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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Kevin H Rindlisbacher, et al.,

Plaintiffs, v. Steinway & Sons Incorporated, et al.,

Defendants.

No. CV-18-01131-PHX-MTL ORDER

The Court now cross-motions for summary judgment (Docs. 192, 199, 205, 207) and Motion for Sanctions (Doc. 202). The Court rules as follows. I. BACKGROUND

Defendant Steinway high-end acoustic pianos. (Doc. ¶ 19, 26.) For decades, Steinway has contracted with independent dealers in various markets to sell new Steinway pianos to retail customers. (Doc. 205 at 2.) Through its dealer agreements, dealers can purchase new pianos from Steinway at wholesale prices and sell those pianos to retail customers. (Doc. 206, Ex. 6 ¶ 6.) Steinway also has company-owned stores where it sells pianos directly to retail customers. (Doc. 206 ¶ 5.)

Plaintiffs Kevin and Jami Rindlisbacher have been in the retail piano business for 37 years. (FAC ¶ 32.) In 1991, Mr. Rindlisbacher took control of . (Id.) The Rindlisbachers now own three

music stores in the Salt Lake City area. (Id.) In 2006, the Rindlisbachers expanded their business and entered into a dealer agreement with Steinway , which authorized them to sell Steinway pianos in Spokane, Washington. (Id. ¶¶ 37, 40 44.) The Rindlisbachers experienced great success in Washington and received Steinway in 2010.

(Id. ¶¶ 46, 49 50.)

In September 2010, Mr. Rindlisbacher inquired whether Steinway would consider appointing him as the dealer for the Phoenix, Arizona market. (Id. ¶ 52.) Steinway had intended to convert a

then-existing, unrelated dealership, Steinway of Phoenix, into a company-owned store. (Id. ¶ 52.) Instead, based on Mr. Steinway changed its plans and signed a dealer agreement (the Phoenix Agreement) with

the Rindlisbachers and their company, Piano Showroom of Arizona, Inc., later that year. (Id. ¶ 71.) The Phoenix Agreement allowed the Rindlisbachers to sell Steinway pianos in the Phoenix market. 1

(Doc. 206, Ex. 35 at 1, 7.) Between Mr. al inquiry and the execution of the Phoenix Agreement, the parties had multiple conversations about the Phoenix market, and the Rindlisbachers and Steinway Western District Sales Manager, Robert Snyder, had visited the prior in Scottsdale, Arizona and Steinway -owned Hollywood, California store. (FAC ¶¶ 58 62.) Mr. Rindlisbacher also spoke with Mr. Snyder and the by phone after the Hollywood visit. (Id. ¶ 63.)

The Rindlisbachers sales in the Phoenix market consistently fell far below the annual sales performance goals set forth in the Phoenix Agreement. (Id. ¶¶ 83 85.) Steinway terminated the Phoenix Agreement in July 2017. (Id. ¶ 94.)

This dispute arises from what the Rindlisbachers allege to be factual omissions by Steinway prior to the parties executing the Phoenix Agreement. Mr. Snyder allegedly told Mr. Rindlisbacher n the [2010] economic environment [he] should 1 The Phoenix Agreement defines the relevant market as Maricopa County, Arizona. For

; FAC ¶ 58.) When entering the Phoenix Agreement, the parties agreed to the reasonableness of the annual sales goals established therein. (FAC ¶ 72.) The Phoenix Agreement provides that the annual sales performance goal reasonable for the Phoenix market is 45 Steinway grand piano sales. (Id. ¶ 68.) The Rindlisbachers now argue that Steinway failure to disclose the historical sales of Steinway grand pianos in the Phoenix market and at its Hollywood store rendered Mr. Snyders statements and the sales goals misleading. (FAC ¶¶ 97 98.) Mr. Rindlisbacher, a sophisticated and experienced businessman, who conducted some amount of due diligence before entering into the Phoenix Agreement and who had the ability to do more did not ask Steinway or Eric Schwartz, the owner of the previous Phoenix-market Steinway dealer, about historical sales in the Phoenix market or at Steinway. (Id. at ¶¶ 58, 62 63; Doc. 206, Ex. 33 at 27 28.)

The Rindlisbachers claim they first discovered the alleged factual omissions on May 27, 2015, during a Steinway-dealer meeting in Florida. (FAC ¶ 109.) On that day, the Rindlisbachers had lunch with Mr. Schwartz. (Id.) During their conversation, Mr. Schwartz Id. ¶ 111.) Mr. Schwartz also told the

Rindlisbachers that his business sold only 10 to 15 Steinway grand pianos each year between 2005 and 2010. (Id. ¶ 112.)

The Rindlisbachers initiated this action on April 12, 2018. (Doc. 1.) The Court has already dismissed

some of the Rindlisbachers e claims that remain are labelled in their (1) Nondisclosure/Constructive Fraud, and (2) Fraudulent Representations and Omissions. 2

The parties now move for summary judgment on several different theories. (See Docs. 192, 199, 205, 207.) II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate if the evidence, viewed in the light most favorable t 2 The Court dismissed the fraudulent representations portion of the Rindlisbacher claim in a previous order. (Doc. 113.)

ble jury could

the outcome of the suit under the governing law. Anderson v. Liberty Lobby, Inc., 477 -movant Id. at 255 (internal citations omitted); see also Jesinger v. Nev. Fed. Credit Union, 24 F.3d 1127, 1131 (9th Cir. 1994) (court determines whether there is a genuine issue for trial but does not weigh the evidence or determine the truth of matters asserted). opposing parties tell two different stories, one of which is blatantly contradicted by the

record, so that no reasonable jury could believe it, a court should not adopt that version of Scott v. Harris, 550 U.S. 372, 380 (2007). III. DISCUSSION Steinway argues the Rindlisbachers remaining claims are barred by the statute of limitations. (Doc. 205 at 1.) Steinway contends that the Rindlisbachers knowledge of the sales history of the prior Steinway dealer were aware the decline

but failed to initiate this lawsuit until April 2018. 3 (Id. at 7.) The Rindlisbachers allege that their fraud claims, arising from the historical sales in the Phoenix market, did not accrue until their May 27, 2015 conversation with Mr. Schwartz. (Doc. 217 at 12). Additionally, the Rindlisbachers contend that Steinway is not entitled to summary judgment as to their claims premised on eight other factual predicates that accrued within the relevant limitations period. (Id. at 2 4, 10.)

In reply, Steinway argues the Rindlisbachers allegations about alleged omissions that were not raised in their Fourth Amended

227 at 1.) The Court ordered the parties to each file a supplemental brief 3 Steinway also argues that any alleged omissions regarding business opportunities with Arizona State University are time-barred. (Doc. 205 at 8 9.) Because the Rindlisbachers concede this point, the Court will not address the argument. (Doc. 217 at 15, n.7.)

to more fully develop arguments related to this issue. (Doc. 246.) Steinway concedes that the Rindlisbachers properly pleaded two factual bases for their fraud claims: (1) the historical sales of Steinway grand pianos in the Phoenix market, and (2) the sales of Steinway grand pianos at Steinway store during 2009 and 2010. (Doc. 248 at 3.) But Steinway argues that the Court should not consider

the factual allegations that the Rindlisbachers have purportedly raised for the first time in opposition to motion for summary judgment. 4

(Doc. 248 at 5 6.) As a threshold matter, the Court must determine whether to consider the facts at issue.

A. New Factual Allegations Rule 8(a) of the Federal Rules of Civil Procedure requires that a civil complaint contain a short and plain statement of the claim showing that the pleader is entitled to The United States Supreme Court has requirement to mean that the complaint must the defendant fair notice of what the claim is Bell Atl. Corp. v. Twombly, 550 U.S. 544, 545 (2007) (internal quotations and alternations omitted). The Rindlisbachers facts at issue because they (Doc. 249 at 7.) Steinway argues that the

Rindlisbachers assert new o - and because Steinway did not receive notice of those allegations, Steinway says, In support of its argument, Steinway relies on two Ninth Circuit cases, Coleman v. Quaker Oats Co., 232 F.3d 1271 (9th Cir. 2000), and Pickern v. Pier I Imports (U.S.), Inc., 457 F.3d 963 (9th Cir. 2006).

In Coleman, the Ninth Circuit prohibited the plaintiffs from proceeding with an age 4 The allegedly unit sales of grand pianos declined by 50-percent in 2009 to 2010 compared to average unit sales from 2001 to 2008; (2) Steinway did not consider past sales in the Phoenix market when setting the annual sales performance goals; (3) the greater Los Angeles market included Los Angele Hollywood store served, and Orange County, which a different Steinway-dealer served; Phoenix-market Steinway dealer proposed to lease a smaller space; (6) the previous Steinway- Steinway-dealer had no regrets leaving the Phoenix market. (Doc. 217 at 2 4.) The Court refers to these factual predicates collectively

discrimination claim based on a disparate impact theory because the only alleged disparate treatment and plaintiffs first raised the disparate impact theory in

their motion for summary judgment. 232 F.3d at 1292 93 (explaining that a disparate . The Rindlisbachers argue

Steinway Coleman is misplaced because they have not asserted a new legal theory. (Doc. 249 at 5.) The Court agrees. Rather than raising a distinct legal theory in their Response, the Rindlisbachers argue the same legal theories predicated on the facts at issue. Thus, Coleman and its progeny do not control.

The Court, however, is persuaded by Steinway Pickern. Steinway contends that the Court should not consider the facts at issue because, like the plaintiff in Pickern, the Rindlisbachers here raised seven new factual allegations for the 5.) In Pickern, a violation of the Americans with

based on a failure to provide a ramp and other ADA violations based on facts including, but not limited to, a list of possible architectural barriers. 457 F.3d at 968 69. After the close of discovery and in opposition to a motion for summary d a failure to Id. at 968. factual bases beyond the failure to provide a ramp would not be considered because the defendant lacked adequate notice of the new allegations. Id. The court rejected the [] new factual allegations as falling within the original and emphasized that the plaintiff should have moved to file an amended complaint to properly assert the additional factual allegations, but the plaintiff failed to do so. Id. at 968 69.

The Rindlisbachers obligation, because of its confidential relation toward [them], to disclose all material facts

before [executing the Phoenix Agreement]. The

Rindlisbachers attempt to distinguish Pickern by arguing that the facts at issue were disclosed by Steinway during discovery. (Id. at 6.) And they further argue that Steinway will not be prejudiced if the Court considers the facts at issue when ruling on the pending motions. (Id. at 7.) The Court addresses the Rindlisbachers arguments in turn.

First, the Court rejects the Rindlisbachers argument that Steinway had adequate notice of the facts at issue because they consistently alleged that Steinway must disclose 5

Providing vague and generic allegations, like the Rindlisbachers do here, Pickern, 457 F.3d at 969. To hold otherwise would read the fair notice requirement out of Rule 8. See id. Thus, the Rindlisbachers does not persuade the Court.

Second, the Rindlisbachers attempt to distinguish Pickern is at odds with Ninth Circuit law. See Oliver v. Ralphs Grocery Co., 654 F.3d 903, 908 09 (9th Cir. 2011) (issue underlying Pickern . . . is whether the defendant had fair notice as required by Rule 8. In general, only disclosures [of factual allegations] in a properly pleaded complaint can provide such notice; a disclosure made during discovery . . . would rarely be an adequate subst). Requiring Steinway to guess whether facts disclosed during discovery would become the basis of the Rindlisbachers claims would seriously undermine requirement in Rule 8. See Pickern 457 P.3d at 969. Thus, the Court is not persuaded by

the Rindlisbachers

Last, the Rindlisbachers concern in Pickern. Pickern notice under Rule Pena v. Taylor Farms Pac., Inc., 2014 WL 1330754, at *5 (E.D. Cal.

Mar. 28, 2014) (citing Pickern, 457 F.3d at 368 69, and Oliver, 654 F.3d at 908 09). In contrast to Pickern, Coleman asks whether a party suffers prejudice from a belated disclosure. Id. Because Pickern rather than Coleman applies to the current dispute, the is not whether Steinway suffered

prejudice but whether Steinway had 5 As support, the Rindlisbachers cite to thirty paragraphs in their FAC none of which make any reference to the facts at issue. (See Doc. 249 at 5; FAC ¶¶ 32 51, 96 98, 120 21, 125, 127 30.)

adequate notice of the grounds on which the Rindlisbachers . Steinway did not have adequate notice that the facts at issue formed the basis of the . Thus, for the reasons stated, the facts that the Rindlisbachers presented for the first time on summary judgment, which were not included or even grounded in their FAC, will not be considered.

B. Statute of Limitations The Court will now proceed to analyze the Rindlisbachers historical sales of Steinway grand pianos in the Phoenix market and at Steinway Hollywood store. In a previous order, the Court considered Steinway

limitations defense. (Doc. 74 at 4 6.) Steinway, in a motion to dismiss, argued that -year statute of limitations barred the Rindlisbachersbecause Mr. Rindlisbacher 2015. (Doc. 26 at 11.) The Court acknowledged sophistication in

piano retail, the opportunities for the Rindlisbachers to conduct due diligence, and assertions that seemed to indicate that Mr. Rindlisbacher knew of the conditions in the Phoenix market. But because the issue was raised in a motion to dismiss, the Court deferred the matter post-discovery. (Doc. 74 at 6 (The question of when Plaintiffs reasonably should have discovered any alleged fraud must be left to a stage of the case when evidence .)

Now, at the summary judgment stage, Steinway renews its statute-of-limitations argument. (Doc. 205 at 6.) This time, Steinway argues that remaining claims are duty-based claims, akin to negligence. (Id. at 7.) Advancing that argument, Steinway contends that claims are time-barred under the two-year statute of limitations set forth in A.R.S. § 12-542. (Id.) The Rindlisbachers maintain that their claims are governed by the three-year limitations period in A.R.S. § 12-543(3). (Doc. 217 at 7 9.) Thus, before the Court can evaluate whether the Rindlisbachers survive the statute of limitations, it must determine the applicable limitations period.

1. Applicable Statute of Limitations an action must be brought and to prevent the unexpected enforcement of stale claims

against persons who have been thrown off their guard Hall v. Romero, 685 P.2d 757, 763 (Ariz. Ct. App. 1984). The Arizona Legislature has enacted a series of statutes setting limitations periods on common law causes of action, but the Legislature did not expressly categorize either of the two claims asserted here within a specific statute. Where the Legislature has not assigned a statute of limitations to a cause of action, the Court must determine which limitations period applies by evaluating the asserted cause of action and the potentially applicable statutes of limitations. See Dunlap v. City of Phoenix, 817 P.2d 8, 11 13 (Ariz. Ct. App. 1990). If of two limitations periods apply,

courts Gust, Rosenfeld &

Henderson v. Prudential Ins. Co. of Am., 898 P.2d 964, 968 (Ariz. 1995).

The Rindlisbachers have two remaining claims, labelled as: (1) Nondisclosure/Constructive Fraud, and (2) Fraudulent Representations and Omissions. (FAC at 17, 20.) The Rindlisbachers argue the three-year limitations period in A.R.S. § 12- 543(3) governs their claims. To support that position, the Rindlisbachers contend that A.R.S. § 12-542 does not, on its face, apply to constructive fraud or fraudulent omission claims and assert that Arizona courts have applied A.R.S. § 12-543(3) to actions for constructive fraud. 6

(Doc. 217 at 8 9.) Steinway argues the relevant statute is A.R.S. § 12- 542 because duty of disclosure. 5.) The Court now addresses which statute governs

each of the Rindlisbachers remaining claims. 6 The Rindlisbachers further argue the Court must apply A.R.S. § 12-543(3) based on the doctrine of the law of the case question must have been decided either expressly or by necessary implication in [a] Thomas v. Bible, 983 F.2d 152, 154 (9th Cir. 1993) (internal quotations omitted) the Court did not decide which limitations period applied to either claim. And the Rindlisbachers concede the Court dismissed some of 12(b)(6) grounds, not on statute of limitations -of- the-case argument.

i. Constructive Fraud Under Arizona law,

Fraud is generally classified under two major headings, actual and constructive. The former is distinguished by the presence of an actual intent to deceive, while the latter is characterized by a breach of duty actionable at law irrespective of moral guilt, and arising out of a fiduciary or confidential relationship. ., 179 P.2d 238, 241 (Ariz. 1947). The text of A.R.S. § 12-543(3) action accrues . . . [actions] [f]

assertion that constructive fraud is one category of fraud, suggests the three-year statute of limitations should govern claims for constructive fraud.

Arizona courts, however, have not squarely addressed which statute of limitations applies to constructive fraud claims. On the one hand, - year limitations period [in A.R.S. § 12-542] applies to claims for breach of fiduciary duty, Coulter v. Grant Thornton, LLP, 388 P.3d 834, 838 (Ariz. Ct. App. 2017). This is true even when a plaintiff successfully tolls the statute of limitations under a constructive fraud theory. See Morrison v. Acton, 198 P.2d 590, 594 96 (Ariz. 1948). But in Rhoads v. Harvey Publications, Inc., a case in which the plaintiff asserted a constructive fraud claim, the parties did not contest that the three-year limitation period for fraud applied. 700 P.2d 840, 845 (Ariz. Ct. App. 1984); see also Gonzalez v. Gonzalez, 887 P.2d 562 (Ariz. Ct. App. 1994) (applying A.R.S. § 12-

Where the answer is not readily available in Arizona caselaw, it is helpful to survey decisions from other jurisdictions. This statute of limitations issue, it turns out, has been analyzed by courts in other states. The Idaho Supreme Court has ruled that claims for constructive fraud are governed by three-year statute of limitations for fraud. Doe v. Boy Scouts of Am., 356 P.3d 1049, 1056 (Idaho 2015). In rejecting an argument that

the breach-of-fiduciary-duty limitations period should apply, the Idaho Supreme Court observed that intent need not be proven it is inferred Id. at 1055 (internal quotations omitted). a constructive fraud claim is not removed from the fraud statute of limitations merely because it involves a breach of fiduciary duty. Id. at 1056. And the Idaho Supreme Court recognized that other jurisdictions have applied their respective Id. (Montana, Virginia, Indiana, and California). Thus, based on the text of A.R.S. § 12-543(3) and the foregoing caselaw, the Court concludes that A.R.S. § 12-543(3) applies to constructive fraud claims.

The inquiry, however, does not stop there. The Court must also determine whether the fraud limitations period should apply to the Rindlisbachers , labelled isclosure/Constructive Fraud. As explained in Dunlap v. City of Phoenix, when 817 P.2d at 13. Under Arizona law, the elements of constructive

Green v. Lisa Frank, Inc., 211 P.3d 16,

34 (Ariz. Ct. App. 2009) (internal quotations omitted).

Here, the Rindlisbachers allege that due to a relation of trust and confidence, Steinway had a duty to disclose the facts necessary to avoid any representations from being materially misleading. (FAC ¶¶ 96 97.) As a result of Steinway breach of that duty, the Rindlisbachers argue they suffered damage in the form of lost profits. (Id. ¶ 102.) Steinway argues the essence of the Rindlisbachers first claim is the breach of an alleged duty of disclosure because they need not prove intent, as required for a claim of actual fraud. (Doc. 227 at 5.)

Considering the elements of constructive fraud and the Rindlisbacher FAC, the Court finds the essence of first claim sounds in fraud. Despite having

no intent requirement, Arizona courts consider constructive fraud one of the two major categories of fraud. See ., 179 P.2d at 241. Thus, contrary to Steinway the Rindlisbachers Moreover, if the existence of a fiduciary or confidential relation compels a finding that the essence of a claim is mere negligence, the three-year statute of limitations would never be applied to constructive fraud claims a result contrary to Arizona caselaw. See e.g., Gonzalez, 887 P.2d at 562 (applying A.R.S. § 12-543(3) to a constructive fraud claim); Rhoads, 700 P.2d at 845 (same). Finally, in cases where Arizona courts have applied the two-year statute of limitations, constructive fraud was not the claim being alleged. Rather, the parties in those cases employed the theory of constructive fraud to toll the statute of

limitations applicable to their other claims. See Morrison, 198 P.2d at 593 (tolling the statute of limitation for a negligence claim on constructive fraud grounds). That is not the case, here. Accordingly, the Court agrees with the Rindlisbachers that a three-year limitations period governs their constructive fraud claim.

ii. Fraudulent Omissions (Nondisclosure) The Rindlisbachers 20.) When determining the applicable statute of limitations, however,

the form in which a cause of action is pleaded is not dispositive. See Dunlap, 817 P.2d at 13. Rather, as noted, the essence of the claim controls the inquiry. Id. Steinway argues that the Rindlisbachers for nondisclosure, as defined in the Restatement § 551(2)(b). (Doc. 205 at 7.) Thus, Steinway says, because the Rindlisbachers -based claim, the two-year statute of limitations applies. (Id.) In response, the Rindlisbachers argue that Steinway asserts negligent nondisclosure that their second claim sounds in fraud. (Doc. 217 at 7.)

As noted throughout this litigation, the causes of action in the various iterations of the Rindlisbachers complaint are difficult to discern. (See Doc. 74 at 8 9; Doc. 113 at 2.)

And the Rindlisbachers have been inconsistent with their own characterization of their second claim. To illustrate, the Rindlisbachers, in a motion for reconsideration, argued that to their constructive fraud claim. (Doc. 75 at 2.) Specifically, they relied on Restatement

§ 551(2)(b circumstances also trigger th[e] duty [to disclose], including matters that a speaker knows (Id. (quoting Restatement § 551(2)(b)).) Considering just that assertion, it appears the

Rindlisbachers nondisclosure, which requires a duty to disclose and not an intentional act. But at other times, the Rindlisbachers have relied on caselaw where fraudulent concealment an intentional tort was alleged. (See Doc. 34 at 11; Doc. 75 at 2.) [D]uty has no relevance in a tort requiring an intentional act. Wells Fargo Bank v. Ariz. Laborers, Teamsters & Cement Masons Loc. No. 395 Pension Tr. Fund, 38 P.3d 12, 34, n.22 (Ariz. 2002). Thus, reliance on cases in which fraudulent concealment was alleged appears at odds with their argument based on Restatement § 551. The Rindlisbachers now say they are prosecuting a claim for fraudulent omissions, (Doc. 217 at 7), even though Arizona caselaw is largely devoid of any reference And they further assert that Steinway Id.)

In ruling on the Rindlisbachers

in Count II and reflected in § 551 of the Restatem .) And the Court ultimately held that claim for fraudulent omissions (nondisclosure) should have survived Id. at 4.) Thus, the only portion of the Rindlisbachers that survived Steinway is a claim for nondisclosure.

Arizona courts look to § 551 of the Restatement when determining whether a party

is liable for nondisclosure. 7

, 494 P.2d 718, 720 (Ariz. Ct. App. 1972). In § 551(1), the Restatement provides:

One who fails to disclose to another a fact that he knows may justifiably induce the other to act or refrain from acting in a business transaction is subject to the same liability to the other as though he had represented the nonexistence of the matter that he failed to disclose, if, but only if, he is under a duty to the other to exercise reasonable care to disclose the matter in question. that he knows to be necessary Restatement § 551(2)(b).

Steinway relies on Van Buren v. Pima Community College, 546 P.2d 821 (Ariz. 1976), to argue a two-year statute of limitations governs claims for nondisclosure. (Doc. 205 at 7.) But the plaintiffs in Van Buren alleged two claims: fraudulent failure to disclose and negligent failure to disclose. 546 P.2d at 822. The Arizona Supreme Court explained that a claim for negligent failure to disclose, as defined in § 552 of the Id. at 823. The court, however, did not address whether a claim arising under § 551 of the Restatement is governed by principles of negligence or whether a two-year or three-year limitations period applies to the claim.

Steinway also relies on Crook v. Anderson, 565 P.2d 908 (Ariz. Ct. App. 1977). (Doc. 205 at 7.) In Crook, the plaintiff asserted several claims, including breach of fiduciary duty. 565 P.2d at 908. The Arizona Court of Appeals, in Crook, applied the two- year limitations period to the breach of fiduciary claim. Id. at 909. Although breach of fiduciary claims and claims for nondisclosure under § 551 of the Restatement may, at times, overlap, breach of fiduciary claims can arise from factual scenarios not involving

7 To dispel or

nondisclosure. The facts of Crook illustrate that point. In Crook, an agreement between the plaintiff and the defendants provided that the defendant was to collect premiums on insurance policies and hold the sums in trust for the plaintiff. Id. at 908. In its complaint, the the defendants. Id. Crook, therefore, does not involve a nondisclosure claim. Moreover, the

Rindlisbachers second claim arises under § 551(2)(b), which makes no mention of a fiduciary duty. Compare Restatement § 551(2)(a) with Restatement § 551(2)(b).

Arizona courts distinguish between claims for nondisclosure and intentional tort claims, like fraudulent concealment. Wells Fargo Bank, 38 P.3d at 21 nondisclosure claims differ from intentional tort claims . . . ; each has different elements . To illustrate, duty is a specific concept applicable to nondisclosure. Id. But, in a fraudulent concealment action, a party may be liable for acts taken to conceal . . . , even in the absence of a fiduciary, statutory, or other duty to disclose Id. Notwithstanding this distinction, Arizona courts recognize that difficult to distinguish . . . King,

494 P.2d at 721. The inconsistencies in the Rindlisbachers reinforce that notion.

That said, the Arizona Supreme Court has explained that both nondisclosure and concealment can form the basis of a fraud action. Wells Fargo Bank, 38 P.3d at 34, n.22. The 551 of the another a fact . . . if, but only Id. (quoting Restatement § 551(1)); see King, 494 P.2d at 720 21 (explaining that a failure to establish the existence of the duty set forth i

Considering the facts of this case and Arizona caselaw, the Court finds the essence of the Rindlisbachers While it is true that the Rindlisbachers portrayal of their claim has wavered throughout this litigation between nondisclosure and

fraudulent concealment, this Court has explicitly held that their claim for fraudulent (Doc. 113 at 4.) The Arizona Supreme Court treats nondisclosure as a class of fraud. See

Wells Fargo Bank, 38 P.3d at 34, n.22. And fraud claims are governed by the three-year limitation period provided in A.R.S. § 12-543(3). The Court further notes that this finding is co period when doubt exists as to which limitations period should apply. See Gust, Rosenfeld & Henderson, 898 P.2d at 968. Accordingly, the three-year limitations period in A.R.S. § 12-543(3) governs the Rindlisbachersnondisclosure claim.

2. The Rindlisbachers s are Time-Barred Pursuant to A.R.S. § 12-543, the limitations period for fraud claims is three years from accrual. Arizona courts have interpreted the limitations period to begin running when the defrauded party discovers or with reasonable diligence could have discovered the Mister Donut of Am., Inc. v. Harris, 723 P.2d 670, 672 (Ariz. 1986). Accordingly, Id. Ordinarily, when discovery

occurs and a claim accrues are questions of fact for the jury. Doe v. Roe, 955 P.2d 951, 961 (Ariz. 1998) (citing Gust, Rosenfeld & Henderson, 898 P.2d at 969). But summary judgment is warranted . . . if the failure to go forward and investigate is not reasonably In re Est. of Benson, 2016 WL 821522, *7 (Ariz. Ct. App. Mar. 2, 2016) (quoting Walk v. Ring, 44 P.3d 990, 996 (Ariz. 2002)).

This lawsuit commenced on April 12, 2018. (Doc. 1.) Because the three-year limitations period governs the Rindlisbachers the claims will be barred by the statute of limitations if they accrued before April 12, 2015.

i. Historical Sales in the Phoenix Market In September 2010, Mr. Snyder, Steinway Manager, allegedly told Mr. Rindlisbacher that [he] should reasonably expect

The parties later agreed, in December 2010, that an annual goal of 45 Steinway grand pianos was reasonable for the Phoenix market. (FAC ¶ 72.) The Rindlisbachers argue that Steinway failed to disclose the actual historical sales of Steinway grand pianos in the Phoenix market, which rendered

the annual sales goals misleading. (Doc. 217 at 2.) The Rindlisbachers contend their claims, arising from this alleged omission, did not accrue until May 27, 2015, when they discussed the matter with Mr. Schwartz, the previous Phoenix-market Steinway dealer. (Doc. 217 at 4.) That conversation, the Rindlisbachers Steinway had (Id.)

Steinway that the Rindlisbachers in January 2014, at the latest. (Doc. 205 at 8.) Steinway substantiates its allegation with a newspaper article from 2011 and an e-mail Mr. Rindlisbacher sent in 2014. (Id. at 7 8.) An article from January 2011, published shortly after the Rindlisbachers opened Piano Showroom of Arizona, quotes Mr. Rindlisbacher saying: , a large piano retailer, owned Steinway of Phoenix the dealer that immediately preceded the Rindlisbachers in the Phoenix market. (FAC ¶ 53.) That article noted: [Steinway of Phoenix] hard as the number of customers able to pay $20,000 or more for

one of the instDoc. 206, Ex. 38.)

In a second article, published in December 2011, Mr. Rindlisbacher made additional remarks about the weakness of the Phoenix market. (Doc. 206, Ex. 52.) That article states: [P]ianos sold in Phoenix declined over the past five years, Rindlisbacher said. Those (Id.) Mr. Rindlisbacher is also quoted saying: were sold each year. Id.) Mr. Rindlisbacher

went on to explain bit surprised with the breadth of the housing crisis. The situation was probably a little more

Id.) And he noted: wly

. but I do expect sales to be up 3 to 5 percent over what they were last year absolutely satisfied with that Id.)

An e-mail that Mr. Rindlisbacher sent to Mr. Snyder in January 2014 2014 e- further demonstrates his understanding of the Phoenix market. (Doc. 206, Ex. 53.) After outlining his monthly sales goals for Steinway grand pianos in 2014 the sum of which totaled only 26 s very long time at least 8 years. So while I think it is a reasonable goal, the reality is it is going

to be diff Id.)

The Rindlisbachers concede that, [o]f course Mr. R[indlisbacher] knew about the 217 at 13.) But they argue Mr. piano sales, either

8 (Id.) The Rindlisbachers characterize the January 2014 e-mail as merely request for a monthly sales budget. (Id. at 14.) When asked about the e-mail during his deposition, Mr. Rindlisbacher denied having actual knowledge of the prior Steinway and . (Doc. 206, Ex. 5 at 211:4 7.)

Mr. Rindlisbacher is a businessman with almost four decades of experience in piano 8 nt, in which he wrote:

The number of Steinway & Sons pianos I have sold this year is down from previous years. The number of prospects I have who are contemplating the purchase of a new Steinway & Sons piano is lower than when I opened three years ago. Most telling to me is the reaction of the typical piano prospect upon finding out the price on a new Steinway & Sons piano a purchase (Doc. 206, Ex. 3.) The Court notes that, in 2009, the Rindlisbachers operated as a Steinway dealer only in Spokane, Washington. But given s affirmatively professing his knowledge of the decline in sales, no reasonable jury could find in Mr. -serving testimony claiming that he was completely unaware of the decline in piano sales. Anderson, 477 U.S. at 254; Villiarimo v. Aloha Island Air, Inc., 281 F.3d 1054, 1061 (9th Cir. 2002).

retail. (FAC ¶ 32.) He has owned and operated retail piano stores in three states: Utah, Washington, and Arizona. (Id. ¶ 32, 40, 71.) As the Steinway dealer in the Phoenix market, the Rindlisbachers had actual knowledge that their own sales of Steinway grand pianos were substantially lower than the annual sales goals set forth in the Phoenix Agreement. (Id. ¶ 84.) heir best efforts to perform as a Steinway dealer in the Phoenix market, hiring experienced and skilled sales people, and employing the same he most Steinway grand pianos the Rindlisbachers sold in the Phoenix market, in any year, is 24 far less than the annual sales goal of 45. 9

(Id. ¶¶ 82, 84.) Mr. testimony suggests he had doubts about the accuracy of the annual sales goals. Indeed, at

his deposition, Mr. Rindlisbacher explained that, in the January 2014 e- basically saying, can. . . . If the 45 [annual sales

(Doc. 206, Ex. 5 at 209:15 20.) Finally, it is worth noting that, in September 2010, Mr. Snyder warned Mr. Rindlisbacher about the economic condition of the Phoenix market. (Doc. 206, Ex. 31.) In an e- extremely excited about the market. Any attempt I made to encourage caution (which I most certainty did) seemed to have the oppos Id.)

The discovery rule does not allow the Rindlisbachers ignorance when a reasonable investigation . . . would have alerted [them] to what [they]

now allege[] to have been [Steinway Isgro v. Wells Fargo Bank, N.A., 2019 WL 273373, *4 (Ariz. Ct. App. Jan. 22, 2019) (citing Gust, Rosenfeld & Henderson, 898 P.2d at 967). The Rindlisbachers repeatedly emphasize that they lacked actual knowledge of the historical sales of Steinway grand pianos in the Phoenix market. (Doc. 217 at 13.) But actual knowledge is not required to trigger accrual. Coronado Dev. Corp. v. Super. Ct. of Ariz., 678 P.2d 535, 537 (Ariz. Ct. App. 1984) (The 9 me was achieved Id.)

statute of limitations in a fraud case begins to run when the plaintiff by reasonable diligence . There is substantial evidence the newspaper articles, the January 2014 e-mail, Mr. deposition testimony, and the Rindlisbachers of Steinway grand pianos in the Phoenix market to put a reasonable person on notice to investigate the historical sales of Steinway grand pianos in the Phoenix market. But the Rindlisbachers chose not to.

o resolve claims on their merits, those that are In re Est. of Lake, 2019 WL 258718, *3 (Ariz. Ct. App. Jan. 18, 2019) (quoting Montano v. Browning, 48 P.3d 494, 496 (Ariz. Ct. App. 2002)). The Court finds there is no genuine dispute With reasonable diligence, the Rindlisbachers would have discovered the historical sales in the Phoenix market. Indeed, they later discovered data simply by asking Victor Geiger, the prior Phoenix-market dealer who Mr. Rindlisbacher had known for years. (Doc. 216, Ex. 9 at 24:20 25:20, 82:1 3; Doc. 206, Ex. 23 ¶ 17.) The Rindlisbachers claims arising from the alleged omission of historical sales in the Phoenix market therefore accrued in 2014, at the latest.

In addition, the Rindlisbachers argue that an alleged confidential relationship mitigate[s] any duty [they had] to discover 10.) The Rindlisbachersargument assumes a confidential relationship exists. As discussed

in Part III.C of this Order, infra, the Rindlisbachers have not established a disputed issue of fact for trial that a confidential relationship between the parties existed. But even if a confidential relationship did exist, the Rindlisbachers largely misstate the law. They rely on four cases to support their position. Not only are the cases distinguishable from the present action, none of the cases absolve the Rindlisbachers from exercising reasonable diligence to investigate the alleged fraud.

The Rindlisbachers first rely on Lasley v. Helms, 880 P.2d 1135 (Ariz. Ct. App.

1994). (Doc. 217 at 11.) In Lasley, a patient and his family sued a doctor for medical malpractice for prescribing the patient a sleeping pill, which the plaintiffs argued was an addictive drug. 880 P.2d at 1136. The doctor assured his patient, on multiple occasions, that taking the drug was safe. Id. that [the patient Id. at 1137. The

plaintiffs relied on the discovery rule to toll the statute of limitations applicable to their malpractice claim. Id. The Arizona Court of Appeals explained that, when analyzing the discovery exception applicable to malpractice cases,

[T]and confidential relationship with his client or patient both compels the professional to disclose, rather than conceal, his error and mitigates the injured persons duty to discover it independently. A delayed limitations period encourages the professional tortfeasor to fulfill his fiduciary duty of full disclosure; it prevents the fiduciary from obtaining immunity for an initial breach of duty [i.e., the malpractice] by a subsequent breach of the obligation of disclosure. Id. (alternations in original) (internal quotations omitted).

The Rindlisbachers rephrase the language from Lasley to argue that the alleged confidential relationship between them and Steinway,

[C]

obtaining immunity for an initial breach of duty [i.e., its 2010 fraud] by a subsequent breach of the obligation of disclosure. (Doc. 217 at 10 (alterations in original).)

As the unaltered version of the text makes clear, Lasley pertained to a malpractice claim and a doctor-patient relationship. The Court is unpersuaded by the imprecise modifications the Rindlisbachers made to fit the language from Lasley to the facts of this case. Moreover, contrary to the Rindlisbachers position, the court in Lasley specifically notes onstructive fraud, if proven, is sufficient to toll the running of a statute of limitations until the plaintiff either knows, or through due diligence should have known, of

the fraud Lasley, 880 P.2d at 1138 (emphasis added).

The Rindlisbachers also rely on Walk v. Ring, 44 P.3d 990, (Ariz. 2002). (Doc. 217 at 11.) Like Lasley, Walk involved a professional negligence claim, and the court

toll the statute of 44 P.3d at 992. Walk was - negligence. Id. limitations, something more is required than the mere knowledge that one has suffered an

adverse result while under the care of a professional fiduciary Id. at 997 (emphasis added). The Rindlisbachers summarize Walk but make no effort to analogize that case to the present action. Rather, they merely assert, in obscure fashion, that the Walk case show[s] Steinway cannot obtain immunity from its 2010 fraud by violating its very sacred t 12.) The present case does not involve a professional fiduciary, and thus, like Lasley, Walk is factually distinguishable. 10

Moreover, the court in Walk deemed summary judgment to be warranted when, as is the case here, failure to go forward and investigate is not reasonably justified. Walk, 44 P.3d at 995 9

In addition, the Rindlisbachers summarize Gonzalez v. Gonzalez, 887 P.2d 562 (Ariz. Ct. App. 1994). (Doc. 217 at 11 12.) In that case, the jury found a confidential relationship existed between a plaintiff-parent and a defendant-child. Gonzalez, 887 P.2d at 565. The court noted, however, that absent a confidential relationship, a plaintiff must exercise reasonable care to protect itself. Id. at 564. As the Court explains in detail in Part III.C, infra, no confidential relationship exists between the Rindlisbachers and Steinway. Thus, the Rindlisbachers were required exercise reasonable diligence to 10 The Court notes that, in Walk, the plaintiff also relied on a theory of fraudulent concealment to toll the statute of limitations for her dental malpractice claim. As explained in Part III.B.1.ii, supra, the surviving portion of the Rindlisbachers nondisclosure. The Rindlisbachers have

not alleged a fraudulent concealment claim, wherein a defendant commits a positive act to conceal a cause of action from a plaintiff.

investigate Steinway alleged fraud.

Last, the Rindlisbachers rely on Mister Donut of America, Inc. v. Harris, 723 P.2d 670 (Ariz. 1986). (Doc. 217 at 12.) In Mister Donut of America, which involved a franchisor-franchisee relationship, the Arizona Supreme Court reversed the Arizona Court of Appeals finding that the fraud claim was time-barred. 723 P.2d at 672. For three years, the franchisor repeatedly assured the franch Id. at 671. In

reality, a restrictive covenant prohibited the donut mixes from being sold in the state. Id. anchisee] may eventually have had a duty to investigate or risk losing his fraud claim surely he was entitled to rely, at least for a while, on the constant assurances of Mister Donut, his franchisor, that all the problems would be Id. at 673. Contrary to the Rindlisbachers argument, the case does not stand

[] Mister Donut of Am., Inc., 723 P.2d

at 673. That said, no confidential relationship exists between the Rindlisbachers and Steinway, and thus this case is unhelpful to .

By January 2014, at the latest, a reasonably prudent person in the Rindlisbachers position would have been suspicious of Steinway fraud and taken steps to investigate. But the Rindlisbachers did nothing to either go forward and investigate or commence their lawsuit. By waiting to bring this action until April 2018, the Rindlisbachers allowed the statute of limitations to expire. Accordingly, the Court finds their claims are time-barred under A.R.S. § 12-543(3).

ii. Historical Sales at the Hollywood Store The Rindlisbachers argue their claims also rest on alleged omissions regarding the sales at Steinway company-owned Hollywood, California store in 2009 and 2010. Before entering the Phoenix Agreement, Mr. Snyder told Mr. Rindlisbacher the Hollywood store FAC ¶ 58.) Mr. Snyder also told

Mr. Rindlisbacher that, based on the Buying Power Index , the Phoenix market is about one-third the size of greater Los Angeles. (Id. ¶ 64.) In October 2010, Mr. Rindlisbacher paid a visit to Steinway Id. ¶ 62.) Mr. Rindlisbacher, Mr. Snyder, after the visit occurred. (Id. ¶ 63.)

Steinway calculates the sales performance goals for its dealers using the BPI. (Doc. 206 ¶ 11.) The BPI is an objective metric created by a third party, which represents the perceived financial purchasing power for a given market. (Id., Ex. 8 at 104:9 11, Ex. 23 ¶¶ 9 12.) In 2010, Steinway Id., Ex. 6 ¶ 16.) Steinway not deviate from that

formula based on sales performance in any particular market during [Mr.] Id. ¶ 17.) Mr. Rindlisbacher, in his declaration, concedes that, when determining the annual sales performance goal for the Phoenix market, Steinway dealers, let alone its sales in a different market. (Doc. 216, Ex. A ¶ 7.C.)

Rule 56 of the Federal Rules of Civil Procedure provides court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material the mere existence of some alleged factual dispute between the parties will not defeat an

otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact. Anderson, 477 U.S. at 247 48 (emphasis in original). Whether a fact is material depends on the relevant substantive law. Id. at 248. nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or un Id.

The substantive law governing the Rindlisbachers of the Restatement. That section provides that

that he knows may justifiably induce the other to act or refrain from actin Case 2:18-cv-01131-MTL Document 252 Filed 10/30/20 Page 24 of 47 for nondisclosure or constructive fraud if he is under a duty to disclose the fact in question. Restatement § 551(1) (emphasis added). To justifiably induce action or inaction, an omission must be material, meaning [person] would attach importance to its existence or nonexistence in determining his choice of action in the transaction in question, see

also Rhoads, 640 P.2d at 201.

In 2009, the year in which the store opened, Steinway sold nine Steinway grand pianos at its Hollywood store. (Doc. 227 at 6.) In 2010, the Hollywood store sold 46 Steinway grand pianos. (Id.) The Rindlisbachers allege statements concerning and profits were rendered misleading by Steinway . (FAC ¶¶ 97 98, 101.) They further argue that the alleged omissions caused the annual sales performance goals in the Phoenix Agreement to be misleading. (Id.) Steinway contends there is no evidence that the statements were false or misleading and alleges Mr. Rindlisbacher could have, but did not, ask Mr. Snyder or the manager of the Hollywood store historical sales numbers. (Doc. 227 at 6.)

Considering the relevant facts and applicable law, the Court finds that the Rindlisbachers have not established a genuine dispute of material fact for trial. Under Arizona law, the alleged omissions pertaining would be material only if a reasonable person would attach importance to them when determining whether to enter the Phoenix Agreement, or if Steinway knew or should have known that the Rindlisbachers regarded the sales as important. See Restatement § 538(2). Neither scenario exists here.

that these statements were false or misleading. The Rindlisbachers

the Phoenix market demonstrates that a store can be profitable by selling pianos below the

11

And to the extent the statements were misleading, there is no evidence that Steinway considered the success or historical sales of the Hollywood store when determining the annual sales goals for the Phoenix market.

To the contrary, there is ample evidence suggesting that the sales goals were calculated using the BPI, regardless of that market past sales. (Doc. 206 ¶¶ 11 13, 15 16.) The Phoenix Agreement expressly states the BPI for the Phoenix market. (Id., Ex. 35 at 7.) And when Mr. Rindlisbacher inquired into becoming the Phoenix-market dealer, the parties, within days, discussed this index. (Id., Ex. 29.) Moreover, when visiting the Hollywood store and then speaking Mr. Rindlisbacher, an

included the product mix, use o but not sales. (Doc. 227 at 6.) Considering these facts, the Court finds that the historical sales are not material to the Rindlisbachers . Accordingly, Steinway is

entitled to summary judgment. See Anderson, 477 U.S. at 248.

Even if material, the Court finds the claims are nevertheless time-barred under A.R.S. § 12-543(3). As noted, the limitations period in A.R.S. § 12- Mister Donut of

Am., Inc., 723 P.2d at 672. The Rindlisbachers contend that Steinway has cited no evidence that they [a] fraud claim before the statute [of limitations] begins to Coronado Dev. Corp., 678 P.2d at 537. The evidence pertaining to Mr. market, including the statements he made in the 2011 newspaper articles, the January 2014

e-mail, and the Rindlisbachers as the Phoenix-market dealer, establishes that 11 Piano Showroom of Arizona, Inc. generated a profit for each year it operated as a Steinway dealership. (Doc. 206, Ex. 5 at 260:9 17.) As the Steinway dealer for the Phoenix market, the Rindlisbachers generated almost $2 million in combined total profit. (Id.)

the Rindlisbachers had grounds for suspecting a fraud case in 2014, at the latest. While it may be true that the Rindlisbachers did not know every detail of the alleged fraud at that time, actual knowledge of every factual predicate is not required for the statute of limitations to run. See Coronado Dev. Corp., 678 P.2d at 537.

The Court finds that, by January 2014, the Rindlisbachers discovered, or through reasonable diligence should have discovered, the alleged fraud in this case. The Rindlisbachers are experienced,

successful, and savvy piano retailers. The law required them to exercise reasonable diligence in their dealings with Steinway. They did not. Under barred by A.R.S. § 12-543(3) and the discovery rule.

iii. Facts at Issue The Court further notes that had it considered the facts at issue, which the Rindlisbachers raised for the first time judgment, rather than exclude those facts under Pickern, the facts at issue would not affect statute-of-limitations conclusion. See supra Part III.A, n.4. The Rindlisbachers say they did not learn the facts at issue until after this lawsuit commenced. (Doc. 217 at 10.) But, as noted, not have to know every fact about his fraud claim before the statute [of limitations] begins Coronado Dev. Corp., 678 P.2d at 537. The , at the latest, within three years of January 2014. Considering the facts at issue would not change that conclusion. Thus, even if the Court had found that the Rindlisbachers provided Steinway with adequate notice of the facts at issue, would still be barred by A.R.S. § 12-543(3).

C. Constructive Fraud: Confidential Relationship As noted, -of-limitations arguments is premised on an alleged confidential relation between them and Steinway. (Doc. 217 at 10.) Specifically, the Rindlisbachers contend that this alleged confidential relationship they had] to discover Id.) Finding no genuine issue of material fact, the Court concludes that the Rindlisbachers and Steinway were not

engaged in a confidential relationship.

that when fraud is relied upon, either in the complaint or the answer, it must be established by clear and satisfactory evidence. Brazee v. Morris, 204 P.2d 475, 476 (Ariz. 1949). Under breach of a legal or equitable duty which irrespective of the moral guilt or intent of the party charged Rhoads Where a relation of trust and confidence exists between two parties so that one of them places peculiar reliance in the trustworthiness of another, the latter is under a duty to make a full and truthful disclosure of all material facts . . . Id. at 846 47. A breach of that duty gives rise to an action in constructive fraud. Id. at 847.

Arizona courts recognize two separate relations of trust and confidence: fiduciary relationships and confidential relationships. t., 179 P.2d at 241. A fiduciary relationship something approximating business agency, professional Id. a confidential relation does not fall into any well- Rhoads, 700 P.2d at 847 (internal quotations omitted). Rather, a confidential relationship is which one is bound to act for the benefit of the other and can take no advantage to himself from his acts relating to the interest of the other Id. Confidential relationships require f power, and superiority of position in Id. N honesty and integrity enough to constitute a fiduciary or

confidential relation. Id.

Under Arizona law, confidential relations have been found to exist between

Stewart v. Phx. Nat l Bank, 64 P.2d 101, 106 (Ariz. 1937). Courts have declined to find confidential

relations when the relationship between the parties arises from an arms-length commercial transaction. Brazee, 204 P.2d at 477 (finding no

l of see also Rhoads, 700 P.2d at 847 48 (finding no confidential relation between parties engaged in a 23-year business relationship); Klinger v. Hummel, 464 P.2d 676, 679 (Ariz. Ct. App. 1970) (finding no confidential relation between a buyer and seller in a real estate transaction

There is a reason why courts impose a duty of disclosure where true relations of trust and confidence exist. They commonly involve situations where one party has placed its trust in another to perform a task or provide counseling and the other party has greater knowledge or a specialized skill. See Restatement § 551, cmt. f (confidence include those of the executor of an estate and its beneficiary, . . . those of physician and patient, attorney and client, priest and parishioner, . . . and guardian and ward. . Without this duty of disclosure, the party with whom trust or confidence is placed might exploit the knowledge disparity or conceal potential conflicts of interest. The disclosure requirement protects against this concern. 12

See e.g., Gonzalez, 887 P.2d at 565 (finding a relation of trust and confidence and thereby imposing a duty of disclosure where

Furthermore, it is well established that [a]n essential element of the principal-agent relationship which carries a fiduciary responsibility is the ability of the agent to act on behalf of his principal Barlage v. Valentine, 110 P.3d 371, 376 (Ariz. Ct. App. 2005) (quoting Equitable Life & Cas. Ins. Co. v. Rutledge, 454 P.2d 869, 876 (Ariz. Ct. App. 1969)). By requiring full and truthful disclosure of all material facts, a basic principle of the law of 12 s diverge from those of its principal, is often referred to as the principal- Generally speaking, an agent always has some incentive to pursue her own interests . . . . Why Do We Regulate Lawyers?: An Economic Analysis of the Justifications for Entry and Conduct Regulation, 33 ARIZ. ST. L. J. can guard against this phenomena by closely monitoring the work of the agent this impinges upon the original purpose of the agency relationship the costs of monitoring an agents behavior will be high. Id.

agency qui facit per alium, facit per se, i.e., one acting by another is acting for himself is preserved. Id. (quoting Gustafson v. Rajkovich, 263 P.2d 540, 543 (Ariz. 1953)).

The Rindlisbachers contend that, because of an alleged relation of trust and confidence between them and Steinway, they had no obligation to exercise due diligence and investigate Steinway factual omissions. (Doc. 217 at 10.) Steinway argues that no fiduciary or confidential relation exists in this case. (Doc. 205 at 11.) Specifically, Steinway says or in a similar capacity the Rindlisbachers Steinway Id.

at 12 13.)

Rindlisbacher et al v. Steinway & Sons Incorporated

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The Rindlisbachers, in their Response to Steinway Judgement #1 (Liability), make no argument and cite no legal authority to rebut Steinway position as to the existence of a confidential relationship. Rather, they assert, in conclusory fashion, that a confidential relation exists and then incorporate the arguments made in their Motion for Summary Judgment on Constructive Fraud (Doc. 199) and corresponding Reply (Doc. 215). (Doc. 217 at 15.) The Court notes that the Rindlisbachers incorporate by reference arguments made in one motion to oppose a new motion

circumvent Pharms. Corp., 952 F. Supp. 2d 880, 885 (D. Ariz. 2013). And generally, the Court will

not sift through incorporated documents to determine which arguments are relevant to the issue presently before the Court. See e.g., Orr v. Bank of Am., 285 F.3d 764, 775 (9th Cir. 2002) (internal quotation omitted) from the parties . Nevertheless, the Rindlisbachers ary

Judgment on Constructive Fraud is also pending before the Court, and Parts VI and VII, therein, pertain to whether a confidential relation exists between them and Steinway. (Doc. 199 at 11 14.) Thus, the Court, in its discretion, will consider the arguments the Rindlisbachers made in their Motion for Partial Summary Judgment on Constructive Fraud

as well as the arguments Steinway raises in response to that motion and in its own Motion for Summary Judgment #1 (Liability). The Rindlisbachers make three arguments in support of finding a confidential relationship. The Court will address each argument in turn.

1. Business Agency, Professional Relation, Family Tie First, the Rindlisbachers contend Steinway s them is akin to Considering Arizona law, the Rindlisbachers are essentially arguing that a fiduciary relationship exists between them and Steinway. ., 179 P.2d at 252 53.]o establish a fiduciary relationship . . . there must be something approximating business agency, professional relationship, or family tie impelling or inducing the trusting party to . , commercial transactions do not create a fiduciary relationship unless one party agrees to serve in a Cook v. Orkin Exterminating Co., Inc., 258 P.3d 149, 152 (Ariz. Ct. iary relationship from Standard Chartered PLC v. Price Waterhouse, 945 P.2d 317, 335 (Ariz. Ct. App. 1996). Whether a fiduciary or confidential relationship exists typically is a question of fact. Cook, 258 P.3d at 151. But when the evidence would be insufficient to support a verdict, the court may rule as a matter of law. Id. The Court finds the evidence in this case insufficient to support a verdict in the Rindlisbachers .

The Rindlisbachers say Steinway iewed the dealer relation as akin to a partner Steinway recognized its dealers at 13.) Steinway agrees with Steinway.

Under Arizona law, s to carry on as co- owne -1012(A). There is no evidence that the Rindlisbachers and Steinway were co-owners of Piano Showroom of

Arizona. Rather, the express terms of the Phoenix Agreement provide that no joint venture between

the parties had been created and characterize the Rindlisbachers In addition, Mr. Rindlisbacher

testified that the Rindlisbachers and Steinway or losses. (Doc. 212, Ex. 5 at 280:16 18.) See A.R.S. § 29- person who

receives a share of profits of a business is presumed to be a partner in the business . . . .). The Rindlisbachers and Steinway did not form a partnership, and thus the Court finds there is no business agency between the parties based a partner relation.

The Rindlisbachers, advancing their business agency argument, also emphasize that they were Steinway tive for a specific territory and that the dealer agreement prohibited sales beyond the territory, sales of competing lines of pianos, and sales for resale. (Doc. 199 at 13.) Relying only on an opinion by the Oregon Court of Appeals and a Third Circuit opinion, which considered New Jersey and Connecticut law, the Rindlisbachers argue that territory arrangement the level of mutual trust and confidence approximates a business

Id. at 12.) The Rindlisbachers have not provided the Court with any Arizona authority establishing that proposition. And the Court will not expand Arizona law to find a confidential relationship based solely on an exclusive territory agreement between a dealer and manufacturer.

The Rindlisbachers considering the express language in the Phoenix Agreement. relationship, such characterization will be persuasive on the issue of

Urias v. PCS Health Syss., Inc., 118 P.3d 29, 35 (Ariz. Ct. App. 2005). In Urias, for example, n connection with [the Id. The Arizona Court of Appeals held that no fiduciary relationship existed relationship, it could have negotiated for specific language in the [a]greement to that

Id.

Here, the Phoenix Agreement expressly provides:

This Agreement does not create an employer-employee relationship, an agency or joint venture between Steinway and Dealer. Dealer shall have no authority to act for or to bind Steinway in any way, to execute agreements on behalf of Steinway or to represent that Steinway is in any way responsible for the acts or omissions of Dealer. Dealer shall be an independent contractor only. (Doc. 206, Ex. 35 at 5.) The Phoenix Agreement did not vest any authority in the Rindlisbachers to act as Steinway Instead, the Phoenix Agreement created a contractual arrangement whereby Steinway agreed to provide the Rindlisbachers with pianos to sell, distribute, and deliver in the Phoenix market. Urias,

118 P.3d at 35. The Phoenix Agreement does the opposite by establishing an independent contractor

arrangement. The Court therefore rejects the Rindlisbachers fiduciary relationship in the form of a business agency exists between the parties.

The Rindlisbachers next argue that Steinway with confidential Doc. 199 at 13.) They do not provide additional detail concerning the nature of that allegedly confidential information. Nor do they cite legal authority establishing that the provision of confidential information to another party is enough to establish a fiduciary or confidential relation. It appears, from Steinway the confidential information the Rindlisbachers are referring to is financial information, information about relationships with music teachers and loan programs, and employee performance evaluations. (Doc. 205 at 13 14.) But the fact the Rindlisbachers provided Steinway with this information does not show that they substituted Steinway See Standard Chartered PLC, 945 P.2d at 336.

The Rindlisbachers also contend the dealer relation is comparable to a family tie considering Steinway Steinway encouragement that dealers view one another as family. (Doc. 199 at 13.) Arizona caselaw

contradicts this argument. In Rhoads v. Harvey Publications, Inc., 700 P.2d 840, 844 (Ariz. Ct. App. 1984), the defendant allegedly told the pla 700 P.2d at 844. But, as the Arizona Court of Appeals made clear, Id. Moreover, in cases where Arizona courts have allowed familial ties to serve as the basis of a confidential relationship, the cases involved actual family members. E.g., Gonzalez, 887 P.2d at 565 66 (parent-child). relations beyond the distinct familial relationships set forth in Arizona caselaw. Thus, the

Court finds there is no evidence in the record to support a fiduciary or confidential relationship on the basis of family ties, professional relations, or business agency. See Fed. R. Civ. P. the assertion by . . .

2. Superiority of Position Second, the Rindlisbachers argue that Steinway (Doc. 199 at 13.) They

Steinway Steinway has 125 patents on various aspects of piano manufacturing, and that Steinway

Id. at 14.)

As this Court has already noted in a previous order m of Contrary to the

Rindlisbachers superiority of position, in the context of fiduciary or

Standard Chartered PLC, 945 P.2d at 335 (alternations in original) (quoting Herz & Lewis, Inc. v. Union Bank, 528 P.2d 188, 190 (Ariz. Ct. App. 1974)). The Rindlisbachers an ordinarily prudent person in the management of his business affairs repose that degree of

confidence in [Steinway] which largely results in the substitution of [Steinway will for See Herz & Lewis, Inc., 528 P.2d at 190 (internal quotations omitted). Thus, the Court is unpersuaded by the Rindlisbachers second argument.

In addition, the Rindlisbachers claim Steinway alleged superior position induced them to place in Steinway. (Doc. 199 at 13 14.) To support their , the Rindlisbachers make parenthetical references to two Arizona cases. (Id. at 12.) Both cases are distinguishable.

The Rindlisbachers correctly note that the Arizona Supreme Court found a confidential relationship to exist between a bank and its customer in Stewart v. Phoenix National Bank, 64 P.2d 101 (Ariz. 1937). In Stewart, the plaintiff had been a customer of the defendant-bank for 23 years. 64 P.2d at

when making financial decisions. Id. Thus, the plaintiff entrusted the b financial advisors based on their specialized knowledge and skill. Id. In finding a

confidential relation, moreover, the court emphasized the unique relationship between modern banks and their customers. Id. Specifically, the court explained that investors

almost universally, advertise their ability to perform services that are confidential in nature, such as trustee, executor, or administrator, for all who do business with them. Id. In contrast, the Stewart court distinguished the relationship between a bank and its depositors. Id relation between a bank and a simple depositor therein is that of debtor and creditor, and ordinarily no confidential relation arises out of such circumstances . . . Id.

The Rindlisbachers make no effort to analogize Stewart to the present case. Their reference to Stewart is merely in a parenthetical in a separate section of their motion. (Doc. 199 at 12.) There is no evidence in this case that Steinway acted as an advisor for the Rindlisbachers or that they relied on Steinway express advice. Rather, the evidence only shows that a sophisticated retailer, the Rindlisbachers, conducted due diligence and entered

an dealership agreement with a sophisticated manufacturer. The Rindlisbachers had a commercial relationship with Steinway and nothing more. Steinway supposed market superiority does not them into a confidential relationship similar to the one found in the Stewart case.

Nor does the Rindlisbachers reference to Mister Donut of America Inc. v. Harris, 723 P.2d 670 (Ariz. 1960), persuade the Court. As explained elsewhere in this Order, Mister Donut of America - 723 P.2d at 673. No franchise relationship exists here. Moreover, as Steinway points out, the Ninth Circuit, applying Arizona law, has explained that a franchisee- es. Simmons v. Mobil

Oil Corp., 29 F.3d 505, 512 (9th Cir. 1994) (bargaining power in the franchise context, more is required [to establish a confidential

relation]. Thus, Mister Donut of America is unhelpful to the Rindlisbachers.

The Rindlisbachers further argue that over their business to Steinway by abiding by certain sales restrictions, displaying signage, utilizing certain interior décor and layouts of merchandise, and training employees. (Doc. 199 at 14.) In response, Steinway contends that sales restrictions, such as the exclusivity of sales territories, operated to the Rindlisbachers s ensured that the Rindlisbachers would be paid by any other Steinway dealer selling new Steinway pianos into the Phoenix market. (Doc. 211 at 13.) Steinway also argues that the Rindlisbachers Steinway [their] business arise from [a] trawere not obligated to enter . . . to but did so to use the (Id. at 13 14.)

The Arizona Court of Appeals has explained that is an indication of a confidential relationship. Rhoads, 700 P.2d at 847. But, [i]t is well established that when the owner of a trademark licenses the mark to others, he retains a duty to exercise control and supervision Miller v. Glenn Miller Prods., Inc., 454 F.3d 975, 992 (9th Cir. 2006) (internal quotations omitted).

not give a licensor control over the day-to-day operations of a licensee beyond that necessary to en Oberlin v. Marlin Am. Corp., 596 F.2d 1322, 1327 (7th Cir. 1979); First Interstate Bancorp

v. Stenquist recognized that the amount of control a licensor must have over a licensee is limited to that

which is necessary to prevent deception . . . . not create a fiduciary [or confidential] Weight Watchers of Que. Ltd. v. Weight Watchers Intern., Inc., 398 F. Supp. 1047, 1053 (E.D.N.Y. 1975); Transgo, Inc. v. Ajac Transmission Parts Corp, 768 F.2d 1001, 1018 (9th Cir. 1985) (internal quotations registered .

The licensing agreement between the parties -out; interior decoration; and product

206, Ex. 36 at 2.) By agreeing to be bound by the terms of the licensing agreement, the Rindlisbachers obtained Showroom of Arizona. (Id. at 1.) Contrary to their assertions, the Rindlisbachers did not

entrust power over their business to Steinway. Rather, under well-established trademark law, Steinway merely retained the right to exercise control and supervision over its trademark. And, as discussed, the Rindlisbachers have not provided the Court with any legal authority relationship into a confidential relationship.

The Rindlisbachers also contend they entrusted power to Steinway because it could [their] having the ability to terminate the Phoenix Agreement for no reason. (Doc. 199 at 14.) The Court is unpersuaded by the Rindlisbachers fragmentary account of the termination clause. By the Phoenix terms, the Rindlisbachers also th[e] Agreement at 4.) Thus, the Court finds that the Rindlisbachers have failed to raise a genuine issue of material fact as to Steinway superiority of position.

3. Superior Knowledge Last, the Rindlisbachers allege that confidential relationship. (Doc. 199 at 14.) Reliance on superior knowledge only creates a

confidential relationship if the knowledge is of a kind beyond the fair and reasonable reach of the alleged beneficiary and inaccessible to the alleged beneficiary through the exercise Standard Chartered PLC, 945 P.2d at 336; see Taeger v. Cath. Fam. & Cmty. Servs., 995 P.2d 721, 727 28 (Ariz. Ct. App. 1999) (explaining the plaintiffs did not merely defer to a ey were required to rely on the y had no other way to attain the information).

Specifically, the Rindlisbachers contend that Steinway County for at least 35 years before 2010, so it knew much more than Plaintiffs about They further suggest that -year history of manufacturing best-in-class pianos gave it a vast reservoir of technical knowledge [the Rindlisbachers] would never have While it is likely true that Steinway possessed more knowledge about its historical success in the Phoenix market, more knowledge is not equivalent to inaccessible knowledge. See Standard Chartered PLC, 945 P.2d at 336; Cook relation in every business transaction involving one party with greater knowledge, skill, or

training, but requires .

The Rindlisbachers have provided the Court with no evidence showing that Steinway had a means of knowledge about the Phoenix market to which they could not have reasonably obtained through their own due diligence. Indeed, the Rindlisbachers ultimately discovered the sales simply by asking the prior Phoenix- market d 24:20 25:20, 82:1 3.) Thus, the evidence pertaining to Steinway superior

knowledge is insufficient to support a verdict in the present action.

The Rindlisbachers have failed to raise a genuine dispute of material fact for trial. Therefore, the Court concludes the evidence in this case is insufficient to establish the existence of a fiduciary or confidential relationship between the parties. The Rindlisbachers e of limitations argument that is dependent on a confidential relationship thereby fails. In addition, because liability for constructive fraud only arises when a fiduciary or confidential relationship exists, Steinway is entitled to judgment as a matter of law on the merits constructive fraud claim.

D. Damages limitations, and Steinway is entitled to summary judgment on the merits of their

constructive fraud claim because the Rindlisbachers have not established a genuine dispute of material fact on the issue of a confidential relation. Alternatively, Steinway is entitled to summary on the issue of damages. 13

The Rindlisbachers seek damages of $7.5 million to $8.6 million in alleged lost profits, $252,000 in out-of-pocket damages arising from a lease they signed in 2014, and punitive damages. (FAC at 28

29.) The claimed lost profit damages are calculated by combining the annual sales goals in the Phoenix Agreement, which total 1,521 pianos, subtracting the 443 pianos that the Rindlisbachers actually purchased from Steinway and sold to customers, and then calculating the profit they would have earned had each of those 1,078 pianos been sold. (Doc. 208, Ex. 25 at 20 22.) The Court first addresses the -of-pocket damages on the issue of causation because the Court finds that issue is dispositive. The Court then addresses the

1. Causation 13 The Court notes that this alternative holding has no impact on the statute of limitations analysis. (Damages) on the assumption that testimony is admissible.

14

Cole v. Gerhart, 423 P.2d 100, 103 (Ariz. Ct. App. 1967) (internal quotations omitted); see also S Dev. Co. v. Pima Cap. Mgmt. Co., 31 P.3d 123, 136 (Ariz. Ct. App. 2001) (explaining that if a defendant is liable to a plaintiff for negligent misrepresentation by omission or fraud, the defendant must compensate the plaintiff for pecuniary loss if the misrepresentation is a legal cause of the loss). The Restatement further provides that fraudulent conduct must be the cause in fact and legal cause of pecuniary loss to support a damages award. Restatement §§ 546, 548A. Section 546, which relates to causation in fact, provides that a defendant is subject to fraud justifiably relies upon the truth of the matter misrepresented, if his reliance is a substantial factor in determining the course of

misrepresentation is a legal cause of a pecuniary loss resulting from action or inaction in reliance upon it if, but only if, the loss might reasonably be expected to result from the reliance (emphasis added).

Steinway argues cannot prove that the alleged omissions were Specifically, Steinway contends that there is no evidence showing that the Rindlisbachers would have acted differently had they known the historical sales in the Phoenix market and that the Id. at 5 6, 9.) Steinway further argues there is no evidence that, had actual sales, they would have actually sold 234 pianos per year for six and a half years

(instead of averaging 64.5) or generated $6 million in annual gross piano sales (instead of Id. at 9.) In response, the Rindlisbachers claim the alleged omissions were a substantial factor in their decision to enter the Phoenix Agreement. (Doc. 220 at 9.) 14 The parties disagree as to whether law pertaining to duty-based claims or law regarding fraud claims is applicable to the current matter. At times, the Rindlisbachers cite law applicable to negligence claims (i.e., Restatement § 431), and at other times they cite law applicable to fraud claims. For purposes of damages, both categories of claims require causation in fact and legal causation. Compare Restatement §§ 546, 548A, with Valley , 517 P.2d 1256 limited to those damages which are the direct and proximate consequence of the

e shown loss causation and Id. at 8.) But

The Rindlisbachers have not provided the Court with evidence showing that the alleged omissions caused their lost profit damages. See Cole v. Gerhart, 423 P.2d at 103

-profits damages theory requires the Court to assume that, had the alleged omissions been disclosed, the Rindlisbachers would have nonetheless entered the Phoenix Agreement, met the sales goals set forth therein, and generated an additional $4 million in annual revenue. (Doc. 207 at 6.) As noted, the Rindlisbachers contend

But the Rindlisbachers have not provided the Court with any evidence showing that they would have sold more than 1,000 additional pianos in six years. The sales goals in the Phoenix Agreement were simply that, goals. There is no evidence that those goals were a contractual guaranty. (Doc. 208, Ex. 1 ¶ 14.) And no reasonable person would rely on these projections as a guarantee of future sales. The Rindlisbachers are only entitled to damages Cole, 423 P.2d at 103; see Restatement §§ 546, 548A. That is not the case, here.

speculative to support a judgment. See Coury Bros. Ranches, Inc. v. Ellsworth, 446 P.2d

lative, remote or uncertain may not form -profit damages theory, the Court would be required to make numerous, unjustified inferential leaps that are wholly unsupported by the record. That is, the Court would need to assume that, had the Rindlisbachers known the historical sales in the Phoenix market or at the Steinway-owned Hollywood store, they would have still entered the Phoenix Agreement, met the sales goals for each year they served as the Phoenix-market dealer, and thereby generate more than $6 million per year in revenue. (Doc. 208 ¶ 44.) Nothing in the record, except mere

speculation, suggests that the Rindlisbachers would have achieved the annual sales performance goals had the alleged omissions been disclosed. To the contrary, the record reveals that the lost- business model. The Rindlisbachers employed only two salespeople in the Phoenix market, and the sales objective for each salesperson was $1 million in annual revenue. (Doc. 208, Ex. 9 at 166:19 22, Ex. 26.) The notion that the Rindlisbachers reasonably expected to, and ultimately would have, generated $6 million in revenue each year $4 million in excess of thei is unsupported by the record. The

be the basis of a judgment. See e.g., , 557 P.2d 543, 548 (Ariz. Ct. App. 1976)

-of-pocket damages cannot form the basis of a judgment. For context, the Court will briefly address the facts relevant to the alleged out-of-pocket damages. In March 2014, the Rindlisbachers entered a seven- the 2014 lease, but Steinway was not a guarantor. (FAC ¶ 78; Doc. 208, Ex. 1 ¶ 18.) In July

2017, Steinway exercised its right to terminate the Phoenix Agreement. (FAC ¶ 94.) The Rindlisbachers became a Yamaha dealer in May 2018. (Doc. 208, Ex. 25 at 23.)

The Rindlisbachers, in reliance on the 2014 lease, seek to recover the overall net loss they suffered in the nine months between the end of their Steinway dealer relationship and the start of their Yamaha dealer relationship. argue lease and the alleged omission

[in 2010] -duplicative out-of-

The Rindlisbachers are correct that, under Arizona law, consequential damages are

available if they arise from fraudulent conduct. Cole, 423 P.2d at 102. But, as noted above, a victim of fraud is only entitled to compensation if the wrong was the natural and proximate result of the fraud. Id. at 103. The Rindlisbachers have made no attempt to address the extremely attenuated nature of their alleged out-of-pocket damages. At the time they entered the 2014 lease, the Rindlisbachers knew their annual sales were falling far below the sales goals in the Phoenix Agreement. (FAC ¶ 84.) The record further suggests that they had notice to investigate, if not actual knowledge of, the historical sales in the Phoenix market. (Doc. 206, Ex. 38, 52 53.) See supra Part III.B.2. The Rindlisbachers knew that both they and Steinway had the option to terminate the Phoenix Agreement for any reason with written notice. (Doc. 206, Ex. 35 at 4.) And commitment to Nonetheless, the Rindlisbachers entered a

seven-year lease in 2014. Any reliance claimed on the Phoenix Agreement continuing for seven more years is unreasonable and no reasonable jury could find otherwise. The Rindlisbachers have provided the Court with no evidence showing a causal connection sustained seven years later. Thus, the Court finds Steinway is entitled to summary judgment on the issue of out-of-pocket damages.

-of-pocket damages are calculated as of the date of [the relevant

Standard Chartered PLC, 945 P.2d at 345. Steinway made the alleged omissions in 2010. (FAC ¶ 98.) -of-pocket damages did not arise until more than seven years later, after the Phoenix Agreement had been terminated. (Doc. 208, Ex. 25 at 23.) Because their only theory of alleged out-of-pocket damages are collateral expenses incurred after the termination, the Rindlisbachers have not established a genuine issue of material fact on the issue of out-of-pocket damages.

The Rindlisbachers have failed to provide the Court with any evidence showing that the alleged omissions were the natural and proximate cause of their alleged damages. See

Cole, 423 P.2d at 103. Thus, -of-pocket damages cannot form the basis of a judgment, and Steinway is entitled to judgment as a remaining claims. See Nelson v. Pima Comm. Coll., 83 F.3d 1075, 1082 83 (9th Cir. 1996) (applying Arizona law and affirming summary judgment where alleged fraud did not result in any damages).

2. Punitive Damages The Rindlisbachers seek punitive damages in order to deter Steinway from

engaging in conduct similar to the facts alleged in this matter and to punish Steinway for its allegedly fraudulent conduct. (FAC at 29.) This Court has previously held that the Rindlisbachers omission of statements relevant to

convinced that the Rindlisbachers have not provided evidence to support an award of

punitive damages.

plaintiff proves by clear and convincing evidence that the defendant engaged in reprehensible conduct and acted with an evil mind Medasys Acquisition Corp. v. SDMS, P.C., 55 P.3d 763, 767 (Ariz. 2002) (internal quotations omitted) Rawlings v. Apodaca, 726 P.2d 565, 578 (Id. The Rindlisbachers concede Steinway did

not consciously seek to damage them, and thus they cannot establish an evil motive on the first basis. (Doc. 220 at 15.) S consciously pursued a course of conduct knowing that it created a substantial risk of Rawlings, 726 P.2d at 578. The Rindlisbachers contend that a jury to find Steinway took intentional actions that consciously disregarded the justifiable risk of significant harm to [them] Case 2:18-cv-01131-MTL Document 252 Filed 10/30/20 Page 44 of 47 in

(Id. at 16 to open a company-owned store in Phoenix and instead allow the Rindlisbachers to serve

as the Phoenix- [them] Id. at 16.)

Punitive damages are not recoverable in every fraud case. Dawson v. Withycombe, 163 P.3d at 1062. Indeed, under Arizona law, punitive damages are rarely available. Medasys Acquisition Corp., 55 P.3d at 767. A motion for summary judgment on the

Dawson, 163 P.3d at 1061 (internal quotations omitted). The record presented at summary judgment provides no indication of an evil mind on behalf of Steinway. An alleged shift away from, what the Rindlisbachers cing evidence of evil motive. Moreover, there are unknown risks in virtually all commercial contracts. The harm [the Rindlisbachers] assert [Steinway] induced

them into signing a contract which actually resulted in some, but not as much, income to 112 at 16 17.) This alleged harm is insufficient for a reasonable jury to find that Steinway acted with the oppressive, outrageous, or intolerable conduct necessary to establish an evil mind. Accordingly, Steinway is entitled to summary judgment on the issue of punitive damages.

E. Steinway Motion for Sanctions Steinway requests sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure. (Doc. 202 at 1.) Steinway argues that have, from the outset, about whether this lawsuit is stale. (Id. at 1 2.) The Court finds that sanctions are not justified in this case. Accordingly, Steinway

F. Steinway Steinway under A.R.S.

§§ 12-341 and 12-341.01. The Co must Dos , 240 P.3d 853, 855 (Ariz. Ct. App. 2010). The Rindlisbachers have not addressed whether they believe an award costs is appropriate in this case.

warranted, or on what grounds. timely filed.

IV. CONCLUSION

Accordingly, IT IS ORDERED granting s Motion for Summary Judgment #1 (Liability) on the statute of limitations issue as to both of the Rindlisbachers claims and the duty to disclose issue as to the merits of the Rindlisbachers

fraud claim (part of Doc. 205).

IT IS FURTHER ORDERED denying the Rindlisbachers Summary Judgment on Constructive Fraud (Doc. 199).

IT IS FURTHER ORDERED granting Judgment # 2 (Damages) on the issues of causation and punitive damages (part of

Doc. 207).

IT IS FURTHER ORDERED denying Steinway (Doc. 202).

IT IS FURTHER ORDERED that the following motions are denied as moot and without prejudice: the Rindlisbachers Defenses (Doc. 192); Steinway issue of detrimental reliance (part of Doc. 205); Steinway Summary Judgment

2 (Damages) on the issues of benefit-of-the-bargain damages and mitigation (part of Doc. 207); the Rindlisbachers Daubert Motion to Exclude Certain Proffered Testimony

of David A. Schwickerath (Doc. 221); Daubert Motion to Preclude Opinions of David R. Perry (Doc. 223); and Steinway Exhibits (Doc. 242).

IT IS FINALLY ORDERED that the Clerk of Court shall enter judgment in favor of Defendant Steinway, Inc. and against Plaintiffs Kevin and Jami Rindlisbacher and Piano Showroom of Arizona, Inc. The Clerk of Court shall close this case.

Dated this 30th day of October, 2020.