaintiffs filed a First Amended Complaint ("FAC") on January 24, 2017. (ECF No. 8.) The FAC asserts six causes of action: (1) strict products liability for a manufacturing defect; (2) strict products liability for a design defect; (3) strict products liability for failure to warn; (4) negligent product liability; (5) breach of express warranties; and (6) loss of consortium. (Id. at 5–12.) Defendant filed the instant motion for summary judgment on March 13, 2018. (ECF No. 21.) Plaintiffs filed an opposition on April 3, 2018. (ECF No. 26.) Defendant filed a reply on April 12, 2018. (ECF No. 28.)

II. STANDARD OF LAW

Summary judgment is appropriate when the moving party demonstrates no genuine issue as to any material fact exists and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970). Under summary judgment practice, the moving party always bears the initial responsibility of informing the district court of the basis of its motion, and identifying those portions of "the pleadings,

[1] The background section provides a general overview of the dispute based on the evidence submitted by the parties, from which the Court finds there are no genuine issues of material fact. A more detailed analysis of the evidentiary record appears in the discussion below.

depositions, answers to interrogatories, and admissions on file together with affidavits, if any," which it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). "[W]here the nonmoving party will bear the burden of proof at trial on a dispositive issue, a summary judgment motion may properly be made in reliance solely on the pleadings, depositions, answers to interrogatories, and admissions on file." Id. at 324 (internal quotations omitted). Indeed, summary judgment should be entered against a party who does not make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.

If the moving party meets its initial responsibility, the burden then shifts to the opposing party to establish that a genuine issue as to any material fact actually does exist. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 585–87 (1986); *First Nat'l Bank of Ariz. v. Cities* Serv. Co., 391 U.S. 253, 288–89 (1968). In attempting to establish the existence of a factual dispute, the opposing party may not rely upon the denials of its pleadings but is required to tender evidence of specific facts in the form of affidavits, and/or admissible discovery material, in support of its contention that a dispute exists. Fed. R. Civ. P. 56(c). The opposing party must demonstrate that the fact in contention is material, i.e., a fact that might affect the outcome of the suit under the governing law, Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986), and that the dispute is genuine, i.e., the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Id. at 251–52.

In the endeavor to establish the existence of a factual dispute, the opposing party need not establish a material issue of fact conclusively in its favor. It is sufficient that "the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial." *First Nat'l Bank,* 391 U.S. at 288–89. Thus, the "purpose of summary judgment is to 'pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial.'" Matsushita, 475 U.S. at 587 (quoting Rule 56(e) advisory committee's note on 1963 amendments).

In resolving the summary judgment motion, the Court examines the pleadings, depositions, answers to interrogatories, and admissions on file, together with any applicable

affidavits. Fed. R. Civ. P. 56(c); SEC v. Seaboard Corp., 677 F.2d 1301, 1305–06 (9th Cir. 1982). The evidence of the opposing party is to be believed, and all reasonable inferences that may be drawn from the facts pleaded before the court must be drawn in favor of the opposing party. Anderson, 477 U.S. at 255. Nevertheless, inferences are not drawn out of the air, and it is the opposing party's obligation to produce a factual predicate from which the inference may be drawn. Richards v. Nielsen Freight Lines, 602 F. Supp. 1224, 1244–45 (E.D. Cal. 1985), *aff'd*, 810 F.2d 898 (9th Cir. 1987). Finally, to demonstrate a genuine issue that necessitates a jury trial, the opposing party "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita, 475 U.S. at 586. "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" Id. at 587.

III. ANALYSIS

Defendant moves for summary judgment on several grounds. As to Plaintiffs' strict products liability and negligence claims, Defendant argues it is not liable for Mr. Zamudio's injuries because a third party significantly remanufactured Pulper 16 in 2009 and there is no evidence that Defendant originally manufactured Pulper 16. Defendant also argues Plaintiffs fail to plead and cannot prove their breach of express warranty claim. The Court will address Defendant's arguments in turn.

A. Whether Defendant is Liable After the 2009 "Remanufacture" of Pulper 16

Defendant argues that even if Plaintiffs could prove Defendant originally manufactured Pulper 16, the machine's original design did not cause Mr. Zamudio's injuries because third parties remanufactured Pulper 16 in 2009.[2] In opposition, Plaintiffs argue that whether Pulper 16 was so significantly altered by a third party as to absolve Defendant of liability is necessarily a question of fact not appropriate for determination on summary judgment. (ECF No. 26 at 5.) Alternatively, Plaintiffs request additional time to conduct discovery under Federal Rule of Civil

[2] "Remanufacturing" is a term of art in the commercial food processing industry, which refers to a process done to older existing equipment when it has reached the end of its useful life. (ECF No. 21-1 at 6.) The parties disagree whether Pulper 16 was remanufactured rather than simply repaired in a manner consistent with its original design.

Procedure ("Rule") 56(d). (Id. at 27.) More specifically, Plaintiffs request additional time to file an expert declaration from Dr. Kenneth Blundell, a product engineer, and also to conduct an inspection of Pulper 16.[3] In reply, Defendants argue the Court should deny Plaintiffs' Rule 56(d) request because Plaintiffs did not pursue discovery diligently and fail to set forth facts establishing how additional discovery would preclude summary judgment. On April 12, 2018, approximately eight days after filing their opposition and the same day Defendant filed its reply, Plaintiffs filed Dr. Blundell's declaration.[4] (ECF No. 31.)

Rule 56(d) prescribes: "If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may . . . defer considering the motion or deny it." Fed. R. Civ. P. 56(d). "To prevail under this Rule, parties opposing a motion for summary judgment must make '(a) a timely application which (b) specifically identifies (c) relevant information, (d) where there is some basis for believing that the information sought actually exists.'" Employers Teamsters Local Nos. 175 and 505 Pension Trust Fund v. Clorox Co., 353 F.3d 1125, 1129–30 (9th Cir. 2004) (quoting *VISA Int'l Serv. Ass'n v. Bankcard Holders of Am.*, 784 F.2d 1472, 1475 (9th Cir. 1986)).

"The burden is on the party seeking additional discovery to proffer sufficient facts to show that the evidence sought exists, and that it would prevent summary judgment." Chance v. Pac–Tel Teletrac Inc., 242 F.3d 1151, 1161 n. 6 (9th Cir. 2001). Further, a court may deny "further discovery if the movant has failed diligently to pursue discovery in the past." Cal. Union Ins. Co. v. Am. Diversified Sav. Bank, 914 F.2d 1271, 1278 (9th Cir. 1990) (citations omitted). However,

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[3] As will be discussed, the Court grants Plaintiffs' request as to Dr. Blundell's declaration. Because Dr. Blundell's declaration and the existing evidence together are sufficient to preclude summary judgment as to Plaintiffs' strict liability and negligence claims, the Court need not and does not address Plaintiff's request to inspect Pulper 16. The Court also notes that it already addressed Plaintiffs' request to inspect Pulper 16 at length in its previous order granting Plaintiffs' ex parte application to modify the scheduling order. (ECF No. 45.)

[4] On the same date Plaintiffs filed Dr. Blundell's declaration, Plaintiffs also filed a list of product liability cases in which Dr. Blundell served as an expert witness (ECF No. 32), Dr. Blundell's resume (ECF No. 33), and a declaration from Plaintiffs' counsel explaining "Plaintiffs secured the declaration of Dr. Blundell as soon as was practicable" (ECF No. 30 at 2). Defendant did not file any objections or opposition to the foregoing documents.

"[c]ourts usually employ a 'generous approach toward granting [Rule 56(d)] motions.'" City of W. Sacramento, Cal. v. R & L Bus. Mgmt., No. 2:18-cv-00900-WBS-EFB, 2019 WL 5457029, at *1–2 (E.D. Cal. Oct. 24, 2019) (citation omitted); see also Burlington N. Santa Fe R. Co. v. Assiniboine & Sioux Tribes of Fort Peck Reservation, 323 F.3d 767, 773 (9th Cir. 2003).

i. Diligence

Defendant contends that the Court should deny Plaintiffs' Rule 56(d) request because Plaintiffs have not been diligent in seeking discovery. (ECF No. 28 at 4–5.) Defendant's argument is unavailing. A mere month before Defendant filed the instant motion, the Court approved a joint stipulation extending discovery deadlines. (ECF No. 20.) Moreover, this Court rejected an essentially identical argument from Defendant when it granted Plaintiffs' ex parte application to modify the scheduling order on October 10, 2018 (ECF No. 45), and the parties have jointly stipulated to extend discovery deadlines many times since. Most recently, on February 23, 2020, the Court approved a joint stipulation extending the deadline to complete expert discovery to July 30, 2020. (ECF No. 68.) In light of the fact that expert discovery is not yet closed, it would be unreasonable for the Court to find Plaintiffs were not diligent in pursuing expert discovery for the purpose of opposing the present motion. While the Court is mindful of Defendant's concerns, the Court cannot say that Plaintiffs' delay constitutes bad faith in light of the parties' many joint stipulations to extend discovery. See Chance, 242 F.3d at 1161 n. 6.

ii. Affidavit

To comply with Rule 56(d), Plaintiffs must submit an affidavit or declaration "setting forth the particular facts expected from further discovery." Fed. R. Civ. P. Rule 56(d); Brae Transp., Inc. v. Coopers & Lybrand, 790 F.2d 1439, 1443 (9th Cir. 1986).

Here, Plaintiffs have attached a sworn declaration of their attorney, Boris Treyzon ("Mr. Treyzon") to their opposition. (ECF No. 26-2.) Mr. Treyzon states that Dr. Blundell's expert declaration will affirm the following: (1) Defendant originally manufactured Pulper 16; (2) Pulper 16 was defective because it did not include an interlock device; and (3) the 2009 remanufacture of Pulper 16 was based on its original design. (Id. at 4; ECF No. 26 at 3.) Because Plaintiffs have "attached a detailed sworn declaration from counsel setting forth particular facts expected to be

obtained" from Dr. Blundell, Plaintiffs have satisfied the affidavit requirement under Rule 56(d).[5] See TMJ Inc., v. Nippon Tr. Bank, 16 F. App'x 795, 797 (9th Cir. 2001).

iii. Existence of Evidence Sought

Under Rule 56(d), the party requesting a continuance must show that the evidence sought exists. Chance, 242 F.3d at 1161 n. 6. "Denial of a Rule [56(d)] application is [therefore] proper where it is clear that the evidence sought is almost certainly nonexistent or is the object of pure speculation." Terrell v. Brewer, 935 F.2d 1015, 1018 (9th Cir. 1991).

As mentioned, Plaintiffs filed Dr. Blundell's declaration on April 12, 2018. (ECF No. 31.) Dr. Blundell's declaration, which will be discussed in more detail below, includes his findings that Pulper 16 was defective as originally designed and the "remanufacture" of Pulper 16 was consistent with its original design. Plaintiffs' ability to provide Dr. Blundell's declaration undermines the argument that the evidence sought does not exist. Therefore, the Court finds that Plaintiffs have met the existence requirement.

iv. Essentialness of Evidence Sought

"[T]he party seeking the continuance must show that it lacks the 'facts essential' to resist the summary judgment motion." McCormick, 26 F.3d at 885. The moving party must explain why those facts would preclude summary judgment. Tatum v. City & Cty. of San Francisco, 441 F.3d 1090, 1100 (9th Cir. 2006). For the reasons set forth below, the Court finds Plaintiffs have met the essentialness requirement of Rule 56(d).

To prevail on their strict liability and negligence claims, Plaintiffs must establish Defendant's defective product was the proximate cause of Mr. Zamudio's injuries. See generally Soule v. Gen. Motors Corp., 8 Cal. 4th 548, 572 (1994) ("A manufacturer is liable only when a defect in its product was a legal cause of injury."); *O'Neil v. Crane Co.*, 53 Cal. 4th 335, 349 (2012) ("It is fundamental that the imposition of liability requires a showing that the plaintiff's injuries were caused by an act of the defendant or an instrumentality under the defendant's

[5] Because the Court finds that Mr. Treyzon's declaration satisfies Rule 56(d), the Court OVERRULES Defendant's objection to the declaration. (See ECF No. 28-1 at 2.)

control.").

Defendant primarily relies on testimony from John Raggio, the plant manager at the Facility, and Taurino Trejo, a shift supervisor and lead mechanic at the Facility. That testimony provides as follows. In 2009, the Facility hired third parties to redesign and remanufacture various components of the existing pulpers. (ECF No. 21-2 at 4.) With regard to the top halves of the machines, third parties installed new, redesigned access doors and metal external covers for all the pulpers, including Pulper 16. (Id. at 6.) The remanufactured access doors or "pulper lids" covered the mixing blades of the machine and the new metal external covers were placed on top of the pulper lids. (Id. at 7.) The new external covers were completely redesigned and changed from their prior form, evolving from a rounded top to a tent-like top. (Id.) The purpose of the new external cover was to prevent individuals from opening and examining a machine while it was running, and metal chains were also added to secure the new external covers of the remanufactured pulper machines during operation. (Id. at 7–8.) Finally, the Facility relied on the third parties who remanufactured the pulper machines to install any safety devices that needed to accompany the new top halves of the machines. (Id. at 8.) In sum, Defendant's evidence suggests that even if Pulper 16 was originally Defendant's product, neither the top half nor the bottom half was original after the remanufacturing process. (Id.)

In opposition, Plaintiffs argue that Dr. Blundell's declaration will provide opinions that Defendant is liable because the 2009 repairs followed Pulper 16's original design. (ECF No. 26 at 3.) As mentioned, Plaintiffs filed Dr. Blundell's declaration approximately eight days after filing their opposition. In the declaration, Dr. Blundell states that he reviewed numerous photographs, notes pertaining to OSHA inspections, and relevant deposition testimony. (ECF No. 31 at 3.) Based on his review, Dr. Blundell states that Pulper 16 should have been supplied with an interlocking guard attached to the inner cover that would cut off the ability of the shaft and blades to move while the inner cover was removed. (Id. at 4.) According to Dr. Blundell, such an interlocking guard would have prevented Mr. Zamudio's injury. (Id.)

Dr. Blundell goes on to state that despite the use of third-party components during the "so-called remanufacturing" of Pulper 16, Defendant's original design still exists with the attendant

safety defects that originated when the machine was first designed and manufactured. (Id.) Dr. Blundell points out that none of the directions regarding changes to the pulpers in 2009 stated that the inner cover should be modified or that an interlocking guard should either be removed or installed. (Id.) Dr. Blundell also states that any electrical components that were replaced did not modify the original design. (Id.) For example, Dr. Blundell emphasizes that Defendant does not build electric motors from scratch and routinely used WEG motors in its original design. (Id. at 4–5.) Similarly, Dr. Blundell states that Defendant would have used a third-party vendor such as Allen Bradley to supply the necessary components for Pulper 16's control system. (Id. at 5.)

The Court concludes the evidence sets forth "differing versions of the truth" that create a genuine dispute of material fact. See *First Nat'l Bank*, 391 U.S. at 288–89. Dr. Blundell's declaration directly contradicts Defendant's argument that Mr. Zamudio's injuries cannot be traced back to Pulper 16's original design. More specifically, Dr. Blundell concludes that the "remanufactured" Pulper 16 was consistent with its original design, which was defective because it lacked an interlocking guard on its internal cover. (ECF No. 31 at 4.) Dr. Blundell also concludes that an interlocking guard would have prevented Mr. Zamudio's injuries. (Id.) While Defendant's evidence suggests that some of Pulper 16's components were completely redesigned, none of the cited testimony specifically addresses the lack of an interlocking guard on the internal cover of the machine. Indeed, when asked whether the 2009 remanufacturing of the top halves of the pulpers included both the internal and external covers, Mr. Raggio responded that he did not recall as to the internal covers. (ECF No. 23-1 at 57.) It is also unclear whether Mr. Raggio's job as plant manager qualifies him to provide an expert opinion regarding the technical aspects of the pulpers and the extent of the remanufacture. Looking at the evidence in the light most favorable to Plaintiffs and drawing all reasonable inferences in their favor, the Court cannot say as a matter of law that third-party "remanufacturing" in 2009 broke the causal link between Pulper 16's original design and Mr. Zamudio's injuries in 2015.

For the foregoing reasons, the Court grants Plaintiffs' Rule 56(d) request to the extent it seeks to have the Court defer ruling on Defendant's motion until Plaintiffs were able to gather evidence in the form of Dr. Blundell's declaration. Further, because Dr. Blundell's declaration

creates a genuine dispute as to whether the 2009 remanufacturing broke the causal link between Pulper 16's original design and Mr. Zamudio's injuries, the Court denies summary judgment on the basis of Defendant's first argument.

B. Whether Defendant Originally Manufactured Pulper 16

Defendant next argues Mr. Raggio's deposition testimony "unequivocally shows" there is no evidence that Defendant originally manufactured Pulper 16. (ECF No. 21-1 at 23.) In opposition, Plaintiffs argue that Mr. Raggio's deposition testimony raises a genuine dispute of material fact as to whether Defendant originally manufactured Pulper 16. (ECF No. 26 at 5.)

"A manufacturer is strictly liable in tort when an article he places on the market, knowing that it is to be used without inspection for defects, proves to have a defect that causes injury to a human being." Greenman v. Yuba Power Prod., Inc., 59 Cal. 2d 57, 62 (1963). "[A] manufacturer is liable when he places a defective product in the hands of a consumer." Garcia v. Joseph Vince Co., 84 Cal. App. 3d 868, 874 (1978) (emphasis in original).

In support of its argument, Defendant analogizes the instant case to Garcia. In Garcia, the plaintiff's eye was injured during a college fencing meet when his opponent's blade broke through his mask. Id. at 872. The plaintiff brought a products liability action against American Fencer Supply ("American"), the alleged manufacturer of the blade, as well as Joseph Vince Company ("Vince"), the alleged manufacturer-supplier of the mask. Id. at 871. As to the blade, the appellate court explained that during college fencing meets, team members sometimes used their own blades and other times used blades owned by the school. Id. at 872. The user of the blade in question and his school owned blades from both Vince and American. Id. After the accident, the coaches of both teams examined the blade in question and arrived at differing conclusions about whether the blade complied with regulations. Id. All the blades were then placed back in the team bag. Id. At that point, the identity of the blade in question was "lost or mixed up with the others in the shuffle." Id. The user of the blade could not recall which blade he used, and it was not produced at trial. Id. at 874. Because the identity of the blade was lost, the trial court entered a judgment for nonsuit in favor of American because it found the plaintiff could not prove whether Vince or American manufactured the blade. Id. at 874–75. The

appellate court affirmed, emphasizing that the evidence was "not sufficient to link American with [the blade in question] by anything more than a chain of conjecture" because the blade "could have originated with either of two different sources of supply." Id.

Defendant argues that like in Garcia, Plaintiffs here can rely on nothing more than conjecture to connect Defendant to Pulper 16. Defendant summarizes the evidence on this issue as follows: (1) Mr. Raggio, the highest-ranking employee at the Facility, is aware of no other living person with more knowledge than himself concerning the origin of Pulper 16, and he has unlimited access to all historical documents controlled by the Facility; (2) Mr. Raggio has no information as to when Pulper 16 was originally manufactured and he cannot identify the original manufacturer; (3) the Facility has no invoices evidencing the original purchase of Pulper 16; (4) the Facility has no information that Defendant ever inspected, installed, sold, rented to, or repaired Pulper 16 or any component part, at any time; and (5) at the time of Mr. Zamudio's injuries, neither the body of Pulper 16 nor any of its component parts contained any identifying marking, symbol, logo, or writing bearing the name "FMC" or any other marking associated with Defendant. (ECF No. 28 at 4–5.) Defendant argues "[l]ike the blade user and the blade user's coach in Garcia, Plaintiffs can only guess as to what entity originally manufactured the product which injured Mr. Zamudio." (ECF No. 21-1 at 23.)

The Court finds that Garcia is factually distinguishable from the instant case. Unlike the blade in Garcia, Pulper 16 is not "lost." Not only are there photographs of Pulper 16, but the machine is also presumably available for inspection considering that both parties previously indicated they seek to have their experts inspect the machine. (See ECF No. 36 at 3.) Moreover, to the extent Defendant argues Mr. Raggio's deposition testimony "unequivocally shows" there is no evidence that Defendant manufactured Pulper 16, the Court disagrees. When asked whether he was aware of any documents that would evidence the purchase from the original manufacturer of Pulper 16, Mr. Raggio stated that the Facility owns an FMC manual dated 1957. (ECF No. 26-2 at 30.) Mr. Raggio went on to say that the schematic of an FMC pulper model 100 in the manual "highly resembles" pulpers 1 through 17. (Id. at 32.) Mr. Raggio added that the pulpers at the Facility were called "FMC 100s." (Id. at 33.) As mentioned, the opposing party need not

establish a material issue of fact conclusively in its favor to survive summary judgment. See First *Nat'l Bank*, 391 U.S. at 288–89. Here, Mr. Raggio's deposition testimony does not rule out the possibility that Defendant originally manufactured Pulper 16. To the contrary, Mr. Raggio's testimony leads to reasonable inferences that the Facility owned FMC pulpers, FMC pulpers are distinct and recognizable, and the manufacturer of Pulper 16 can be determined by comparison to the FMC manual or otherwise upon further inspection.

In sum, Mr. Raggio's deposition testimony creates a genuine dispute as to whether Defendant originally manufactured Pulper 16. As such, the Court denies summary judgment on the basis of Defendant's second argument. For the foregoing reasons, the Court DENIES Defendant's motion for summary judgment as to Plaintiffs' strict liability and negligence claims.

C. Breach of Express Warranty Claim

To prove their breach of an express warranty claim, Plaintiffs must show that the seller: "(1) made an affirmation of fact or promise or provided a description of its goods; (2) the promise or description formed part of the basis of the bargain; (3) the express warranty was breached; and (4) the breach caused injury to the plaintiff." Blennis v. Hewlett-Packard Co., No. C 07-00333 JF, 2008 WL 818526, at *2 (N.D. Cal. Mar. 25, 2008). In addition, to plead a claim for breach of express warranty, "one must allege the exact terms of the warranty, plaintiff's reasonable reliance thereon, and a breach of that warranty which proximately causes plaintiff injury." Blennis, 2008 WL 818526, at *2 (quoting Williams v. Beechnut Nutrition Corp., 185 Cal. App. 3d 135, 142 (1986)).

Defendant argues Plaintiffs fail to sufficiently plead and cannot prove their breach of express warranty claim. (ECF No. 21-1 at 25.) More specifically, Defendant argues there is no evidence of the following: (1) the exact terms of a warranty; (2) that Plaintiffs reasonably relied on the warranty; or (3) that a breach of the warranty proximately caused Mr. Zamudio's injury. (Id.) Summary judgment should be entered against a party who does not make a showing sufficient to establish the existence of an element on which that party will bear the burden of proof at trial. Moreover, if the moving party establishes the absence of a genuine issue of material fact — as Defendant has in this case — the burden then shifts to the opposing party to

establish that a genuine issue as to any material fact actually does exist. Matsushita, 475 U.S. at 585–87. Plaintiffs here have not met their burden of establishing the elements of their breach of express warranty claim. And because they did not respond to Defendant's argument concerning their breach of express warranty claim, nor do they cite any evidence in support of their claim, they have failed to raise any disputed issue of fact precluding summary judgment. While Plaintiffs are entitled to all reasonable inferences, they must produce a factual predicate from which the inference may be drawn. Richards, 602 F. Supp. at 1244–45. In the absence of evidence or any argument to the contrary, the Court concludes there is no genuine issue of material fact as to Plaintiffs' breach of express warranty claim. Therefore, the Court GRANTS Defendant's motion for summary judgment as to Plaintiffs' breach of express warranty claim.

IV. CONCLUSION

For the reasons set forth above, Defendant's Motion for Summary Judgment (ECF No. 21) is hereby GRANTED in part and DENIED in part as follows:

1. Defendant's Motion for Summary Judgment is DENIED as to Plaintiffs' strict products liability and negligence claims; and
2. Defendant's Motion for Summary Judgment is GRANTED as to Plaintiffs' breach of express warranty claim.

IT IS SO ORDERED.

DATED: May 5, 2020

Troy L. Nunley
United States District Judge