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: May 28, 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	23CV424748	Robert Pringle v. Volkswagen of America, Inc.	Click on LINE 1 or scroll down for ruling in lines 1-2.
LINE 2	23CV424748	Robert Pringle v. Volkswagen of America, Inc.	Click on LINE 1 or scroll down for ruling in lines 1-2.
LINE 3	23CV427200	Walter James Kubon et al. v. Rosalie Guancione	Click on LINE 3 or scroll down for ruling.
LINE 4	22CV403017	Applied Materials, Inc. v. Huu T. Vu et al.	Click on LINE 4 or scroll down for ruling.
LINE 5	23CV412490	Yue Zhao v. Vu Enterprises, Inc. et al.	OFF CALENDAR
LINE 6	19CV340967	Safe Products for Californians, LLC v. Vital Amine, Inc.	Motion to approve Proposition 65 settlement and consent judgment: notice is proper, and the motion is unopposed. Good cause appearing, the court GRANTS the motion. The court specifically finds that the injunctive relief required by the settlement complies with Proposition 65 and that the civil penalty amount and amount of attorney's fees and costs are reasonable. Plaintiff shall submit the judgment for the court's signature.
LINE 7	19CV358256	Wendy Towner et al. v. Gilroy Garlic Festival Association, Inc. et al.	Click on LINE 7 or scroll down for ruling in lines 7-8.
LINE 8	19CV358256	Wendy Towner et al. v. Gilroy Garlic Festival Association, Inc. et al.	Click on LINE 7 or scroll down for ruling in lines 7-8.

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LINE #	CASE #	CASE TITLE	RULING
LINE 9	22CV394614	Good Samaritan Hospital, L.P. v. MultiPlan, Inc. et al.	Application of Errol J. King, Jr., Taylor J. Crousillac, and Brittany Holt Alexander to appear *pro hac vice*: parties to appear. If no party or third-party (*e.g.*, the State Bar of California) appears at the hearing to object to the application, the court will GRANT it.
LINE 10	22CV394614	Good Samaritan Hospital, L.P. v. MultiPlan, Inc. et al.	Application of Nicole Muñoz Huschka to appear *pro hac vice*: parties to appear. If no party or third-party (*e.g.*, the State Bar of California) appears at the hearing to object to the application, the court will GRANT it.
LINE 11	22CV394614	Good Samaritan Hospital, L.P. v. MultiPlan, Inc. et al.	Application of Andrew G. Jubinsky to appear *pro hac vice*: parties to appear. If no party or third-party (*e.g.*, the State Bar of California) appears at the hearing to object to the application, the court will GRANT it.
LINE 12	22CV397608	Dung Mai v. Trish Thuy Than Ngo	Motion to be relieved as counsel: notice may be proper, but the court does not see a proof of service on file. Parties to appear.

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LINE #	CASE #	CASE TITLE	RULING
LINE 13	24CV428842	City Of Campbell v. Zachary Mark Imre Vass	Petition seeking determination regarding disposition of weapons (and motion to seal portions of the declarations and memorandum of points and authorities in support of the petition): notice is apparently proper, and the court has received no response to the petition or the motion. Good cause appearing, the court GRANTS the petition and orders that the confiscated weapons not be returned to the respondent under Welfare and Institutions Code section 8102, subdivision (c). The court also GRANTS the motion to seal, finding that: there exists an overriding privacy interest of the respondent in his medical condition that overcomes the right of public access to the information; the overriding interest supports maintaining the information under seal; a substantial probability exists that the overriding interest will be prejudiced if the information is not sealed; the proposed sealing is narrowly tailored; and no less restrictive means exist to achieve the overriding interest. The court clerk is directed to maintain the unredacted versions of the Memorandum of Points and Authorities in Support of Petition Seeking Judicial Determination of Weapons and the supporting declarations (all filed 3/1/24) under seal. Public access to the unredacted documents will remain restricted absent a further order from the court.

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Calendar Lines 1-2
Case Name: *Robert Pringle v. Volkswagen of America, Inc.*
Case No.: 23CV424748

I. BACKGROUND

This is a "lemon law" action under the Song-Beverly Consumer Warranty Act by plaintiff Robert Pringle against defendant Volkswagen of America, Inc., a.k.a. Volkswagen Group of America, Inc. ("VW"), and Doe defendants. The lawsuit is based on Pringle's purchase of a 2023 Volkswagen Jetta. Pringle alleges that the vehicle contains "defects which cause the infotainment and instrument screens to shut off while in use, defects which cause the screens to lag, and defects which cause the screens to reboot while driving." (Complaint, ¶ 7.)

The complaint, filed on October 19, 2023, states twelve causes of action: (1) Breach of the Implied Warranty of Merchantability (Civ. Code, § 1794); (2) Breach of the Implied Warranty of Fitness (Civ. Code, § 1794); (3) Breach of Express Warranty (Civ. Code, § 1794); (4) Failure to Promptly Repurchase Product (Civ. Code, § 1793.2, subd. (d)); (5) Failure to Commence Repairs Within a Reasonable Time (Civ. Code, § 1794); (6) Failure to Complete Repairs Within 30 Days (Civ. Code, § 1794); (7) Failure to Maintain Sufficient Service and Repair Facilities (Civ. Code, § 1794); (8) Failure to Make Service Literature and Parts Available (Civ. Code, § 1794); (9) Advertising Defective Merchandise Without Disclosing Defects (Bus. & Prof. Code, §§ 17531 & 17535); (10) Conversion; (11) Negligence; and (12) Violation of Civil Code Section 1796.5. There are no exhibits attached to the complaint.

Currently before the court is a demurrer to and motion to strike portions of the complaint.

II. DEMURRER

A. General Standards

The court, in ruling on a demurrer, treats it "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *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 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.) A plaintiff is not ordinarily required to allege "'each evidentiary fact that might eventually form part of the plaintiff's proof . . . .'" (*Ferrick v. Santa Clara University* (2014) 231 Cal.App.4th 1337, 1341.) In ruling on a demurrer, the allegations of the complaint must be liberally construed, with a view to substantial justice between the parties. (*Glennen v. Allergan, Inc*. (2016) 247 Cal.App.4th 1, 6 (*Glennen*).)

The court considers only the pleading under attack, any attached exhibits, and any facts or documents for which judicial notice is properly requested and may be granted. The court cannot consider extrinsic evidence. Thus, the court has considered the declaration of Eduardo Bravo only to the extent that it discusses the meet-and-confer efforts required by statute. The court has not considered the exhibits attached to this declaration.

Code of Civil Procedure section 430.60 states: "A demurrer shall distinctly specify the grounds upon which any of the objections to the complaint, cross-complaint, or answer are taken. Unless it does so, it may be disregarded." The rules of court also require that the demurrer itself—distinct from a supporting memorandum of points and authorities—specify the target of any objection and the grounds. (See Cal. Rules of Court, rules 3.1103(c), 3.1112(a), 3.1320(a) ["Each ground of demurrer must be in a separate paragraph and must state whether it applies to the entire complaint, cross-complaint, or answer, or to specified causes of action or defenses."]; see also 5 Witkin, *Cal. Procedure* (5th ed., 2019) Pleading, § 953 ["Each ground of demurrer must be in a separate paragraph and must state whether the demurrer applies to the entire complaint, cross-complaint, or answer, or to specified causes of action or defenses."].)

B. Discussion

VW demurs to the complaint's ninth and tenth causes of action on the ground that they fail to state sufficient facts. VW contends that the ninth cause of action fails under Code of Civil Procedure section 430.10, subdivision (e), because Pringle "has an adequate remedy at law" and "cannot set forth sufficient facts." As for the tenth cause of action, VW contends that Pringle "has not and cannot set forth facts sufficient" to state a claim for conversion. (Notice of Demurrer and Demurrer, p. 2:1-14.)

1. Ninth Cause of Action (Bus. & Prof. Code, §§ 17531 & 17535)

The ninth cause of action alleges a violation of the Unfair Competition Law ("UCL"). (Bus. & Prof. Code, §§ 17200 et seq.) "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.)

Section 17531 makes it unlawful for anyone to advertise the sale of defective merchandise without "conspicuously" making it clear—*i.e.*, disclosing—that the merchandise is defective. A violation of this section is actionable under section 17535, which permits "any person who has suffered injury in fact and has lost money or property as a result" of the violation to move for injunctive relief. In this case, the ninth cause of action seeks to enjoin VW "from engaging in any future violations of section 17531." (Complaint, ¶ 55.) Business and Professions Code section 17534.5 states: "Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state."

The court OVERRULES VW's demurrer to the ninth cause of action, as follows.

VW's argument that Pringle cannot seek injunctive relief in the ninth cause of action because the other causes of action in the complaint establish that he has an adequate remedy at

law is not persuasive. To begin with, the availability of a remedy at law does not describe a failure to state sufficient facts under Code of Civil Procedure section 430.10, subdivision (e). Rather, it is simply an argument that other causes of action make the requested relief improper. (See *Caliber Bodyworks, Inc. v. Super. Ct.* (2005) 134 Cal.App.4th 365, 385 ["A demurrer is not the appropriate vehicle to challenge a portion of a cause of action demanding an improper remedy."]; *Kong v. City of Hawaiian Gardens Redevelopment Agency* (2002) 108 Cal.App.4th 1028, 1047 ["a demurrer cannot rightfully be sustained to part of a cause of action or to a particular type of damage or remedy"].) VW's argument ignores the plain language of Business and Professions Code section 17534.5—which, again, clearly states that the UCL remedy is "cumulative" to other potential remedies—and would lead to absurd results if plaintiffs were precluded from bringing false advertising claims seeking an injunction alongside any claims seeking other relief. At the pleading stage, a plaintiff may seek alternative remedies.[1]

In its supporting memorandum, VW makes the additional argument, not properly raised in its notice of demurrer, that the allegations of the ninth cause of action (Complaint, ¶¶ 53-55) fail to identify the undisclosed defect. Even if this argument had been properly raised, the court would find it to be unpersuasive.[2] Again, the allegations of the complaint are liberally construed on demurrer. (See *Glennen, supra*.) As noted above, the complaint describes the alleged defect in paragraph 7 as "defects which cause the infotainment and instrument screens to shut off while in use, defects which cause the screens to lag, and defects which cause the screens to reboot while driving." This is incorporated by reference into the ninth cause of action and is sufficient.

2. Tenth Cause of Action (Conversion)

"Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages." (*Lee v. Hanley* (2015) 61 Cal.4th 1225, 1240.) "To prove a cause of action for conversion, the plaintiff must show the defendant acted intentionally to wrongfully dispose of the property of another." (*Duke v. Superior Court* (2017) 18 Cal.App.5th 490, 508.) "[C]onversion is a strict liability tort. It does not require bad faith, knowledge, or even negligence; it requires only that the defendant have intentionally done the act depriving the plaintiff of his or her rightful possession." (*Voris v. Lampert* (2019) 7 Cal.5th 1141, 1158.)

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[1] VW's argument is based primarily on an unpublished and unpersuasive federal district court case—*Durkee v. Ford Motor Co.* (N.D. Cal. Sept. 2, 2014, No. C 14-0617) [2014 U.S.Dist.LEXIS 122857]—which carries zero weight here.

[2] VW asserts that this alleged failure to identify the defect also renders the ninth cause of action "uncertain and vague," which is an entirely separate ground for demurrer that has *also* not been properly raised in the notice of demurrer. (See Memorandum, p. 5:18-20.) Even if VW had properly raised and noticed the issue of *uncertainty* under Code of Civil Procedure section 430.10, subdivision (f), the court would overrule the demurrer on this basis. "'[D]emurrers for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond.' 'A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures.'" (*A.J. Fistes Corp. v. GDL Best Contractors, Inc*. (2019) 38 Cal.App.5th 677, 695, internal citations omitted.) VW does not come anywhere close to making a showing of incomprehensibility.

The tenth cause of action (Complaint, ¶¶ 57-60) is expressly predicated on the fourth cause of action for failure to repurchase the vehicle promptly, which VW has not challenged. VW's failure to challenge the fourth cause of action on demurrer implicitly concedes that it states sufficient facts.

The court OVERRULES VW's demurrer to the tenth cause of action, as follows.

VW's first argument, that the conversion cause of action is "redundant" or duplicative of Song-Beverly Act claims, does not describe a failure to state sufficient facts under section 430.10, subdivision (e). It is not a valid basis for a demurrer. "This is the sort of defect that, if it justifies any judicial intervention at all, is ordinarily dealt with most economically at trial, or on a dispositive motion such as summary judgment." (*Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858, 890.)

VW's second and third arguments—that the tenth cause of action fails to describe the conversion or establish Pringle's right to restitution—are equally unpersuasive. Again, the complaint must be read as a whole, and it clearly describes the alleged conversion as VW's refusal to repurchase the vehicle. By alleging that VW failed to make restitution as required by Civil Code section 1793.2, subdivision (d) (fourth cause of action), Pringle necessarily alleges that several reasonable attempts to repair the car were made. Otherwise, there would have been no basis for alleging an obligation to make restitution in the first instance. Again, VW has not challenged the fourth cause of action. VW's final argument—that the conversion claim fails to plead an ascertainable sum—is also baseless. The complaint alleges that Pringle seeks to recover the "entire purchase price" of the subject vehicle. (Complaint, ¶ 8.) This is an ascertainable sum.

III. MOTION TO STRIKE PORTIONS OF THE COMPLAINT

A. General Standards

Under Code of Civil Procedure section 436, a court may strike out any irrelevant, false, or improper matter inserted into any pleading, or strike out all or part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. Irrelevant matter includes: (1) an allegation that is not essential to the statement of a claim or defense, (2) an allegation that is neither pertinent to nor supported by an otherwise sufficient claim or defense, and (3) a demand for judgment requesting relief not supported by the allegations of the complaint or cross-complaint. (See Code Civ. Proc., § 431.10, subds. (b), (c).) The grounds for a motion to strike must appear on the face of the challenged pleading or from matters of which the court may take judicial notice. (Code Civ. Proc., § 437, subd. (a); see also *City and County of San Francisco v. Strahlendorf* (1992) 7 Cal.App.4th 1911, 1913.) In ruling on a motion to strike, the court reads the complaint as a whole, all parts in their context, and assumes the truth of all well-pleaded allegations. (See *Turman v. Turning Point of Central California, Inc*. (2010) 191 Cal.App.4th 53, 63, citing *Clauson v. Super. Ct*. (1998) 67 Cal.App.4th 1253, 1255.)

A motion to strike may be brought against a portion of a cause of action that is purportedly defective—*e.g.*, because it seeks an improper remedy. (See *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680.) At the same time, as Courts of Appeal have emphasized, "[W]e have no intention of creating a procedural 'line item veto' for the civil defendant." (*Id*.

at p. 1683.) California Rule of Court 3.1322(a) requires that "[a] notice of motion to strike a portion of a pleading must quote in full the portions sought to be stricken except where the motion is to strike an entire paragraph, cause of action, count, or defense. Specifications in a notice must be numbered consecutively."

B. Discussion

VW seeks to strike two specified portions of the complaint. First, it targets the request for injunctive relief in the ninth cause of action and in the complaint's prayer on the basis that the request: "fails as a matter of law because Plaintiff's underlying causes of action for violations of Business and Professions Code sections 17531 and 17535 fail as a matter of law, and Plaintiff fails to set forth facts sufficient to constitute such causes of action, as described in Defendant's concurrently filed Demurrer to Plaintiff's Complaint. Further, Plaintiff's injunctive relief claim is vague, ambiguous, and uncertain as to what Plaintiff is seeking to enjoin." (Notice of Motion and Motion, p. 2:6-10.)

This portion of the motion to strike is DENIED. Arguments in support of a demurrer do not support a motion to strike, and at any rate, the court is overruling VW's demurrer to the ninth cause of action.

VW also seeks to strike the request for punitive damages in paragraph 60 of the complaint and in the complaint's prayer on the basis that Pringle "has not concisely alleged any actual damages and does not and cannot allege facts supporting 'clear and convincing evidence' of 'oppression, fraud or malice.'" (Notice of Motion and Motion, p. 2:14-15.)

Under the punitive damages statute, "malice" is defined as "conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others." (Civ. Code, § 3294, subd. (c)(1).) "Oppression" is defined as "despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." (Civ. Code, § 3294, subd. (c)(2).) "Despicable conduct," in turn, has been described as conduct that is "so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people." (*Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 331.) To request punitive damages against a corporation, the complaint must allege that an officer, director, or managing agent of the corporation was either personally responsible for the allegedly despicable conduct or that an officer, director, or managing agent of the corporation: (1) had advance knowledge of the despicable conduct and consciously disregarded it; or (2) authorized or ratified the despicable conduct. (Civ. Code, § 3294, subd. (b).) Finally, "fraud" is defined within the statute as "an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." (Civ. Code, § 3294, subd. (c)(3).)

In order to support a prayer for punitive or exemplary damages, the complaint must allege "ultimate facts of the defendant's oppression, fraud or malice." (*Cyrus v. Haveson* (1976) 65 Cal.App.3d 306, 316-317.) Simply pleading the statutory terms "oppression, fraud or malice" is insufficient to allege punitive damages; the complaint must plead facts to support those allegations. (*Blegen v. Superior Court* (1986) 176 Cal.App.3d 503, 510-511; *Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 872.) At the same time, the complaint will be read as a

whole, so that even conclusory allegations may suffice when read in context with facts alleged as to the defendant's wrongful conduct. (*Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6-7; *Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255).

Here, the only mention of punitive damages in the complaint is in paragraph 60, in the tenth cause of action for conversion. This paragraph simply parrots the language of the Civil Code section 3294, and no specific facts are pled anywhere in the complaint to support the allegation. The court therefore GRANTS the motion to strike the punitive damages claim in paragraph 60 of the complaint (and in the prayer for relief) with 10 DAYS' LEAVE TO AMEND.

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Calendar Line 3
Case Name: *Walter James Kubon et al. v. Rosalie Guancione*
Case No.: 23CV427200

I. BACKGROUND

This is an action for quiet title brought by plaintiffs Walter and Vally Kubon (the "Kubons") against defendant Rosalie Guancione ("Guancione"). The Kubons filed their complaint on December 8, 2023, and they served the summons and complaint on Guancione on January 5, 2024. As February 4 was a Sunday, Guancione's response to the complaint was due on February 5, 2024. The Kubons attempted to file a request for entry of default the next day, on February 6, but the filing was rejected by the clerk's office because it listed the wrong filing date for the complaint and was incomplete. The Kubons tried again on February 13; on the same day, Guancione filed a verified answer. The clerk's office allowed the answer to be filed and rejected the request for entry of default on the ground that an answer had been filed. The Kubons tried yet again on February 16, 2024, but this, too, was rejected.

The Kubons have now filed a motion to strike Guancione's answer on the ground that the clerk's office should have entered the default. Guancione opposes. For the reasons that follow, the court denies the motion.

The court notes that the Kubons are self-represented, which is sometimes referred to as appearing "in propria persona." "[W]hen a litigant is appearing in propria persona, he is entitled to the same, but no greater, consideration than other litigants and attorneys. Further, the in propria persona litigant is held to the same restrictive rules of procedure as an attorney." (*Burnete v. La Casa Dana Apartments* (2007) 148 Cal.App.4th 1262, 1267 [internal citations omitted]; see also *Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543 [self-represented litigants "are held to the same standards as attorneys" and must comply with the Code of Civil Procedure]; *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984-985 ["A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation."].)

II. MOTION TO STRIKE GUANCIONE'S ANSWER

A. General Standards

Under Code of Civil Procedure section 436, a court may strike out any irrelevant, false, or improper matter inserted into any pleading, or strike out all or part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. The grounds for a motion to strike must appear on the face of the challenged pleading or from matters of which the court may take judicial notice. (Code Civ. Proc., § 437, subd. (a); see also *City and County of San Francisco v. Strahlendorf* (1992) 7 Cal.App.4th 1911, 1913.) In ruling on a motion to strike, the court reads the challenged pleading as a whole, all parts in their context, and assumes the truth of all well-pleaded allegations. (See *Turman v. Turning Point of Central California, Inc*. (2010) 191 Cal.App.4th 53, 63, [citing *Clauson v. Super. Ct*. (1998) 67 Cal.App.4th 1253, 1255].)

B. Discussion

As an initial matter, the court agrees with Guancione that the Kubons have not complied with Code of Civil Procedure section 435.5, subdivision (a), which requires the moving party to meet and confer "in person, by telephone, or by video conference" before filing a motion to strike. The moving party is also required to file a declaration describing those meet-and-confer efforts, and that is absent here. At the same time, the court disagrees with Guancione that the motion to strike must be denied based on this problem alone. Although a failure to meet and confer may well be indicative of a lack of good faith in bringing the motion—and in this case, there is an ample basis upon which to infer that the Kubons' efforts to obtain a default against Guancione are motivated by a desire to prevail by "gotcha" rather than on the merits[3]—section 435.5, subdivision (a)(4), expressly states that "[a] determination by the court that the meet and confer process was insufficient shall not be grounds to grant or deny the motion to strike."

As for the substance of the motion, the Kubons repeatedly argue that Guancione's answer was erroneously accepted by the clerk's office and that a default should have been entered instead. This is not a valid basis for a motion to strike. Indeed, the Kubons' requested remedy of an order to the clerk's office to enter a default under Code of Civil Procedure section 585 is not a form of relief available under a motion to strike. Even if the Kubons are correct that they filed their request for entry of default minutes or hours before Guancione filed the answer on the same day, and even if the court accepts the proposition (for the sake of argument) that the clerk's office erred in failing to carry out its ministerial duty to enter a default immediately, before it received an answer that same day, that is not an infirmity that appears "on the face of the challenged pleading." (Code Civ. Proc., § 437, subd. (a).)

Alternatively, the Kubons argue that the "time for Defendant to answer passed" before February 13, 2024, and that this alone is a basis for striking the pleading. (See Motion, p. 2:15.) Although it is undisputed that Guancione filed the answer eight days late (Code Civ. Proc., § 412.20, subd. (a)(3)), the general rule is that "a defendant may file an answer, even after the time to answer has expired, unless a default has previously been entered." (*Brown v. Ridgeway* (1983) 149 Cal.App.3d 732, 736; see also *Goddard v. Pollock* (1974) 37 Cal.App.3d 137, 141 ["[I]t is now well established by the case law that where a pleading is belatedly filed, but at a time when a default has not yet been taken, the plaintiff has, in effect, granted the defendant additional time within which to plead and he is not strictly in default."].)

In the end, whether to accept the February 13, 2024 answer or to strike it is a matter left to the court's discretion: "The plaintiff has no absolute right to have the pleading stricken from the files merely because it was not filed in time; and, on the other hand, the defendant has no absolute right to have his belated pleading remain in the files; for a defendant cannot, *as of right*, answer or demur after the expiration of the time prescribed by statute. It is a proper practice, therefore, for the plaintiff to move to strike the pleading from the files; and, in the exercise of a sound discretion, the court very properly may grant such motion strike." (*Cuddahy v. Gragg* (1920) 46 Cal.App. 578, 580-581 [emphasis in original]; see also *Imagistics International, Inc. v. Department of General Services* (2007) 150 Cal.App.4th 581, 588 [citing *Cuddahy*]; *Lincoln v. Lopez* (2022) 77 Cal.App.5th 922, 938-939 [same]; *Bowers v.*

[3] The court takes a dim view of such maneuvers.

Dickerson (1861) 18 Cal. 420, 421 [where an answer is untimely filed and before default the trial court has "absolute power either to retain the answer or to permit another to be filed, or to pursue whatever course in that respect the justice of the case required"].)

The court ultimately concludes that the answer should be allowed to remain in the file and that this case should move forward on the merits. "The policy of the law favors, wherever possible, a hearing on the merits; appellate courts are more disposed to affirm an order where the result compels a trial on the merits than they are when the default judgment is permitted to stand, and it appears that a meritorious defense may be available. Phrased differently, the policy of the law is to have every case tried on its merits and that policy views with disfavor a party who, regardless of the merits, attempts to take advantage of the mistake, inadvertence, or neglect of his adversary." (*Slusher v. Durrer* (1977) 69 Cal.App.3d 747, 753 [internal citations omitted] [reviewing a motion for relief from default].) That principle applies with particular force here, where the Kubons have not shown any prejudice arising from the late filing of the answer—which, again, was a mere *eight days* late.

Indeed, even if the clerk's office had entered a default in this case, the court notes that motions for relief from default under Code of Civil Procedure section 473, subdivision (b), are routinely granted. "Section 473 is often applied liberally where the party in default moves promptly to seek relief, and the party opposing the motion will not suffer prejudice if relief is granted. [Citations.] In such situations 'very slight evidence will be required to justify a court in setting aside the default.' [Citations.] [¶] Moreover, 'because the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default.' [Citation.] An order denying a motion for relief under section 473 is therefore 'scrutinized more carefully than an order permitting trial on the merits. [Citation.]'" (*Murray & Murray v. Raissi Real Estate Develop., LLC* (2015) 233 Cal.App.4th 379, 385.) In view of the foregoing precepts of law, the Kubons' failure to meet and confer in good faith and their unexplained refusal to entertain Guancione's attorney's request "to withdraw default" on the same day the answer was filed (Motion, p. 2:18) weighs heavily against granting this motion.

The motion is DENIED.

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Calendar Line 4
Case Name: *Applied Materials, Inc. v. Huu T. Vu et al.*
Case No.: 22CV403017

In this motion to compel, defendant Capital Asset Exchange & Trading LLC ("CAET") seeks further responses to special interrogatories (Nos. 49-82) from plaintiff Applied Materials, Inc. ("Applied").[4] Each of these interrogatories is essentially the same, seeking further information about the number (*i.e.*, quantity) of each product or "part" that Applied has manufactured since 2013 and that is the subject of Applied's allegations of theft. For example, Interrogatory No. 49 asks, "Identify the number of part number 0010-56201 YOU have manufactured since 2013." As there are apparently 34 individual parts at issue between the parties, the remaining 33 interrogatories request the same information about additional part numbers.

CAET argues that this information is needed in order to defend against Applied's allegation that CAET either knew or should have known that the parts that defendant James Nguyen offered for sale were stolen. Because Applied's allegation of knowledge is based (at least in part) on the notion that CAET should have been suspicious of Nguyen's ability to supply these parts, CAET argues that "if Plaintiff manufactured material quantities of the parts at issue, it would [have been] (and in fact is) unremarkable that such parts were readily available in the secondary market at various and discounted prices . . . . As such, the quantities of the parts manufactured by [Applied] tends to disprove [Applied's] allegations that CAET knew or should have known the parts at issue were stolen." (Memorandum, p. 2:11-13 & p. 2:17-18.)[5]

Applied makes several arguments in response: (1) that its non-public manufacturing information is irrelevant to showing CAET's knowledge, because CAET did not have access to this information and therefore could not have relied on it, and there were other "red flags" that should have alerted CAET as to Nguyen; (2) that its manufacturing information is not relevant to proving or disproving whether CAET's sales or offers for sale included Nguyen's stolen inventory; (3) that the manufacturing information is irrelevant to the pricing and cost analysis contained in the declaration of Scott Russell in support of Applied's request for default judgment against Nguyen (and is generally irrelevant to any damages calculation); and (4) that it never admitted that this information was relevant when it previously provided manufacturing data with respect to one part number in responses to Interrogatories Nos. 47 and 48.[6] Applied notes that during its meet-and-confer communications with CAET, it provided a sworn declaration from one of its Product Line Managers, Hector Sepulveda, who explained that Applied does not keep the requested manufacturing information in the normal course of

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[4] In a December 5, 2023 order, the court used the abbreviation "CAE," but the defendant consistently refers to itself as "CAET," so the court will use that abbreviation going forward.
[5] The court grants CAET's request for judicial notice of the complaint and the declaration of Scott Russell under Evidence Code section 452, subdivision (d). The court does not take judicial notice of any disputed facts contained within the Russell declaration.
[6] Applied also points out that it objected that the number of CAET's special interrogatories far exceeds the presumptive limit of 35, but it does not rely on this objection in opposing this motion (and the court does not find the objection to be compelling in any event).

business and that it would take "two to three Applied engineers or material planners between 85 and 102 total hours to compile the requested information."[7]

The court ultimately concludes that information about the quantities of these Applied parts available on the market (including the secondary market) is potentially relevant to CAET's claim that it did not know—and should not reasonably have known—that Nguyen's inventory was suspicious. While Applied is correct that this evidence is not *directly* probative of CAET's actual or constructive knowledge about Applied's parts—indeed, it is not likely to be the most relevant evidence at trial regarding the issue of CAET's knowledge—it is still indirectly probative, because it could *corroborate* CAET's claim that there were already a lot of these parts on the market, making Nguyen's possession of them seem less like a red flag. Therefore, CAET is entitled to at least some of this discovery.

At the same time, the court is not convinced that information about Applied's *manufacturing* necessarily should be compelled, particularly given Applied's assertion that it does not maintain this information in the ordinary course of business and that compiling it would be unduly burdensome. Instead, it seems that the quantities of Applied parts available on the market would be most tied to Applied's *sales* for these parts, rather than its manufacturing. Indeed, CAET mentions that this was one of the compromises that it offered to Applied in the course of their meet-and-confer discussions: that instead of producing information about the number of parts manufactured, Applied could "provide the number of parts *sold*." (Memorandum, p. 4, fn. 5 [emphasis in original].) Applied's opposition does not address this compromise proposal at all. Applied certainly does not aver that obtaining the sales data for each part would be as burdensome as (or more burdensome than) obtaining manufacturing data for each part. Of course, the court has no information about the internal records of a company such as Applied,[8] but sales information for products seems to be something that would be far more likely to be tracked in the regular course of business and far more easily ascertainable.

Thus, just as the court found Applied's discovery requests to be overbroad in its December 5, 2023 order but nevertheless ordered CAET to respond to a narrowed version of them, so the court now finds CAET's special interrogatories to be overbroad but orders Applied to respond to a narrowed version of them. The court finds that the following narrowed format for each interrogatory would be appropriate: "Identify the quantity of part number [*xxxx-xxxxx*] YOU sold between 2018 and 2022."[9] The court orders Applied to serve answers to Interrogatories Nos. 49-82, as modified herein, within 30 days of notice of entry of this order.

The motion is GRANTED IN PART and DENIED IN PART.

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[7] The court overrules CAET's written objections to the Sepulveda declaration, which it improperly submits with its *reply* papers, even though it has been in possession of this declaration since March 1, 2024, more than three weeks before it filed this motion. Even if CAET had properly submitted its objections to this declaration with its opening papers, the court would overrule them as conclusory and unpersuasive.

[8] Which is why the parties should have expended greater efforts to meet and confer to reach a compromise. It is always better for the parties to reach a *knowledgeable* compromise than for them to rely on the court to impose a non-knowledgeable and inevitably speculative solution.

[9] "[S]ince 2013" is also unreasonably broad on its face.

Each side has requested monetary sanctions of $7,500 against the other. The court DENIES both sides' requests for sanctions.

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Calendar Lines 7-8
Case Name: *Wendy Towner et al. v. Gilroy Garlic Festival Association, Inc. et al.*
Case No.: 19CV358256

This case is currently on appeal. Although appellate issues are not something in which this court typically gets involved, defendant/respondent First Alarm Security & Patrol, Inc. ("First Alarm") has filed a "motion to modify plaintiffs' designation of the record on appeal" in this court, and defendant/respondent City of Gilroy (the "City") has joined in that motion. First Alarm and the City object to plaintiffs/appellants' election to proceed with an appendix instead of a clerk's transcript, and it does appear that rule 8.124(a)(1) of the California Rules of Court provides for the "superior court" to "order[] otherwise on a motion served and filed within 10 days after the notice of election is served." Accordingly, the court will address the motion.

First Alarm and the City contend that because the trial court record is so voluminous in this case, it will be "time-consuming," "highly cumbersome," and "inefficient" for their counsel to comb through the record to ensure that an appendix is complete. (Memorandum, pp. 4:1, 4:16, 4:23, 6:15-16.) They would prefer that the trial court clerk's office undertake this work for a clerk's transcript, in order to allow the respondents to realize some "cost savings." (*Id.* at p. 4:12.) The court finds this argument to be singularly uncompelling and based on a fundamental lack of understanding of the resources available to the trial court clerk's office. The fact that the trial court record in this case is unusually voluminous is an argument *in favor of* plaintiffs' election to proceed by way of an appendix (or appendices), not an argument against it. As plaintiffs note, "'although the clerk and reporter are subject to deadlines for preparing the record, they often fail to meet these deadlines; and completion of the record can be delayed for months, particularly if the record is large.'" (Opposition, p. 2:7-10 [quoting Eisenberg et al., *Cal. Practice Guide: Civil Appeals and Writs* (The Rutter Group).) The court agrees with plaintiffs that the reasons advanced by First Alarm and the City in their motion "could be said to exist in any case," and they "have shown nothing special about the circumstances of this case." (Opposition, p. 2:13-14.)

The court DENIES the motion. Of course, this order is fully subject to modification by the Court of Appeal, which can always make the ultimate decision as to what form the record on appeal should take.

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