SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 10
Honorable Frederick S. Chung

Rachel Tien, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408-882-2210

DATE: September 12, 2024 TIME: 9:00 A.M.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

The courthouse is open: Department 10 is now fully open for in-person hearings, as of April 18, 2023. The court strongly prefers **in-person** appearances for all contested law-and-motion matters. For all other hearings (*e.g.*, case management conferences), the court strongly prefers either **in-person or video** appearances. Audio-only appearances are permitted but disfavored, as they cause significant disruptions and delays to the proceedings. Please use telephone-only appearances as a last resort.

Scheduling motion hearings: Please go to https://reservations.scscourt.org or call 408-882-2430 between 8:30 a.m. and 12:30 p.m. (Mon.-Fri.) to reserve a hearing date for your motion *before* you file and serve it. You must then file your motion papers no more than five court days after reserving the hearing date, or else the date will be released to other cases.

CourtCall is no longer available: Department 10 uses Microsoft Teams for remote hearings. Please click on this link if you need to appear remotely, and then scroll down to click the link for Department 10: https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. Again, the court strongly prefers in-person or video appearances. Telephonic appearances are a sub-optimal relic of a bygone era.

Recording is prohibited: As a reminder, most hearings are open to the public, but state and local court rules prohibit recording of court proceedings without a court order. This prohibition applies to both in-person and remote appearances.

Court reporters: Unfortunately, the court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If any party wishes to have a court reporter, the appropriate form must be submitted. See https://www.scscourt.org/general_info/court_reporters.shtml.

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	22CV397012	Bernadette Ramirez v. Envision MPS Hon Auto, LLC	Order of examination: parties to appear.
LINE 2	22CV399300	State Farm Mutual Automobile Insurance Company v. Jose Guadalupe Herrera Macias	Click on LINE 2 or scroll down for ruling.
LINE 3	24CV442043	David Mora v. City of San Jose et al.	Click on LINE 3 or scroll down for ruling.
LINE 4	21CV380551	Brenda Balcazar et al. v. Frank Nguy et al.	OFF CALENDAR
LINE 5	21CV380551	Brenda Balcazar et al. v. Frank Nguy et al.	OFF CALENDAR
LINE 6	23CV417184	Thomas Vo v. Technology Credit Union	Click on LINE 6 or scroll down for ruling.
LINE 7	24CV437659	Angelita Mia Canales v. David Cava et al.	OFF CALENDAR
LINE 8	20CV369203	Jane Doe 1 et al. v. Don Adrian Garcia Francisco et al.	Click on LINE 8 or scroll down for ruling.
LINE 9	23CV411753	Binh Nguyen et al. v. Nhan Chu et al.	Click on LINE 9 or scroll down for ruling.
LINE 10	23CV414697	Huajun Lu et al. v. Bryan Zhang	Motion to set aside default judgment: notice is proper, and the motion is unopposed. The court finds good cause to GRANT the motion under Code of Civil Procedure sections 473 and 473.5. The case is reinstated, and defendant shall file a response to the complaint within 20 days of this order.
LINE 11	23CV416988	Susan Wallman v. Kia America, Inc.	Click on LINE 11 or scroll down for ruling.

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Calendar Line 2
Case Name: *State Farm Mutual Automobile Insurance Company v. Jose Guadalupe Herrera Macias*
Case No.: 22CV399300

This is a subrogation action brought by plaintiff State Farm Mutual Automobile Insurance Company ("State Farm") against defendant Jose Guadalupe Herrera Macias ("Macias"), based on an automobile accident that occurred on September 21, 2021. State Farm filed the original and still-operative complaint on June 3, 2022. Macias answered on August 9, 2022.

On March 7, 2024, this court granted State Farm's motion to compel further responses to form interrogatories and requests for production of documents, ordering Macias to provide further responses and pay $2,060 in monetary sanctions within 30 days. It appears that Macias did not comply with this order, and so State Farm has now filed this "motion to strike" defendant's answer and to "enter a default" against Macias.

The court denies the motion for two separate reasons.

First, State Farm has improperly noticed this as a "motion to strike," but the motion does not comply with Code of Civil Procedure sections 435-437. Under section 435, subdivision (b)(1), such a motion must be brought "within the time allowed to respond to a pleading." (Code Civ. Proc., § 435(b)(1).) In this case, that deadline was more than two years ago.

Second, based on the relief sought by State Farm, this should have been properly denominated and noticed as a motion for *discovery* sanctions—in this case, terminating sanctions. At any rate, State Farm has failed to show that such a drastic remedy is appropriate here. Case law instructs that an incremental approach to discovery sanctions should be the customary approach, not one that goes straight for termination. (See *J.W. v. Watchtower Bible & Tract Society of New York, Inc.* (2018) 29 Cal.App.5th 1142, 1169-1170; *Creed-21 v. City of Wildomar* (2017) 18 Cal.App.5th 690, 701.)

State Farm fails in the first instance to address whether any lesser sanctions would be the appropriate remedy for Macias's failure to obey the court's March 7, 2024 order. The purpose of discovery sanctions is not to punish; it is to remedy any harm that may have been suffered by the moving party as a result of the lack of discovery. It is axiomatic that this court must consider "whether a sanction short of dismissal or default would be appropriate to the dereliction." (*Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 796-797.) In this case, State Farm has gone straight for the most drastic remedy of default, without properly considering (or attempting to show) whether evidence or issue sanctions would be enough to place it in the same position it would have been in if it had obtained the requested discovery from Macias in the first place.

The motion is DENIED.

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Calendar Line 3
Case Name: *David Mora v. City of San Jose et al.*
Case No.: 24CV442043

The City of San Jose (on behalf of itself, its police department, and its employee Eric Hon) demurs to the complaint filed by plaintiff David Mora on the ground that Mora failed to comply with the government claim presentation requirement. Notice is proper for this demurrer, and the court has received no opposition from Mora.

The City's demurrer relies almost exclusively on extrinsic evidence—the declaration of Senior Deputy City Attorney Brian Loftus and the exhibits thereto—to argue that Mora failed to comply with the claim presentation requirement. This is improper, and the court disregards all of it. Nevertheless, as the City points out, the complaint lacks any relevant dates (other than the July 22, 2022 date on which Mora contacted the City to repair the sidewalk near his residence), and so it fails on its face to allege compliance with the claim presentation requirement. The claim presentation requirement is an affirmative element of any cause of action against the City defendants. (See *Shirk v. Vista Unified School District* (2007) 42 Cal.4th 201, 209 ["Complaints that do not allege facts demonstrating either that a claim was timely presented or that compliance with the claims statute is excused are subject to a general demurrer for not stating facts sufficient to constitute a cause of action."].)

Accordingly, the demurrer is SUSTAINED with 20 days' leave to amend. The court grants leave to amend because it does not have enough information to determine whether the complaint can be amended (or not) to cure this material defect.

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Calendar Line 6
Case Name: *Thomas Vo v. Technology Credit Union*
Case No.: 23CV417184

Plaintiff Thomas Vo moves to compel further responses to requests for production of documents from defendant Technology Credit Union ("TCU"). Notice is proper, but the court did not receive a response to the motion from TCU until September 9, 2024—*i.e.*, *11 days* after it was due, and only three calendar days before the hearing. Despite the extreme tardiness of the opposition, the court exercises its discretion to consider it.

The court GRANTS the motion and orders TCU to provide supplemental responses within 20 days of notice of entry of this order.

The sole basis for TCU's opposition is that this case—including any discovery—is purportedly automatically stayed under Code of Civil Procedure section 916, because TCU has now appealed the court's order denying its petition to compel arbitration. Although section 916 does provide that "the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby" (Code Civ. Proc., § 916, subd. (a)), on May 18, 2023, the California Legislature passed Senate Bill 365, which contains an express exception to section 916 for appeals of an order denying a petition to compel arbitration: "Notwithstanding Section 916, the perfecting of such an appeal shall not automatically stay any proceedings in the trial court during the pendency of the appeal." (Code Civ. Proc., § 1294, subd. (a).) This new language in section 1294, subdivision (a), went into effect on January 1, 2024.

Here, the court's order denying TCU's petition to compel arbitration was issued on November 9, 2023, and TCU filed its notice of appeal on November 28, 2023. Thus, this case ***was*** automatically stayed on November 28, under the prior statutory scheme. The question that remains is what happened on January 1, 2024, when the new law went into effect? Did the case remain automatically stayed, or does SB 365 mean that the case is no longer stayed pending the appeal? TCU argues that the perfecting of its appeal on November 28, 2023 "divested" the trial court of jurisdiction under the prior law and that applying the new law to the present case now would be a "retroactive" application. The court finds this argument to be unpersuasive. The question here is not whether the case was stayed from November 28, 2023 to January 1, 2024: answering this question in the negative would indeed be a retroactive application; the court answers the question in the affirmative. Instead, the critical question here is what happens to this case under the present law ***going forward***? The court concludes that allowing this case to remain automatically stayed would be directly contrary to the legislative purpose underlying SB 365. The court orders the parties to proceed with the litigation.

Although the court finds TCU's argument that it is entitled to an indefinite stay to be unconvincing, the court also finds that the argument was not totally unreasonable. Accordingly, Vo's request for monetary sanctions is denied. The court expects TCU to comply with this order and provide supplemental discovery responses within 20 days of notice of entry of this order. In addition, the court expects TCU to provide responses to Vo's other discovery requests, which are the subject of motions to be heard on September 19, 2024. **In particular, the court urgently directs TCU's attention to *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 776**, which holds that if a responding party manages to serve its RFA

responses before the hearing on a motion for RFAs to be deemed admitted, then the court must deny the motion; but "woe betide" the responding party that fails to serve RFA responses before the hearing, because"[i]n that instance the court has no discretion but to grant the admission motion, usually with fatal consequences for the defaulting party." (*Ibid.* [quoting (*Demyer v. Costa Mesa Mobile Home Estates* (1995) 36 Cal.App.4th 393, 395–396].)

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Calendar Line 8
Case Name: *Jane Doe 1 et al. v. Don Adrian Garcia Francisco et al.*
Case No.: 20CV369203

This is a motion to recover expenses incurred in proving matters not admitted in responses to requests for admissions ("RFAs"). (Code Civ. Proc., § 2033.420.) Defendant Kelly Ng argues that she propounded RFAs that plaintiff Jane Doe 1 refused to admit, that she incurred costs in proving what was denied in these RFAs, and that she is now entitled to an award of $103,344.40 in fees and costs for having prevailed on summary judgment.[1] For the reasons that follow, the court grants the motion in part and denies it in part.

Under Code of Civil Procedure section 2033.420, a prevailing party can obtain fees and costs reasonably incurred in proving matters denied in RFA responses if the matters denied were of substantial importance and the responding party had no reasonable basis for denying them. (*City of Glendale v. Marcus Cable Associates, LLC* (2015) 235 Cal.App.4th 344, 354.) Although this is typically accomplished after a trial and judgment, an award under section 2033.420 can also be obtained after a successful summary judgment motion. (See *Barnett v. Penske Truck Leasing Co.* (2001) 90 Cal.App.4th 494, 498-499.) The purpose of such an award of fees and costs—which is sometimes referred to as a "cost of proof sanction"—is to reimburse the prevailing party for the reasonable amounts incurred in proving the truth of a requested admission. It is compensatory and not punitive.

In this case, Ng cites three RFAs as the basis for this motion. RFA No. 5, to which Doe 1 responded on November 8, 2022, requested:

> *Admit that defendant Kelly Ng had no reason to know that defendant Don Adrian Garcia Francisco should not have been allowed unsupervised time alone with children.*

RFA Nos. 42 and 43, to which Doe 1 responded on June 7, 2023, requested:

> *Admit YOU have no EVIDENCE that prior to the commencement of this action defendant Kelly Ng had actual knowledge of the allegation made in 2002 that defendant Don Francisco had a sexual relationship with his then 14-year-old girlfriend.*
>
> and
>
> *Admit YOU have no EVIDENCE that prior to the commencement of this action defendant Kelly Ng had no actual knowledge that defendant Don Francisco had a propensity to engage in sexual abuse of minors.*

After a hearing on January 11, 2024, Ng prevailed on summary judgment, on the ground that plaintiffs did not have any evidence of Ng's "actual knowledge" regarding Don Francisco's propensity to commit sexual assault, and that plaintiffs therefore could not show

[1] The motion originally sought $123,344.40, but Ng's reply acknowledges that there was a typographical error that added $20,000 to the total.

the existence of a triable issue of material fact on their cause of action for negligent supervision against Ng.

The court finds that Doe 1 had a reasonable basis for denying RFA No. 5, which is phrased extremely broadly. Asking Doe 1 whether Ng had a "reason to know" that defendant Don Francisco should not have been left unsupervised with children is very different from asking whether Ng *actually knew* that Don Francisco should not have been left unsupervised with children. The court's summary judgment was based on the latter circumstance and not the former. The former circumstance encompasses not only what Ng actually knew, but also what she *should have* known. The court finds that Ng absolutely had a "reason" to know about her boyfriend's history and propensities, even if she may in fact have been surprisingly clueless about them.

RFA Nos. 42 and 43 are a much closer call, as their language tracks the court's ultimate conclusion on summary judgment: that plaintiffs did not have any "evidence" that Ng had "actual knowledge" of either: (1) her boyfriend's prior sexual relationship with a 14 year old (including whether he was a defendant in a prior case involving that 14 year old), or (2) her boyfriend's "propensity" to engage in sexual abuse of minors. Doe 1 objected that the definition of "evidence" in the RFAs was "vague and ambiguous," but the court disagrees. In addition, Doe 1 argues in her opposition that the definition of "evidence" was broader than the statutory definition (Evid. Code, § 140) and encompassed any potential circumstantial evidence of such knowledge.

The court does not necessarily disagree with plaintiffs that Ng's knowledge of the risk of leaving Don Francisco unsupervised with minors could be proved with circumstantial evidence. But the court ultimately determines—just as it did on summary judgment—that there was no such circumstantial evidence here. Again, plaintiffs certainly had circumstantial evidence that Ng *should have known* about Don Francisco's sexual history and propensities, but none of their circumstantial evidence showed that Ng *actually* knew. Because the negligent supervision cause of action required proof of actual knowledge, because the court's summary judgment ruling was based on the absence of such proof, and because RFA Nos. 42 and 43 were specifically directed to the existence (or absence) of such proof, the court finds that these RFAs were of "substantial importance" to the case and that Doe 1 had no reasonable basis for denying them.

The court therefore awards fees and costs incurred by Ng on or after June 7, 2023 (as opposed to on or after November 8, 2022) in proving the absence of evidence of actual knowledge by her. By the court's calculation, this shortened timeframe reduces the requested amount by $25,832.75: *i.e.*, from $103,344.40 to $77,511.65. In addition, the court finds that a number of entries from January 13, 2024 to March 27, 2024 were related solely to an unnecessary disagreement between the parties over the language of the final judgment, including an unnecessarily disputed ex parte application to the court. None of this latter dispute related to any "costs of proof," and the final judgment should have taken a few minutes, at most, to draft. The court therefore subtracts these entries (totaling $1,967.50) from the final amount, as well. That results in a final total of **$75,544.15**.

Apart from the foregoing subtractions, the court finds that the amounts requested on behalf of Ng were reasonable and non-duplicative. Although plaintiffs' point is well taken that it does seem contrary to the interests of justice to order such a large fee award against a

survivor of sexual abuse, the court must also consider the purpose of the statute (Code of Civil Procedure section 2033.420) in calling for the reimbursement of a litigant—in this case, the avowedly least knowledgeable defendant among several defendants in this case—for the costs of proving something that should not, in good faith, have been denied in the first place.

The motion is GRANTED in part and DENIED in part.

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Calendar Line 9
Case Name: *Binh Nguyen et al. v. Nhan Chu et al.*
Case No.: 23CV411753

This is a motion to enforce a settlement agreement by plaintiffs Binh Nguyen, Phuc Le, Duonganh Chu, and Vananh Chu Nguyen. Plaintiffs originally brought this as an ex parte application in May 2024. Because the court found both sides' written submissions to be somewhat confusing, the court had a conference with the parties on May 17, 2024, after which defendants Nhan Chu and Hang Doan Chu (the "Chu Defendants") were ordered to produce all the documentation supporting their capital gains tax payment, as required by Paragraph 5 of the parties' settlement agreement. The court stated that until such documentation was produced to plaintiffs, it was "not clear whether the other relief requested by plaintiffs is necessary or appropriate." (May 17, 2024 Order, p. 2.) The court therefore denied the other relief requested by plaintiffs "without prejudice to it being raised in a noticed motion." (*Ibid.*)

Plaintiffs have now brought that noticed motion. They claim that the documentation they received from the Chu defendants was heavily redacted, but that it confirms that the Chu defendants improperly subtracted more from plaintiffs' share of the proceeds from the sale of the joint property than defendants were entitled to subtract. According to plaintiffs, the only subtraction permitted by the parties' settlement agreement was "the Chu Defendants' Capital Gains Tax Payment," but in addition to deducting the amount of the capital gains tax payment, the Chu defendants also improperly deducted amounts for accountant fees, social security taxes, and a claimed net operating loss. Plaintiffs argue that they are entitled to receive $55,788.62 from the Chu defendants, representing $351,242.25 (the property sale proceeds) minus $189,993 (the federal capital gains tax payment) minus $49,672 (the state capital gains tax payment), divided by two. For having had to bring the ex parte application and this noticed motion, plaintiffs now also seek interest in the amount of $2,262.11, plus $11,392.22 in attorney's fees and costs. Paragraph 13 of the parties' settlement agreement provides for "an award by the Court of attorney's fees and costs actually incurred in the good faith prosecution or defense" of a motion to enforce.

As an initial matter, the court notes that there is no opposition to the motion on file. Although it appears that the Chu defendants attempted to file an opposition—there is a civil filing rejection letter from the clerk's office in the file—they never remedied their filing error. This is not the first time that the Chu defendants have failed to file papers properly and failed to fix their error: they did the same thing with their attempted ex parte filing in May, which was one of the primary reasons for the court's confusion several months ago. Nevertheless, the court did receive a courtesy hard copy of the opposition brief, and plaintiffs have filed a reply brief responding to the opposition, so the court will consider the arguments on the merits. If the Chu defendants would like to have a clear record of the proceedings going forward, however, they must fix this omission in the court file.

The court grants plaintiffs' motion. The court agrees with plaintiffs that the only amount that the settlement agreement allows the Chu defendants to have deducted from plaintiffs' share was the capital gains tax payment, not the accountant fees, social security taxes, and claimed net operating losses. The Chu defendants argue that because the settlement agreement refers to the capital gains tax payment as "the Chu Defendants' Capital Gains Tax Payment," this means that "the Chu defendants control the definition of the term 'capital gains tax payment,'" and "it gives the Chu defendants the right to define what is included in such

payment calculation." (Opposition, p. 3:6-7 & 3:18-20.) Therefore, according to them, they had the unilateral discretion to include some of these other amounts with the definition. The court finds this argument to be preposterous on its face. Just because the capital gains tax payment was "their" payment does not mean that the Chu defendants were free to redefine what constituted that payment—it simply means that it was "their" obligation to make that payment, rather than the obligation of the other parties to the settlement. The Chu defendants' contention that—because the settlement agreement required them to provide documentation to plaintiffs to "support" and "reflect" their calculations of the capital gains tax payment—they were free to create their own novel calculation of the amount finds no support anywhere in the language of the settlement agreement. Instead, the court interprets the requirement that the Chu defendants provide supporting documentation to be intended to prevent them from engaging in the very shenanigans that they have apparently attempted to engage in here.

The court finds that $55,788.62 is the correct amount owed by the Chu defendants. In addition, the court finds the amount of interest ($2,262.11) to be justified and that plaintiffs are entitled to attorney's fees of $11,392.22 under Paragraph 13 of the settlement agreement. Contrary to the Chu defendants' argument, plaintiffs' counsel's hourly billing rate of $560/hour is not unreasonable. Moreover, the court recognizes that plaintiffs had to bring multiple filings in an effort to enforce the parties' settlement, in the face of singularly meritless arguments in opposition by the defendants.

The motion is GRANTED, and the Chu defendants shall pay the total of **$69,442.95** to plaintiffs within 30 days of notice of entry of this order.

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Calendar Line 11
Case Name: *Susan Wallman v. Kia America, Inc.*
Case No.: 23CV416988

This is a motion for a new trial by plaintiff Susan Wallman in her Song-Beverly Consumer Warranty Act action against defendant Kia America, Inc. ("Kia"). On February 1, 2024, the court sustained Kia's demurrer to the original complaint with leave to amend. After Wallman amended her complaint, Kia demurred again to the amended pleading, and on June 11, 2024, the court sustained the demurrer yet again, but this time it was without leave to amend. On July 10, 2024, the court signed a judgment of dismissal in favor of Kia.

Wallman has now filed both a motion for reconsideration and a motion for a new trial in connection with the June 11, 2024 order and July 10, 2024 judgment. Wallman is correct that the proper vehicle for challenging the court's rulings is in fact a motion for a "new trial," even though no trial occurred in this case. That is because a judgment of dismissal has been issued. (See *20th Century Ins. Co. v. Superior Court* (2001) 90 Cal.App.4th 1247, 1261.) Nevertheless, the court also finds that Wallman has failed to set forth a proper basis for a new trial.

As defined in Code of Civil Procedure section 656, "A new trial is a re-examination of an issue of fact in the same court after a trial and decision by a jury, court or referee." A motion for new trial may only be made on the seven statutory grounds set forth in Code of Civil Procedure section 657: "The right to a new trial is purely statutory, and a motion for a new trial can be granted only on one of the grounds enumerated in the statute." (*Fomco, Inc. v. Joe Maggio, Inc.* (1961) 55 Cal.2d 162, 166; see also *Linhart v. Nelson* (1976) 18 Cal.3d 641, 644 [because new trial motions are creatures of statute, "'the procedural steps for making and determining such a motion are mandatory and must be strictly followed'" [quoting *Mercer v. Perez* (1968) 68 Cal.2d 104, 118]].) Those seven grounds are: (1) "Irregularity in the proceedings," (2) "Misconduct of the jury," (3) "Accident or surprise," (4) "Newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial," (5) "Excessive or inadequate damages," (6) "Insufficiency of the evidence," and (7) "Error in law." (Code Civ. Proc., § 657.)

In this case, Wallman cites grounds 1, 3, 4, 6, and 7 as the basis for her motion, but none of these apply. That is because the gist of Wallman's motion is that the court should allow her to file a new proposed second amended complaint ("SAC") that contains more specific allegations—including a specific date—about when she could have discovered the engine defects that are the subject of her suit, thereby establishing the application of the "delayed discovery" rule for purposes of Kia's statute of limitations defense. Whereas Wallman's original and first amended complaints vaguely alleged that she discovered Kia's wrongful conduct "shortly before filing this Complaint," her new SAC alleges that she could not possibly have discovered Kia's misconduct before January 26, 2022, when she "called Defendant's hotline" and gave Kia an "opportunity to repair." The court has not performed a detailed comparison of these new allegations in the SAC with the prior complaints—although the court does note that Wallman alleges that she had also taken her vehicle in for repairs in 2018 and 2020, and had also called the hotline in 2020—but the critical issue is that nothing in Wallman's motion or her proposed SAC establishes "irregularity," "accident or surprise," "newly discovered evidence," "insufficiency of the evidence," or "error in law" in connection

with the court's prior ruling. None of Wallman's arguments qualify as statutory grounds for a new trial.

A new trial is not supposed to be a second (or third) bite at the apple. Wallman does not simply get a "do over" with her SAC, after she failed to cure the defects identified in her original complaint with her first amended complaint. She needs to identify something that was wrong in the earlier proceedings, and here, the only thing that went "wrong" was her own failure to cure the deficiencies in her allegations regarding the potential application of the delayed discovery exception to the statute of limitations. Moreover, the court finds that the SAC consists primarily of new *arguments* as to why Wallman could not possibly have understood the issues surrounding complex and technical motor defects until after her third or fourth attempt to fix them—years after her first attempt—as opposed to affirmative factual allegations setting forth when and how she actually discovered the defects in her car. Finally, no explanation is provided as to why these proposed amendments were not made earlier in the first amended complaint.

In the supporting declaration of her counsel (Mani Arabi), Wallman attempts to identify "new evidence": a September 2022 NHTSA investigation relating to another Kia technical service bulletin (#ENG222) concerning "excessive oil consumption." (Arabi Declaration, ¶¶ 9-11.) The court finds this new evidence to be immaterial under Code of Civil Procedure section 657(4). First, it has no discernible relationship to Wallman's new allegations regarding her delayed discovery of Kia's conduct. Second, it duplicates allegations about "excessive oil consumption" that were already contained in the first amended complaint. In other words, Wallman does not explain how this evidence is either "material" or "new." Moreover, she does not explain how she "could not, with reasonable diligence, have discovered and produced it" before. (Code Civ. Proc., § 657(4).)

Because Wallman has not sufficiently showed the application of any statutory ground for a new trial, the motion is DENIED.

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