

**SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA**

**Department 3  
Honorable William J. Monahan, Presiding**

Courtroom Clerk  
191 North First Street, San Jose, CA 95113  
Telephone: (408) 882-2130

**DATE: 5/21/2024 TIME: 9:00 A.M.**

**TO CONTEST THE RULING:** Before 4:00 p.m. today (5/20/2024) you must notify the:

- (1) Court by calling (408) 808-6856 and
- (2) Other side by phone or email that you plan to appear and contest the ruling.  
(California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

**TO APPEAR AT THE HEARING:** The Court prefers in-person appearances. If you must appear virtually, please use video. To access the link, click on the below link or copy and paste into your internet browser and scroll down to **Department 3**.

[https://www.sccscourt.org/general\\_info/ra\\_teams/video\\_hearings\\_teams.shtml](https://www.sccscourt.org/general_info/ra_teams/video_hearings_teams.shtml)

**FOR YOUR NEXT HEARING DATE:** Please reserve your next hearing date using Court Schedule—an online scheduling tool that can be found on the Santa Clara County court website here:

<https://reservations.sccscourt.org/>

**FINAL ORDERS:** The prevailing party shall prepare the order unless otherwise ordered. (See California Rule of Court 3.1312.) **Please Note:** Any proposed orders must be submitted with the Judicial Council Form EFS-020 Proposed Order (Cover Sheet). Please include the date, time, dept., and line number.

**COURT REPORTERS:** The Court no longer provides official court reporters. If any party wants a court reporter, the appropriate form must be submitted. See court website for policy and forms.

LINE #	CASE #	CASE TITLE	RULING
<a href="#">LINE 1</a>	23CV427614	HEAVENZ KAUR vs GENERAL MOTORS LLC, a limited liability company et al	Hearing: Demurrer to the First Amended Complaint by Def General Motor LLC  Ctrl Click (or scroll down) on Lines 1-2 for ruling. The court will prepare the order.
<a href="#">LINE 2</a>	23CV427614	HEAVENZ KAUR vs GENERAL MOTORS LLC, a limited liability company et al	Motion: Strike Portions of the First Amended Complaint by Def General Motor LLC  Ctrl Click (or scroll down) on Lines 1-2 for ruling. The court will prepare the order.

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<a href="#">LINE 3</a>	24CV430061	Katharine Zoladz et al vs Google LLC	<p>Hearing: Demurrer to Plaintiff's Complaint by Defendant Google LLC</p> <p>OFF CALENDAR. First Amended Complaint was filed on 5/8/2024 so Demurrer is MOOT.</p>
<a href="#">LINE 4</a>	21CV392558	Harlan Graves et al vs Forbes Security Inc. et al	<p>Motion: Compel discovery responses and sanctions by defendant Forbes Security, Inc.</p> <p>Unopposed and GRANTED. Plaintiff Harlen Graves ("Plaintiff") shall serve objection-free responses to Defendant Forbes Security Inc. ("Defendant")'s Supplemental Special Interrogatories ("SI"), Set One, Nos. 26 and 27 are due 20 days from notice of entry of this order.</p> <p>Plaintiff shall pay monetary sanctions in the reasonable amount of (5 hours at \$200 per hour, plus filing fee of \$60) the total of \$1,060 to Defendant within 20 days from notice of entry of this order.</p> <p>Defendant to prepare order.</p>
<a href="#">LINE 5</a>	23CV425885	Michelle Cho vs Calix, Inc.	<p>Hearing: Motion to Compel Arbitration or in the alternative; to dismiss for improper venue (and request for judicial notice) by Defendant Calix, Inc.</p> <p>OFF CALENDAR. Vacated per 5/17/2024 order.</p>
<a href="#">LINE 6</a>	23CV427937	Juan Cabrera vs FORD MOTOR COMPANY, a Delaware Corporation et al	<p>Motion: Compel CTSCH Id: 1533. Confirmation: ZBQUKOG9. Scheduled online for Plaintiff Juan Cabrera</p> <p>Plaintiff Juan Cabrera ("Plaintiff")'s motion to compel defendant Sunnyvale Ford to serve responses, without objections, to Plaintiff's written discovery (including judicially approved form interrogatories ("FI"), Special Interrogatories ("SI"), and Requests for Production of Documents ("RPD") sets one.</p> <p>OFF CALENDAR. Withdrawn by moving party.</p>

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<a href="#">LINE 7</a>	23CV427937	Juan Cabrera vs FORD MOTOR COMPANY, a Delaware Corporation et al	<p>Motion: Order CTSCH Id: 959. Confirmation: QWJJEFG6. Scheduled online for Plaintiff Juan Cabrera</p> <p>Plaintiff Juan Cavrera (“Plaintiff”)’s motion to compel deposition attendance and production of documents by defendant Sunnyvale Ford’s person most knowledgeable (PMK).</p> <p>OFF CALENDAR. Withdrawn by moving party.</p>
<a href="#">LINE 8</a>	23CV427937	Juan Cabrera vs FORD MOTOR COMPANY, a Delaware Corporation et al	<p>Motion: Order CTSCH Id: 960. Confirmation: 7YNZBLWG. Scheduled online for Plaintiff Juan Cabrera</p> <p>Plaintiff’s motion for order establishing admissions by defendant Sunnyvale Ford to request for admissions (“RFA”) set one and for sanctions.</p> <p>OFF CALENDAR. Withdrawn by moving party.</p>
<a href="#">LINE 9</a>	18CV325918	Kevin Bedolla vs Adam Wang et al	<p>Motion: Withdraw as attorney by Allonn E. Levy, Hopkins &amp; Carley, ALC for Defendants Adam Wang Jennifer Wang, and Lil, Inc.</p> <p>Unopposed and granted. Moving attorney to prepare order.</p>
<a href="#">LINE 10</a>	22CV395975	Jean-Luc Kayigire vs Bryan Shisler et al	<p>Motion: Set Aside Default/Judgment by Defendant Bryan Shisler</p> <p>Ctrl Click (or scroll down) on Line 10 for tentative ruling. The court will prepare the order.</p>

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<a href="#"><u>LINE 11</u></a>	2013-1-CV-252335	BH Financial Services, Inc. vs Stephen Ho	<p>Motion: Reconsider order from 3/29/2024 by defendant Stephen Ho (Pro Per)</p> <p><b>APPEAR.</b></p> <p>Defendant Stephen Ho (“Defendant”)’s motion for reconsideration pursuant to Code of Civil Procedure (“CCP”) section 1008 of the court’s denial of motion for order to vacate the default judgment is DENIED.</p> <p>Plaintiff BH Financial Services, Inc. (“Plaintiff”)’s request for judicial notice is GRANTED.</p> <p>The court will prepare the order.</p>
<a href="#"><u>LINE 12</u></a>	2013-1-CV-252335	BH Financial Services, Inc. vs Stephen Ho	<p>Hearing: Other Motion for New Trial by defendant Stephen Ho (Pro Per)</p> <p><b>APPEAR.</b></p> <p>While Plaintiff BH Financial Services Inc. (“Plaintiff”) filed opposition to defendant Stephen Ho (“Defendant”)’s motion for reconsideration, it does not appear that Plaintiff filed any opposition to Defendant’s motion for new trial.</p>

<b>Line 13</b> m	21CV380141	LCS Capital, LLC vs Dameka Locke	Motion: Other to enter consent Judgment in enforcement of settlement by Plaintiff.
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Unopposed and GRANTED. Plaintiff LCS Capital, LLC  
to submit proposed order and judgment.

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## Calendar Lines 1-2

**Case Name:** *Heavenz Kaur v. General Motors, LLC, et al.*

**Case No.:** 23-CV-427614

Demurrer and Motion to Strike to the First Amended Complaint by Defendant General Motors, LLC

### **Factual and Procedural Background**

This is an action for violations of the Song-Beverly Act and other claims by plaintiff Heavenz Kaur (“Plaintiff”) against defendants General Motors, LLC (“GMC”) and Fremont Chevrolet (collectively, “Defendants”).

According to the first amended complaint (“FAC”), on May 19 2021, Plaintiff acquired a 2021 Chevrolet Bolt (“vehicle” or “subject vehicle”) for personal, family, and/or household purposes from Capitol Chevrolet, an authorized dealer and agent of GMC.<sup>1</sup> (FAC at ¶ 6.) The vehicle was sold to Plaintiff with express warranties that the vehicle would be free from defects in materials, nonconformities, or workmanship during the applicable warranty period. (Id. at ¶ 12.) And, to the extent the vehicle had defects, GMC would repair those defects. (Ibid.) This included an 8-year, 100,000 mile warranty on the vehicle’s battery. (Ibid.)

GMC also impliedly warranted that the subject vehicle would be of the same quality as similar vehicles sold in the trade and be fit for the ordinary purposes for which similar vehicles are used. (FAC at ¶ 13.)

In 2021, defendant GMC issued a recall notice for the subject vehicle, stating that its batteries may ignite when nearing a full charge. (FAC at ¶ 34.) GMC warned Plaintiff that the vehicle’s charge should not exceed 90%, the battery mileage should not fall below seventy (70) miles remaining, and the vehicle should not be parked indoors overnight. (Ibid.)

In December 2021, Plaintiff received a letter from Steve Hill (“Hill”), GMC’s Vice-President. (FAC at ¶ 51.) In the letter, Hill represented to Plaintiff that GMC would provide her with a new battery for the subject vehicle that did not suffer from the same defects as the battery that was installed at the time of purchase. (Id. at ¶ 52.)

In June 2023, GMC changed course and reneged on Hill’s promise to replace Plaintiff’s battery. (FAC at ¶ 56.)

However, shortly thereafter GMC told Plaintiff there had been a “misunderstanding” and that her battery would not in fact be replaced. (FAC at ¶ 57.) To date, GMC continues to refuse to replace her battery despite its promise to do so in December 2021. (Id. at ¶ 58.)

On February 23, 2024, Plaintiff filed the operative FAC alleging causes of action for:

(1) Violation of Song-Beverly Act – Breach of Express Warranty;

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<sup>1</sup> The FAC erroneously refers to “Plaintiffs” throughout the pleading but this action includes only a single named plaintiff.

- (2) Violation of Song-Beverly Act – Breach of Implied Warranty;
- (3) Violation of Song-Beverly Act – Section 1793.2;
- (4) Fraud;
- (5) Violation of Business & Professions Code Section 17200; and
- (6) Negligent Repair.

On March 27, 2024, defendant GMC filed the motions presently before the court, a demurrer and motion to strike to the FAC. GMC filed a request for judicial notice in conjunction with the motions. Plaintiff filed written opposition. GMC filed reply papers.<sup>2</sup>

### **Demurrer to the FAC**

Defendant GMC argues the fourth and fifth causes of action fail to state a valid claim. (See Code Civ. Proc., § 430.10, subd. (e).)

### **Request for Judicial Notice**

“Judicial notice is the recognition and acceptance by the court, for use by the trier of fact or by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter.” (*Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1117.)

In support, defendant GMC requests judicial notice of the fact that the United States Environmental Protection Agency estimated that the 2020-2022 model-year Chevrolet Bolts have a total range of 259 miles. (See Evid. Code, § 452, subds. (b), (h).) The court however declines to consider the request as it is not relevant to resolving issues raised by the demurrer for reasons explained below. (See *Gbur v. Cohen* (1979) 93 Cal.App.3d 296, 301 [judicial notice is confined to those matters which are relevant to the issue at hand].)

Accordingly, the request for judicial notice is DENIED.

### **Legal Standard**

“In reviewing the sufficiency of a complaint against a general demurer, we are guided by long settled rules. ‘We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. We also consider matters which may be judicially noticed.’ ” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) “A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff’s ability to prove these allegations, or the possible

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<sup>2</sup> The court declines to consider the declaration and attached exhibit by counsel for GMC filed in reply as it constitutes new evidence introduced for the first time in reply. (See *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537 [the general rule of motion practice is that new evidence is not permitted with reply papers]; *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 252 [improper to introduce new evidence in reply].)

difficulty in making such proof does not concern the reviewing court.” (*Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213–214.)

“The reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. The court does not, however, assume the truth of contentions, deductions or conclusions of law. ... [I]t is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory. And it is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment.” (*Gregory v. Albertson’s, Inc.* (2002) 104 Cal.App.4th 845, 850.)

#### **Fourth Cause of Action: Fraud**

Plaintiff’s fourth cause of action for fraud is based on two theories: (1) misrepresentation; and (2) concealment.

##### Misrepresentation

“The essential elements of a count for intentional misrepresentation are (1) a misrepresentation, (2) knowledge of falsity, (3) intent to induce reliance, (4) actual and justifiable reliance, and (5) resulting damage.” (*Chapman v. Skype Inc.* (2013) 220 Cal.App.4th 217, 230-231.)

“Fraud must be pleaded with specificity rather than with general and conclusory allegations. The specificity requirement means a plaintiff must allege facts showing how, when, where, to whom, and by what means the representations were made, and, in the case of a corporate defendant, the plaintiff must allege the names of the persons who made the representations, their authority to speak on behalf of the corporation, to whom they spoke, what they said or wrote, and when the representation was made.” (*West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 793 (*West*), citation and quotation marks omitted.)

Courts enforce the specificity requirement in consideration of its two purposes. (*West, supra*, 214 Cal.App.4th at p. 793.) The first purpose is to give notice to the defendant with sufficiently definite charges that the defendant can meet them. (*Ibid.*) The second is to permit a court to weed out meritless fraud claims on the basis of the pleadings; thus, the pleading should be sufficient to enable the court to determine whether, on the facts pleaded, there is any foundation, prima facie at least, for the charge of fraud. (*Ibid.*)

To support a claim for misrepresentation, Plaintiff alleges: (1) GMC willfully, falsely, and knowingly marketed the subject vehicle as having long range capability; (2) GMC knew the representations were false and intended for Plaintiff to rely on them; and (3) Plaintiff decided to buy the vehicle based in part on the false and misleading representations. (FAC at ¶¶ 93-96.)

Defendant GMC argues the fraud claim has not been pled with the required specificity to state a cause of action. (See Demurrer at pp. 7:3-10:3.) In opposition, Plaintiff fails to address the specificity argument and instead contends she has stated a valid claim for fraudulent concealment. (See OPP at p. 4:17-23.) Thus, Plaintiff appears to concede there is no cause of action for fraud stated under a theory of intentional misrepresentation. (See

*Sehulster Tunnels/Pre-Con v. Traylor Brothers, Inc.* (2003) 111 Cal.App.4th 1328, 1345, fn. 16 [failure to address point is “equivalent to a concession”]; see also *Westside Center Associates v. Safeway Stores 23, Inc.* (1996) 42 Cal.App.4th 507, 529 [failure to challenge a contention in a brief results in the concession of that argument].) Therefore, the court now considers whether Plaintiff has stated a valid claim for fraud under a theory of concealment. (See *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 38 [“If the complaint states a cause of action under any theory, regardless of the title under which the factual basis for relief is stated, that aspect of the complaint is good against a demurrer.”].)

### Concealment

“[T]he elements of an action for fraud and deceit based on concealment are: (1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage.” (*Marketing West, Inc. v. Sanyo Fisher (USA) Corp.* (1992) 6 Cal.App.4th 603, 612-613.)

Defendant GMC argues there is no claim stated for fraudulent concealment because: (1) such claims in this instance are barred by the economic loss rule; and (2) there is no relationship alleged giving rise to a duty to disclose.

#### **1. Economic Loss Rule**

The economic loss rule provides that “where a purchaser’s expectations in a sale are frustrated because the product he brought is not working properly, his remedy is said to be in contract alone, for he has suffered only economic losses.” (*Robinson Helicopter Company v. Dana Corporation* (2004) 34 Cal.4th 979, 988 (*Robinson*).) This doctrine hinges on a “distinction drawn between transactions involving the sales of goods for commercial purposes where economic expectations are protected by commercial and contract law, and those involving the sale of defective products to individual consumers who are injured in a manner which has traditionally been remedied by resort to the law of torts.” (*Ibid.*) The rule requires a purchaser to recover solely in contract for purely economic loss due to disappointed expectations, unless the purchaser can demonstrate harm above and beyond a broken contractual promise. (*Ibid.*)

Defendant GMC asserts the fraudulent concealment claim is barred by the economic loss rule. In support, GMC relies on the following two cases: (1) *Robinson*; and (2) *Butler-Rupp v. Lourdeaux* (2005) 134 Cal.App.4th 1220 (*Butler-Rupp*). (See Demurrer at pp. 13:25-14:4.) But, the California Supreme Court in *Robinson* addressed only claims for intentional misrepresentation and did not consider whether the economic loss rule was applicable to fraudulent concealment. (See *Robinson, supra*, 34 Cal.4th at p. 991 [“Because Dana’s affirmative intentional misrepresentations of fact (i.e., the issuance of the false certificates of conformance) are dispositive fraudulent conduct related to the performance of the contract, we need not address the issue of whether Dana’s intentional concealment constitutes an independent tort.”]; see also *Murphy v. City of Alameda* (1992) 11 Cal.App.4th 906, 914 [“It is fundamental that cases are not authority for propositions not considered and decided.”].) Nor



did the First Appellate District in *Butler-Rapp* address a claim for fraudulent concealment as that case examined a cause of action for negligent infliction of emotional distress. Furthermore, as stated in opposition, a recent appellate court decision from the First District has determined that fraudulent concealment claims are not subject to the economic loss rule. (See OPP at p. 5:6-11; *Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828, 843 (*Dhital*).<sup>3</sup>)

Thus, the demurrer to the fourth cause of action based on the economic loss rule is not sustainable.

## **2. Duty to Disclose**

“To maintain a cause of action for fraud through nondisclosure or concealment of facts, there must be allegations demonstrating that the defendant was under a legal duty to disclose those facts.” (*Los Angeles Memorial Coliseum Commission, et al. v. Insomniac, Inc., et al.* (2015) 233 Cal.App.4th 803, 831.)

“There are ‘four circumstances in which nondisclosure or concealment may constitute actionable fraud: (1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations but also suppresses some material facts. [Citation.]’ ” (*LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 336, quoting *Heliotis v. Schuman* (1986) 181 Cal.App.3d 646, 651.)

Plaintiff alleges defendant GMC had a duty to disclose as follows:

“Defendant had a duty to disclose that the battery in the vehicle is unsafe at the point of purchase because (1) Defendant had exclusive knowledge of the material, suppressed facts; (2) Defendant took affirmative actions to conceal the material facts; and (3) Defendant made partial representations about the mileage range, battery safety, and performance of the vehicle that were misleading without disclosure of the fact that the vehicle contained unsafe batteries that caused the vehicle to overheat and pose a risk of fire.” (FAC at ¶ 102.)

Despite these allegations, defendant GMC contends there is no legal basis to support a duty to disclose. In support, GMC relies principally upon *Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276 (*Bigler*) where the Fourth Appellate District wrote:

“Our Supreme Court has described the necessary relationship giving rise to a duty to disclose as a ‘transaction’ between the plaintiff and the defendant: ‘In *transactions* which do not involve fiduciary or confidential relations, a cause of action for non-disclosure of material facts may arise in at least three instances: (1) the defendant makes representations but does not disclose facts which materially qualify the facts disclosed, or which render his disclosure likely to mislead; (2) the facts are known or accessible only to defendant, and

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<sup>3</sup> In reply, defendant GMC points out that the California Supreme Court granted review of *Dhital* on February 1, 2023 but this court may still rely on the decision for any potential persuasive value. (See Reply at p. 5:20-25; Cal. Rules of Court, Rule 8.115(e)(1).)

defendant knows they are not known to or reasonably discoverable by the plaintiff; (3) the defendant actively conceals discovery from the plaintiff.’ [Citation.] Other cases have described the requisite relationship with the same term. [Citations.] **Such a transaction must necessarily arise from direct dealings between the plaintiff and the defendant; it cannot arise between the defendant and the public at large.”** (*Bigler, supra*, at pp. 311-312, emphasis added.)

Defendant GMC argues there is no direct relationship alleged between GMC and Plaintiff because she did not purchase the subject vehicle directly from GM. (See Demurrer at p. 15:12-17.) But, earlier in *Bigler*, the appellate court cites with approval the following:

A duty to disclose facts arises only when the parties are in a relationship that gives rise to the duty, such as seller and buyer, employer and prospective employee, doctor and patient, **or parties entering into any kind of contractual arrangement.** (*Bigler, supra*, 7 Cal.App.5th at p. 311, citation and quotation marks omitted; emphasis added.)

Here, Plaintiff alleges: (1) she acquired the subject vehicle from an authorized dealer and agent of GMC; (2) at the time of the sale, GMC entered into a contract with Plaintiff to provide her with a warranty of the subject vehicle; (3) the warranty contract provided by GMC demonstrates that the dealer is an agent of GMC; and (4) the sale of the vehicle by a GMC dealership, coupled with issuance of the warranty, created a transactional and contractual relationship between GMC and Plaintiff. (FAC at ¶¶ 6-8, 92.) As stated in opposition (OPP at p. 5:19-27), the First Appellate District concluded similar allegations were acceptable for pleading purposes to state a claim for fraudulent concealment:

“At the pleading stage (and in the absence of a more developed argument by Nissan on this point), we conclude plaintiffs’ allegations are sufficient. Plaintiffs alleged that they bought the car from a Nissan dealership, that Nissan backed the car with an express warranty, and that Nissan’s authorized dealerships are its agents for purposes of the sale of Nissan vehicles to consumers.” (*Dhital, supra*, 84 Cal.App.5th at p. 844.)

In reply, defendant GMC directs the court to several federal district court decisions addressing this issue which are not binding on this court. (See Reply at pp. 4:28-5:13, 6:25-7:7; see *Futrell v. Payday California, Inc.* (2010) 190 Cal.App.4th 1419, 1432, fn. 6 [although not binding, courts may consider unpublished federal district court opinions as persuasive].) Nor is the court entirely persuaded by these authorities as many were decided prior to *Dhital* and thus do not address the merits of that decision. It remains to be seen whether the California Supreme Court will agree with or reject *Dhital*’s holding in connection with the duty to disclose issue. But, at least for now, this court will lean on the decision for its persuasive value with respect to this action.

Thus, the demurrer to the fourth cause of action for failing to allege a duty to disclose is not sustainable.

Therefore, as Plaintiff has stated a valid claim for fraudulent concealment, the demurrer to the fourth cause of action is OVERRULED.

**Fifth Cause of Action: Violation of Business and Professions Code Section 17200**

“The UCL defines ‘unfair competition’ to ‘mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising’ and any act prohibited by [Business and Professions Code] section 17500. [Citation.]” (*Searle v. Wyndham Int’l* (2002) 102 Cal.App.4th 1327, 1332-1333 (*Searle*).) “Section 17200 ‘is not confined to anticompetitive business practices, but is also directed toward the public’s right to protection from fraud, deceit, and unlawful conduct. [Citation.] Thus, California courts have consistently interpreted the language of section 17200 broadly.’ [Citation.]” (*South Bay Chevrolet v. General Motors Acceptance Corp.* (1999) 72 Cal.App.4th 861, 877-878.) “The statute prohibits ‘wrongful business conduct in whatever context such activity might occur.’ [Citation.]” (*Searle, supra*, at 102 Cal.App.4th at p. 1333.)

Here, Plaintiff’s UCL claim alleges conduct that is unlawful, unfair, and fraudulent against defendant GMC. (FAC at ¶¶ 107-143.) As to the fraudulent prong, GMC repeats arguments made in connection with the demurrer to the fourth cause of action. (Demurrer at p. 16, fn. 2.) The court however has considered and rejected those arguments for reasons stated above. Thus, at a minimum, Plaintiff alleges a valid claim under the UCL with respect to the fraudulent prong which is sufficient to overcome a pleading challenge by general demurrer.

Accordingly, the demurrer to the fifth cause of action on the ground that it fails to state a claim is **OVERRULED**.

#### **Motion to Strike Portions of the FAC**

Defendant GMC separately moves to strike the prayer for punitive damages in the FAC. As stated above, the court has overruled the demurrer with respect to the fraudulent concealment claim. As a consequence, the FAC properly supports Plaintiff’s prayer for punitive damages. (See *Stevens v. Super. Ct.* (1986) 180 Cal.App.3d 605, 610 [pleading of fraud is sufficient for punitive damages].)

Therefore, the motion to strike the prayer for punitive damages is **DENIED**.

#### **Disposition**

The demurrer to the fourth and fifth causes of action on the ground that they fail to state a valid claim is **OVERRULED**.

The motion to strike the prayer for punitive damages is **DENIED**.

The court will prepare the Order.

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## Calendar line 10

**Case Name:** *Jean-Luc Kayigire, et al. vs Bryan Shisler, et al.*

**Case No.:** 22CV395975

Defendants Bryan Shisler and Pro-Auto Showroom (“Defendants”)’ motion for order requesting that their default [and] default judgment be set aside on the grounds of [mistake,] inadvertence, surprise, or excusable neglect (Cal. Code Civ. Proc. (“CCP”) §473(b) or in the alternative based on the Court’s equitable power to vacate a default is DENIED.

A trial court has wide discretion to grant relief under CCP section 473. (*Berman v. Klassman* (1971) 17 Cal.App.3d 900, 909.)

CCP section 473(b) provides, in part:

The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order, or proceeding was taken.

The motion for discretionary relief from a default under CCP section 473(b) must be filed within six months after the clerk’s entry of default. “The motion is ineffective if filed thereafter, even if it is within 6 months after entry of the default judgment (these are separate procedures [...]).” (Weil & Brown (The Rutter Group 2023) Cal. Practice Guide, Civil Proc. Before Trial ¶ 5.279.)

The law favors judgments on the merits. (*Fasuyi v. Permatex, Inc.* (2008) 167 Cal.App.4th 681, 694-703; *Berman v. Klassman* (1971) 17 Cal.App.3d 900, 909.) Thus, on a motion for relief from default, “doubts must be resolved *in favor of relief*, with an order denying relief scrutinized [on appeal] more carefully than an order granting it.” (Weil & Brown (The Rutter Group 2023) Cal. Practice Guide, Civil Proc. Before Trial, ¶ 5:281.4, quoting *Lasalle v. Vogel* (2019) 36 Cal.App.5th 127, 137 [emphasis in original]; see also *Berman v. Klassman, supra*, 17 Cal.App.3d at p. 910; *Tunis v. Barrow* (1986) 184 Cal.App.3d 1069, 1079 [“Unless inexcusable neglect is clear, the policy favoring trial on the merits prevails. [Citation.] Doubts are resolved in favor of the application for relief from default [citation]....”].)

In the present action, Defendants were personally served with the summons and complaint on March 29, 2022 (not 2023 as alleged by Defendants). (See POS filed April 12, 2022.)

Defendants default was entered on 8/31/2023. (See Request for Entry of Default filed 8/31/2023.) Defendants filed this motion on 3/25/2024 more than six months after the default was entered.) [ 8/31/2024 plus 6 months [(1) Sept. (2) Oct. (3) Nov. (4) Dec. (5) Jan. (6) Feb.] would be 2/29/2024. Even if you added 2 more days after 2/29/2024 because it started on the 31st, it would still be more than six months later.]

On 11/1/2023 Defendants tried to file an Answer, but it was rejected because Default was entered on 8/31/2023. (See Civil Filing Rejection Letters filed on 11/31/2023.) Moreover, on 11/2/2023 Defendants' counsel (Mr. Chappars) appeared in this case at a Case Status Review hearing on behalf of defendant Bryan Shisler. (See Minute Order for hearing dated 11/2/2023.) Defendants filed this motion over four months later on 3/25/2024. (This was more than 6 months after their default was entered on 8/31/2023.) Defendant's failure to timely file this motion within 6 months of entry of their default on 8/31/2023 was inexcusable.

In the present action, no default judgment has been entered. Accordingly, it cannot be vacated and there is no abstract of judgment or writ or levied property to be returned to Defendant.

Defendants' motion is DENIED.

The court will prepare the order.

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**Calendar line 11**

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**Calendar line 12**

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**Calendar line 13**

**Case Name:** *LCS Capital, LLC vs Dameka Locke*

**Case No.:** 21CV380141

Plaintiff LCS Capital, LLC (“Plaintiff”)’s motion for entry of a consent judgment to in enforcement of the terms of a written settlement agreement between Plaintiff and defendant Dameka Locke, an individual (“Defendant”), in accordance with section 664.6 of the California Code of Civil Procedure (“CCP”) is unopposed and GRANTED.

Plaintiff to submit proposed order and judgment.

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