
PARTIES/ATTORNEYS

Plaintiff	Marlon Tulio Moreno	Kevin Y. Jacobson, Esq. Gregory Sogoyan, Esq. Stephanie Ordaz, Esq. QUILL & ARROW, LLP
Defendant	Kia America Inc.	Scott S. Shepardson Michael D. Smith ONGARO PC

TENTATIVE RULING

For all the reasons discussed below, the motion is granted to the extent it requests the court enter judgment pursuant to the Offer to Compromise. To effectuate the settlement therein, the court orders Kia America, Inc. to complete the vehicle surrender within ten days unless Kia presents a compelling argument for a different date; and orders Kia to pay Plaintiff and the lien holder the amount owed in the Settlement Agreement within a commercially reasonable time. The court denies the request for interest, assuming any was made, and for sanctions.

This is an action for a breach of the Song-Beverly Consumer Warranty Act (“the Act”) brought by Plaintiff Marlon Tulio Moreno against Defendant Kia America, Inc. The complaint was filed on April 26, 2024 and answered on February 21, 2023. Notice of Settlement of Entire Case was filed on June 18, 2024. On February 3, 2025, plaintiff filed a motion to enforce the settlement agreement pursuant to Code of Civil Procedure section 664.6.

1. Terms of the Settlement Agreement

“A court ruling on a motion under Code of Civil Procedure section 664.6 must determine whether the parties entered into a valid and binding settlement.” (*Hines v. Lukes* (2008) Cal.App.4th 1174, 1182; *Elyaoudayan v. Hoffman* (2003) 104 Cal.App.4th 1421, 1428–1429.)

Plaintiff asserts that a valid and binding agreement exists in the form of an accepted offer to compromise pursuant to Code of Civil Procedure section 998. On June 17, 2024, plaintiff’s counsel executed a copy of defendant’s offer to compromise

and emailed it to defendant's counsel. The offer to compromise was for \$96,000, return of the vehicle, and reasonable costs, expenses, and attorney fees. The offer provides: "Please be advised that due to current circumstances, the settlement payment may be delayed up to 60 days after execution and return of this offer." (Ordaz Decl., Exh. 1.) Acceptance of this offer was executed by plaintiff's attorney. (Code Civ. Proc., § 998, subd. (d)—"Any acceptance of the offer, whether made on the document containing the offer or on a separate document of acceptance, shall be in writing and shall be signed by counsel for the accepting party or, if not represented by counsel, by the accepting party.) Moreover, it is enforceable as a writing signed by the parties for settlement of the case. (Code Civ. Proc., § 664.6, subd. (b)—"For purposes of this section, a writing is signed by a party if it is signed by . . . [¶] An attorney who represents the party.") The court finds the parties have entered into a valid and binding settlement.

2. Enforcement of Settlement

Section 664.6 provides an expedited procedure for enforcing the parties' settlement agreement and, as a result, a party need not resort to less efficient procedures, such as filing a new lawsuit for specific enforcement of the settlement contract. (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 809 (*Weddington*); see *Gorman v. Holte* (1985) 164 Cal.App.3d 984, 989 [ways to enforce an oral settlement agreement].) Among other things, "[s]ection 664.6 generally allows a court to enter judgment pursuant to a settlement agreement despite the dismissal of the complaint, which ordinarily deprives the court of continuing jurisdiction." (*Howeth v. Coffelt* (2017) 18 Cal.App.5th 126, 134.)

Kia does not deny entering into the settlement nor does it substantively oppose the request. Instead, it reports that Kia "has been handling an unprecedented number of Song-Beverly settlements over the past year, and the high case volume, in conjunction with the holidays, has contributed to logistical challenges." (Shepardson Decl., ¶ 6.) Having been prompted by this motion, attorney Shepardson reports that it overnighted plaintiff's attorneys' fee check on February 21, 2025 and that as of February 24, 2025, it has located a dealership willing to facilitate the surrender. (Shepardson Decl., ¶ 10.) Once the surrender is complete, Kia can mail the settlement checks to plaintiff and the lienholder, which it already has in its possession. (Shepardson Decl., ¶ 4.)

There is thus no basis for denying the motion. The court grants the motion; enters judgment pursuant to the Agreement; and orders Kia to complete the vehicle surrender within ten days unless it presents a compelling argument for a different date; and orders Kia to pay Plaintiff and the lien holder the amount owed pursuant to the Settlement Agreement within a commercially reasonable time.

3. Interest

Kia opposes plaintiff's request for interest. It does not appear that plaintiff has requested interest in connection with this motion. Even if it had been requested, it would be denied. Procedurally, the court is authorized by Code of Civil Procedure section 664.6 to enter judgment; it is not declaring Kia to be in breach of the Agreement. Thus, interest for such breach has not been implicated. However, now the Agreement has been entered as judgment, it seems reasonable to assume plaintiff can utilize the existing enforcement mechanisms under the Code of Civil Procedure to obtain post-judgment interest and costs.

4. Sanctions Pursuant to Code Civil Procedure section 128.5

Pursuant to Code of Civil Procedure section 128.5, "A trial court may order a party, the party's attorney, or both to pay the reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Code Civ. Proc. § 128.5, subd. (a).) "Actions or tactics' include, but are not limited to, the making or opposing of motions or the filing and service of a complaint, cross-complaint, answer, or other responsive pleading." (Code Civ. Proc., § 128.5, subd. (b)(1).) "Frivolous' means totally and completely without merit or for the sole purpose of harassing an opposing party." (Code Civ. Proc., § 128.5, subd. (b)(2).)

Here, plaintiff argues there is ample evidence that Kia's conduct was frivolous and in bad faith. Plaintiff point out he signed the agreement on June 17, 2024. (Ordaz Decl., ¶ 4, Exh. 1.) Seven months have passed since the date of signing and the date the motion was filed. Even allowing for Kia's acknowledged 60 day delay, five months have passed.

While the record shows that Kia was entirely negligent when it included a time frame in the agreement that it could not meet due to the high-volume logistical challenges, the court does not find this conduct to be solely intended to be frivolous. Sanctions are denied. The court nevertheless directs Kia to provide realistic deadlines in their settlements and to otherwise meet their obligations in a timely fashion, as there will certainly be a point after which the conduct begins to look intentional.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See [Remote Appearance \(Zoom\) Information | Superior Court of California | County of Santa Barbara](#).)