

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

Department 20, Honorable Socrates Peter Manoukian, Presiding

Courtroom Clerk: Hien-Trang Tran-Thien

191 North First Street, San Jose, CA 95113

Telephone: 408.882.2320

Department20@scscourt.org

"Every case is important" "No case is more important than any other." —
United States District Judge Edward Weinfeld (<https://www.nytimes.com/1988/01/18/obituaries/judge-edward-weinfeld-86-dies-on-us-bench-nearly-4-decades.html>)

"The Opposing Counsel on the Second-Biggest Case of Your Life Will Be the Trial Judge on the
Biggest Case of Your Life." — Common Wisdom.

As Shakespeare observed, it is not uncommon for legal adversaries to "strive mightily, but eat and
drink as friends." (Shakespeare, *The Taming of the Shrew*, act I, scene ii.)" (*Gregori v. Bank of
America* (1989) 207 Cal.App.3d 291, 309.)

Counsel is duty-bound to know the rules of civil procedure. (See *Ten Eyck v. Industrial Forklifts Co.*
(1989) 216 Cal.App.3d 540, 545.) The rules of civil procedure must apply equally to parties represented
by counsel and those who forgo attorney representation. (*McClain v. Kissler* (2019) 39 Cal.App.5th 399.)

By Standing Order of this Court, all parties appearing in this Court are expected to comply with the
Code of Professionalism adopted by the Santa Clara County Bar Association:

<https://www.sccba.com/code-of-professional-conduct/>

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DATE: Tuesday, 10 October 2023

TIME: 9:00 A.M.

**Please note that for the indefinite future, all hearings will be conducted remotely as the Old
Courthouse will be closed. This Department prefers that litigants use Zoom for Law and
Motion and for Case Management Calendars. Please use the Zoom link below.**

"A person's name is to him or her the sweetest and most important sound in any language."—Dale Carnegie. All Courts of California celebrate the diversity of the attorneys and the litigants who appear in our Courts. Do not hesitate to correct the Court or Court Staff concerning the pronunciation of any name or how anyone prefers to be addressed. As this Court is fond of saying, "with a name like mine, I try to be careful how I pronounce the names of others." Please inform the Court how you, or if your client is with you, you and your client prefer to be introduced. The Court encourages the use of diacritical marks, multiple surnames and the like for the names of attorneys, litigants and in court papers. You might also try www.pronouncenames.com but that site mispronounces my name.

You may use these links for Case Management Conferences and Trial Setting Conferences without Court permission. Informal Discovery Conferences and appearances on Ex Parte applications will be set on Order by the Court.

Join Zoom Meeting
<https://scu.zoom.us/j/96144427712?pwd=cW1JYmg5dTdsc3NKNFBpSjlEam5xUT09>
Meeting ID: 961 4442 7712
Password: 017350

Join by phone:
+1 (669) 900-6833
Meeting ID: 961 4442 7712

One tap mobile
+16699006833,,961 4442 7712#

APPEARANCES.

Appearances are usually held on the Zoom virtual platform. However, we are currently allowing in court appearances as well. If you do intend to appear in person, please advise us when you call to contest the tentative ruling so we can give you current instructions as to how to enter the building.

Whether appearing in person or on a virtual platform, the usual custom and practices of decorum and attire apply. (See *Jensen v. Superior Court (San Diego)* (1984) 154 Cal.App.3d 533.). Counsel should use good quality equipment and with sufficient bandwidth. Cellphones are very low quality in using a virtual platform. Please use the video function when accessing the Zoom platform. The Court expects to see the faces of the parties appearing on a virtual platform as opposed to listening to a disembodied voice.

For new Rules of Court concerning remote hearings and appearances, please review California *Rules of Court*, rule 3.672.

This Court expects all counsel and litigants to comply with the Tentative Rulings Procedures that are outlined in Local Civil Rule 8(E) and *California Rules of Court*, rule 3.1308. If the Court has not directed argument, oral argument must be permitted only if a party notifies all other parties and the Court at (408) 808-6856 before 4:00 p.m. on the court day before the hearing of the party's intention to appear. A party must notify all other parties by telephone or in person. A failure to timely notify this Court and/or the opposing parties may result in the tentative ruling being the final order in the matter.

Please notify this Court immediately if the matter will not be heard on the scheduled date. *California Rules of Court*, rule 3.1304(b). If a party fails to appear at a law and motion hearing without having given notice, this Court may take the matter off calendar, to be reset only upon motion, or may rule on the matter. *California Rules of Court*, rule 3.1304(d). A party may give notice that he or she will not appear at a law and motion hearing and submit the matter without an appearance unless this Court orders otherwise. This Court will rule on the motion as if the party had appeared. *California Rules of Court*, rule 3.1304(c). Any uncontested matter or matters to which stipulations have been reached can be processed through the Clerk in the usual manner. Please include a proposed order.

All proposed orders and papers should be submitted to this Department's e-filing queue. Do not send documents to the Department email unless directed to do so.

While the Court will still allow physical appearances, all litigants are encouraged to use the Zoom platform for Law & Motion appearances and Case Management Conferences. Use of other virtual platform devices will make it difficult for all parties fully to participate in the hearings. Please note the requirement of entering a password (highlighted above.) As for personal appearances, protocols concerning social distancing and facial coverings in compliance with the directives of the Public Health Officer will be enforced. Currently, facemasks are not required in all courthouses. If you appear in person and do wear a mask, it will be helpful if you wear a disposable paper mask while using the courtroom microphones so that your voice will not be muffled.

Individuals who wish to access the Courthouse are advised to bring a plastic bag within which to place any personal items that are to go through the metal detector located at the doorway to the courthouse.

Sign-ins will begin at about 8:30 AM. Court staff will assist you when you sign in. If you are using the Zoom virtual platform, it will be helpful if you "rename" yourself as follows: in the upper right corner of the screen with your name you will see a blue box with three horizontal dots. Click on that and then click on the "rename" feature. You may type your name as: **Line #/name/party**. If you are a member of the public who wishes to view the Zoom session and remain anonymous, you may simply sign in as "Public."

CIVILITY.

In the 48 years that this Judge has been involved with the legal profession, the discussion of the decline in civility in the legal profession has always been one of the top topics of continuing education classes.

This Court is aware of a study being undertaken led by Justice Brian Currey and involving various lawyer groups to redefine rules of civility. This Judge has told Justice Currey that the lack of civility is due more to the inability or unwillingness of judicial officers to enforce the existing rules.

The parties are forewarned that this Court may consider the imposition of sanctions against the party or attorney who engages in disruptive and discourteous behavior during the pendency of this litigation.

COURT REPORTERS.

This session will not be recorded. No electronic recordings, video, still photography or audio capture of this live stream is allowed without the expressed, written permission of the Superior Court of California, County of Santa Clara. State and Local Court rules prohibit photographing or recording of court proceedings whether in the courtroom or while listening on the Public Access Line or other virtual platform, without a Court Order. See Local General Rule 2(A) and 2(B); *California Rules of Court*, rule 1.150.

This Court no longer provides for Court Reporters in civil actions except in limited circumstances. If you wish to arrange for a court reporter, please use Local Form #CV-5100. All reporters are encouraged to work from a remote location. Please inform this Court if

any reporter wishes to work in the courtroom. This Court will approve all requests to bring a court reporter. Counsel should meet and confer on the use of a court reporter so that only one reporter appears and serves as the official reporter for that hearing.

PROTOCOLS DURING THE HEARINGS.

During the calling of any hearing, this Court has found that the Zoom video platform works very well. But whether using Zoom or any telephone, it is preferable to use a landline if possible. IT IS ABSOLUTELY NECESSARY FOR ALL INDIVIDUALS TO SPEAK SLOWLY. Plaintiff should speak first, followed by any other person. All persons should spell their names for the benefit of Court Staff. Please do not use any hands-free mode if at all possible. Headsets or earbuds of good quality will be of great assistance to minimize feedback and distortion.

The Court will prepare the Final Order unless stated otherwise below or at the hearing. Counsel are to comply with **California Rules of Court**, rule 3.1312.

TROUBLESHOOTING TENTATIVE RULINGS.

To access a tentative ruling, move your cursor over the line number, hold down the “Control” key and click. If you see last week’s tentative rulings, you have checked prior to the posting of the current week’s tentative rulings. You will need to either “REFRESH” or “QUIT” your browser and reopen it. Another suggestion is to “clean the cache” of your browser. Finally, you may have to switch browsers. If you fail to do any of these, your browser may pull up old information from old cookies even after the tentative rulings have been posted.

This Court’s tentative ruling is just that—tentative. Trial courts are not bound by their tentative rulings, which are superseded by the final order. (See *Faulkinbury v. Boyd & Associates, Inc.* (2010) 185 Cal.App.4th 1363, 1374-1375.) The tentative ruling allows a party to focus his or her arguments at a subsequent hearing and to attempt to convince the Court the tentative should or should not become the Court’s final order. (*Cowan v. Krayzman* (2011) 196 Cal.App.4th 907, 917.) If you wish to challenge a tentative ruling, please refer to a specific portion of the tentative ruling to which you disagree.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 1	21CV387570	Aegis Insurance Co. vs. Friendly Wholesalers of California d.b.a. SeeMoCars et al.	Motion of Cross-Defendant Affinity Home Enterprises Inc. d.b.a. Arrow Pacific Insurance Services To Strike Portions of the Second Amended Cross-Complaint Filed By Defendant/Cross-Complainant Azzam Abdo. The motion to strike punitive damages by cross-defendant Arrow is MOOT. The motion to strike the request for restitution by cross-defendant Arrow is DENIED. SEE ATTACHED TENTATIVE RULING.
LINE 2	21CV387570	Aegis Insurance Co. vs. Friendly Wholesalers of California d.b.a. SeeMoCars et al.	Demurrer of Cross-Defendant Affinity Home Enterprises Inc. d.b.a. Arrow Pacific Insurance Services To Second Amended Cross-Complaint Filed By Defendant/Cross-Complainant Azzam Abdo. The demurrer to the entire SACC for lack of duty by cross-defendant Arrow is OVERRULED. The demurrer to the second cause of action by cross-defendant Arrow is OVERRULED in its entirety. The demurrer to the third, fourth, fifth, and seventh causes of action by cross-defendant Arrow is SUSTAINED WITH 10 DAYS’ LEAVE TO AMEND for failure to state a claim. The demurrer to the eighth cause of action by cross-defendant Arrow is SUSTAINED WITHOUT LEAVE TO AMEND for failure to state a claim. SEE LINE #1 FOR TENTATIVE RULING.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 3	21CV387570	Aegis Insurance Co. vs. Friendly Wholesalers of California d.b.a. SeeMoCars et al.	<p>Demurrer of Cross-Defendant United Auto Corporation to Second Amended Cross-Complaint Filed By Defendant/Cross-Complainant Azzam Abdo.</p> <p>The demurrer to the second, third, fourth, fifth, and seventh causes of action by cross-defendant UACC is SUSTAINED WITH 10 DAYS' LEAVE TO AMEND for failure to state a claim.</p> <p>SEE LINE #1 FOR TENTATIVE RULING.</p>
LINE 4	22CV403642	Ricoh USA, Inc. vs. Creative Montessori Learning Center, Inc.; Creative Montessori Learning Center.	<p>Motion of Plaintiff for Judgment on the Pleadings.</p> <p>On 08 August 2023, this Court struck the defendant corporation for failing to have taken by competent counsel. On the following day, plaintiff filed an application for default judgment.</p> <p>Is this matter MOOT?</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 5	21CV390050	Holt-Pacific Associates vs Subway Real Estate, LLC; Doctor's Associates, Inc.; Letan Group, LLC;cChirayu Patel; a.k.a. Akki Patel.	<p>Motion Of Plaintiff Holt-Pacific Associates To Compel Defendant Letap Group LLC To Provide Further Discovery Responses (Requests for Production of Documents, Form Interrogatories, Requests for Admissions) and Request For Sanctions.</p> <p>Defendant did not file a memorandum of points and authorities in opposition to the motion. (See <i>Schaeffer Land Trust v. San Jose City Council</i> (1989) 215 Cal.App.3d 612, 619, fn. 2 [a point which is merely suggested by a party's counsel, with no supporting argument or authority, is deemed to be without foundation and requires no discussion]; <i>County of Sacramento v. Lackner</i> (1979) 97 Cal. App. 3d 576, 591 [In a challenge to a judgment, it is incumbent upon an appellant to present argument and authority on each point made. Arguments not presented will generally not receive consideration].)</p> <p>The motion to compel further responses GRANTED. Wanting party shall provide code compliant responses without objections within 10 days of the filing and service of this order.</p> <p>This Court will note the contention of the responding party that the sanctions being sought is excessive. This Court will agree somewhat and will award sanctions to plaintiff in the amount of \$5,500.00 and 10 days of the filing and service of this order.</p> <p>NO FORMAL TENTATIVE RULING.</p>

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 6	21CV390050	Holt-Pacific Associates vs Subway Real Estate, LLC; Doctor's Associates, Inc.; Letan Group, LLC; Chirayu Patel; a.k.a. Akki Patel.	<p>Motion Of Plaintiff Holt-Pacific Associates To Compel Defendant Chirayu Patel To Provide Further Discovery Responses (Form-General, Set One), And Request For Production Of Documents and Request For Sanctions.</p> <p>Defendant did not file a memorandum of points and authorities in opposition to the motion. (See Schaeffer Land Trust v. San Jose City Council (1989) 215 Cal.App.3d 612, 619, fn. 2 [a point which is merely suggested by a party's counsel, with no supporting argument or authority, is deemed to be without foundation and requires no discussion]; County of Sacramento v. Lackner (1979) 97 Cal. App. 3d 576, 591 [In a challenge to a judgment, it is incumbent upon an appellant to present argument and authority on each point made. Arguments not presented will generally not receive consideration].)</p> <p>The motion to compel further responses GRANTED. Wanting party shall provide code compliant responses without objections within 10 days of the filing and service of this order.</p> <p>This Court will note the contention of the responding party that the sanctions being sought is excessive. This Court will agree somewhat and will award sanctions to plaintiff in the amount of \$5,500.00 and 10 days of the filing and service of this order.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 7	22CV398594	Jessica Madani v. General Motors, LLC	<p>Further Hearing On Motion Of Plaintiff To Compel Defendants To Further Produce Documents</p> <p>This motion was first heard on 31 August 2023 and continued to this date to allow the parties to meet and confer concerning the narrowing of the definition of the claimed defects. Both parties were given the opportunity to file supplemental briefs. Plaintiff chosen to do.</p> <p>Plaintiff contends that the parties are at an impasse because General Motors refuses to cooperate on narrowing the definition of the defects. Homeowners refused to avoid a date for when it will lose the requested women all policy and procedures as well any internal occasion documents.</p> <p>The motion is GRANTED and General Motors is to provide code compliant responses to the modified requests as set forth in plaintiff's supplemental brief within 20 days of the filing and service of this order.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 8	22CV402532	Scott Johnson vs Taqueria El Ranchito, Inc., a California Corporation	<p>Motion of Cris C. Vaughn, Esq. To Withdraw As Attorney of Record.</p> <p>On 02 October 2023, Amanda Seabock was substituted in as counsel of record for plaintiff.</p> <p>Is this motion MOOT?</p> <p>NO FORMAL TENTATIVE RULING.</p>

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 9	22CV408294	Jeffrey Rocca v. General Motors, LLC	<p>Motion Of Plaintiff To Compel Defendant To Provide Further Responses To Plaintiff's Request For Production Of Documents, Set One.</p> <p>On this Court's own motion, the hearing will be CONTINUED to 16 November 2023 at 9:00 AM.</p> <p>SEE ATTACHED TENTATIVE RULING.</p>
LINE 10	18CV328418	Capital One Bank (USA), N.A. vs Mohammad Lahooti	<p>Motion Of Defendant Thuy Tran To Dismiss Lawsuit.</p> <p>This matter was continued from 05 September 2023. The matter was because no opposition papers have been filed. It appears party has nothing to do with this lawsuit.</p> <p>OFF CALENDAR.</p>
LINE 11	23CV420615	Advantest America, Inc. and Advantest test solutions, Inc. vs Samer Kabbani; Lattice Innovation, Inc.; AEM holdings, Ltd.; Wavem US, Inc.	<p>Hearing on Motion Of Petitioners for Confirmation of Arbitration Award.</p> <p>No party filed opposition to this motion. The motion is GRANTED and petitioners are to prepare an appropriate judgment and submit it to this Department via the clerk's e-filing queue.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 12	2010-1-CV-186686	McDowell Mountain Ranch Community Association vs Giana Scarpelli; John Doe Scarpelli.	<p>Motion of Plaintiff McDowell Mountain Community Association for Attorney's Fees.</p> <p>No party filed opposition to this motion.</p> <p>The Motion is GRANTED. Plaintiff is entitled to an award of attorneys fees and costs in the amount of \$4,754.17, which includes the attorneys fees and costs incurred in the making of this motion.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 13			SEE ATTACHED TENTATIVE RULING.
LINE 14			SEE ATTACHED TENTATIVE RULING.
LINE 15			SEE ATTACHED TENTATIVE RULING.
LINE 16			SEE ATTACHED TENTATIVE RULING.
LINE 17			SEE ATTACHED TENTATIVE RULING.
LINE 18			SEE ATTACHED TENTATIVE RULING.
LINE 19			SEE ATTACHED TENTATIVE RULING.
LINE 20			SEE ATTACHED TENTATIVE RULING.
LINE 21			SEE ATTACHED TENTATIVE RULING.
LINE 22			SEE ATTACHED TENTATIVE RULING.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 23			SEE ATTACHED TENTATIVE RULING.
LINE 24			SEE ATTACHED TENTATIVE RULING.
LINE 25			SEE ATTACHED TENTATIVE RULING.
LINE 26			SEE ATTACHED TENTATIVE RULING.
LINE 27			SEE ATTACHED TENTATIVE RULING.
LINE 28			SEE ATTACHED TENTATIVE RULING.
LINE 29			SEE ATTACHED TENTATIVE RULING.
LINE 30			SEE ATTACHED TENTATIVE RULING.

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Calendar Line 1

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

DEPARTMENT 20

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(For Clerk's Use Only)

CASE NO.: 21CV387570 Aegis Security Insurance Co. v. Friendly Wholesalers of California etc.

DATE: 10 October 2023 TIME: 9:00 am LINE NUMBERS: 01, 02, 03

This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2nd Floor, 161 North First Street, San Jose. Any party opposing the tentative ruling must call Department 20 at 408.808.6856 and the opposing party no later than 4:00 PM on 09 October 2023. Please specify the issue to be contested when calling the Court and Counsel.

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Orders on:

- (1) Demurrer and Motion to Strike to the Second Amended Cross-Complaint by Cross-Defendant Arrow Pacific Insurance Services; and**
- (2) Demurrer to the Second Amended Cross-Complaint by Cross-Defendant United Auto Credit Corporation.**

I. Statement of Facts.

This is an action for fraud, breach of contract and unfair business practices.

According to the second amended cross-complaint ("SACC"), cross-defendant Jalal Shreim ("Jalal") was the sole shareholder, president and CEO of Friendly Wholesalers of California ("FWC"), formerly a successful rug business in San Jose, California.¹ (SACC at ¶¶ 2, 4, 14.) Cross-defendant Mohamad Shreim ("Mohamad") was the son of Jalal and worked with FWC since 2015. (Id. at ¶ 2.)

In 2014, Jalal, Mohamad, and FWC experienced financial difficulties and requested loans from cross-complainant Azzam Abdo (self-represented) ("Abdo"). (SACC at ¶ 15.) Thereafter, in 2015, FWC started a used cars dealership identified as "SeeMoCars." (Id. at ¶ 16.) Jalal and FWC realized they could not pay back the loan and asked Abdo if he would convert the loans into an investment which he agreed to. (Ibid.) The only term for the loans' conversion was that Abdo would be president of SeeMoCars while Jalal would continue as president of the rug business. (Ibid.)

¹ At times, the court refers to some parties by their first names for purposes of clarity. No disrespect is intended. (See *Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1136, fn. 1.)

In mid-August 2015, Abdo and Jalal disagreed about the role of Mohamad at SeeMoCars. (SACC at ¶ 17.) As a consequence, Abdo resigned his position as president of SeeMoCars and demanded to have his name removed from all FWC documents, and have all the money (loans converted to investment) returned to him. (Ibid.) Jalal accepted Abdo's resignation and agreed to payback the money which officially ended their business relationship. (Ibid.) Jalal breached the agreement and did not remove Abdo's name from FWC documents nor did he return Abdo's money. (Ibid.)

On 1 June 2015, the first surety bond (**#10027675**) from cross-defendant Hudson Insurance Group ("Hudson") became effective. (SACC at ¶ 18.) The term of the bond was one year during which no claims were made on this surety bond. (Ibid.)

On 1 June 2016, Hudson renewed its surety bond (**#10027675**) for another year, expiring on 31 May 2017. (SACC at ¶ 19.) Hudson however cancelled the surety bond following a claim made by Kim Scott ("Scott") for \$112, as Scott had purchased a vehicle in 2013 well before FWC was in the car business. (Ibid.)

FWC, who requires a surety bond to operate according to DMV rules, approached cross-defendant Arrow Pacific Insurance Services ("Arrow") to find a replacement for Hudson's cancelled surety bond. (SACC at ¶ 21.) Arrow is a broker who provides services to companies looking for surety bonds. (Ibid.)

On 11 October 2016, Myron Sanchez ("Sanchez"), Arrow's manager, sent an application/indemnity for a surety bond from Hudson. (Ibid.) Arrow was informed that the application/indemnity would be signed on behalf of Jalal and Abdo wrote such fact on the application. (Ibid.) Sanchez acknowledged that, which led Abdo to believe that Jalal would be the responsible party for the indemnity since the signing was on his behalf. (Ibid.)

Hudson approved the application/indemnity signed on behalf of Jalal and issued a new surety bond (**#10048183**), effective 17 October 2016 to FWC. (SACC at ¶ 22.) Hudson did not object to the fact that Abdo was signing on behalf of Jalal nor did it represent anything to the contrary that Jalal is the only responsible party to the surety bond. (Ibid.) Both Hudson and Arrow intentionally failed to disclose that signing on behalf of Jalal will not relieve Abdo for responsibility and accountability to indemnity and thus the disclosure was deceptive. (Ibid.) In reliance on Arrow and Hudson's intentional concealment and nondisclosure, Abdo signed the application/indemnity on behalf of Jalal. (Ibid.)

On 3 November 2016, Arrow informed FWC that Hudson's surety bond (**#10048183**) would be cancelled, effective 22 November 2016. (SACC at ¶ 23.) Arrow found another company that provides surety bonds, cross-defendant Aegis Security Insurance Company ("Aegis"). (Id. at ¶ 25.) Once again, Abdo signed the Aegis application and indemnity on behalf of Jalal and sent it back to Arrow on 13 November 2016. (Ibid.) Aegis approved the application/indemnity and offered a surety bond to FWC, effective 21 November 2016. (Ibid.) Both Aegis and Arrow intentionally failed to disclose that signing on behalf of Jalal will not relieve Abdo for responsibility and accountability to indemnity and thus the disclosure was deceptive. (Ibid.) In reliance on Arrow and Aegis's intentional concealment and nondisclosure, Abdo signed the application/indemnity on behalf of Jalal. (Ibid.)

In September 2017, following termination of the Abdo/FWC relationship, FWC defaulted on payments for flooring companies. (SACC at ¶ 31.) FWC closed its gates and eventually hid all vehicles in its facilities that were owned by flooring companies and others. (Ibid.) Thereafter, FWC and Aegis were bombarded with claims. (Ibid.) All claims were made on the Aegis surety bond as it was the only bond in effect during this time. (Ibid.)

Aegis never told Abdo of any amount paid on any claim nor did it ever bill him. (SACC at ¶ 32.) Thus, on 27 August 2018, Abdo received a letter from cross-defendant Jomax Recovery Services ("Jomax"), a collection agency, seeking to collect on behalf of Aegis the principal amount of \$6,055.84. (Ibid.) In response, Abdo stated the contract was signed on behalf of Jalal. (Ibid.) Later, on 30 December 2020, Aegis reported additional claims to Jomax now totaling \$22,350.84. (Ibid.) Abdo was not informed of this new claim nor was he billed for it. (Ibid.) Abdo also alleges Jomax, collecting on behalf of Hudson and Aegis, reported derogatory statements about him to the credit reporting agencies. (Id. at ¶ 27.)

On 1 May 2017, cross-defendant United Auto Credit Corporation ("UACC") and FWC entered into a written agreement where FWC agreed to sell and UACC agreed to purchase certain retail installment contracts. (SACC at ¶ 37.) UACC, FWC, Mohamad and Jalal presented, orally and in writing, that at the time of the contract, it will have a good marketable title and complete all forms necessary to perfect a valid and enforceable security

interest of any finance entity including UACC in the vehicle. (Id. at ¶ 38.) Further, FWC, Mohamad, Jalal, and UACC represented that no vehicle would be sold or financed without the title. (Ibid.)

On 18 July 2017, after the FWC-Abdo relationship was terminated, UACC purchased the retail installment sale contract for Ms. Riley's 2014 Nissan Altima ("car" or "vehicle") from FWC who failed to perfect UACC's first priority security interest in the car. (SACC at ¶ 39.) That failure obligated FWC to purchase back the contract from UACC. (Ibid.) FWC however failed to respond to UACC's demand for purchasing the contract back for the car making the bonding company, Aegis, responsible for Ms. Riley's damages in the amount of \$12,945.45. (Ibid.) UACC demanded payments from Ms. Riley for the car even though the vehicle could not be driven without title and registration or license plate which UACC failed to deliver. (Ibid.) Ms. Riley, who already paid \$4,500 for the car, did not want to continue making payments for a vehicle that could not be driven. (Ibid.)

Since UACC demanded that Ms. Riley continue to pay for the vehicle for reasons stated above, and because Aegis denied her claim, Ms. Riley filed a lawsuit against FWC, UACC, and Aegis on 18 September 2019 in Santa Clara County Superior Court. (SACC at ¶ 40.) Ultimately, Aegis reached a settlement with Ms. Riley in the amount of \$15,695 but never tendered any demand or claim on Abdo until the filing of this action. (Id. at ¶ 41.) UACC, as the financing company for Ms. Riley's car, possesses ownership of the vehicle. (Ibid.)

On 20 August 2021, Aegis filed a complaint against FWC and Abdo for breach of contract and common counts for amounts sustained in connection with a Commercial Bond Application and Indemnity Agreement.²

On 24 January 2022, Abdo filed his answer alleging a general denial and affirmative defenses. He also filed a cross-complaint setting forth causes of action for:

Breach of Implied Contract;

- Unlawful, Unfair, or Fraudulent Business Practices, Business & Professions Code, § 17200, et seq.;
- Fraud and Deceit;
- Negligent Misrepresentation;
- Intentional Misrepresentation;
- Violation of the Consumer Credit Reporting Agencies Act, Civil Code, § 1785.1, et seq.;
- Violation of the Rosenthal Fair Debt Collection Practices Act, Civil Code, § 1788, et seq.

On 2 March 2022, cross-defendant Aegis filed a demurrer and motion to strike to the cross-complaint. The hearing was set for 31 May 2022. Prior to the hearing, the court posted a tentative ruling overruling the demurrer to the first cause of action and sustaining the demurrer with leave to amend to the second, third, fifth, sixth, seventh, and eighth causes of action. The motion to strike emotional distress damages allegations was granted with leave to amend and the motion to strike the fifth cause of action was rendered moot by the sustaining of the demurrer. Neither party challenged the tentative ruling which became the final order of the court.

On 9 June 2022, cross-complainant Abdo filed an amendment to the cross-complaint identifying Does 3, 4, and 5 as Arrow, Hudson, and Martin Ginsberg ("Ginsberg") respectively.

On 20 July 2022, Abdo filed a first amended cross-complaint ("FACC") alleging causes of action for:

- (1) Unlawful, Unfair, or Fraudulent Business Practices, Business & Professions Code, § 17200, et seq.;
- (2) Fraud, Deceit and Concealment;
- (3) Negligent Misrepresentation;

² This Department intends to comply with the time requirements of the Trial Court Delay Reduction Act (**Government Code**, §§ 68600-68620). The California Rules of Court state that the goal of each trial court should be to manage limited and unlimited civil cases from filing so that 100 percent are disposed of within 24 months. (**California Rules of Court, Rule 3.714(b)(1)(C) and (b)(2)(C).**)

- (4) Intentional Misrepresentation;
- (5) Violation of the Rosenthal Fair Debt Collection Practices Act, Civil Code, § 1788, et seq.;
- (6) Elder Abuse;
- (7) Interpleader.

On 10 August 2022, cross-defendant Aegis filed a motion to strike the claims for elder abuse and interpleader. The hearing was set for 25 October 2022. Prior to the hearing, the court posted a tentative ruling granting the motion without prejudice to cross-complainant Abdo filing and serving a proper motion for leave to file an amended cross-complaint. At the hearing, Abdo contested the tentative ruling. Thereafter, the court adopted the tentative ruling as its final order.

On 13 December 2022, the court heard the following motions: (1) a demurrer to the FACC by cross-defendant Aegis; (2) a demurrer and motion to strike the FACC by cross-defendant Hudson; and (3) a demurrer to the FACC by cross-defendants Jomax and Ginsberg (collectively, “Jomax Defendants”).³ Following oral argument, the court adopted its tentative ruling as follows:

The demurrer to the second, third, fourth, fifth, and sixth causes of action by cross-defendant Aegis is SUSTAINED WITHOUT LEAVE TO AMEND for failure to state a claim.

The demurrer to the seventh cause of action by cross-defendant Aegis is MOOT.

The demurrer to the second, third, fourth, fifth, seventh, and eighth causes of action by cross-defendant Hudson is SUSTAINED WITH 10 DAYS’ LEAVE TO AMEND for failure to state a claim.

The demurrer to the sixth cause of action by cross-defendant Hudson on the ground that it fails to state a claim is OVERRULED.

The motion to strike the prayer for punitive damages by cross-defendant Hudson is MOOT.

The demurrer to the second and sixth causes of action by the Jomax Defendants is SUSTAINED WITH 10 DAYS’ LEAVE TO AMEND for failure to state a claim.

The demurrer to the eighth cause of action by cross-defendant Ginsberg is SUSTAINED WITH 10 DAYS’ LEAVE TO AMEND for failure to state a claim.

On 27 December 2022, Abdo filed the operative SACC alleging causes of action for:
Breach of Implied Contract;

- (1) Unlawful, Unfair, or Fraudulent Business Practices, Business & Professions Code, § 17200, et seq.;
- (2) Fraud, Deceit and Concealment;
- (3) Negligent Misrepresentation;
- (4) Intentional Misrepresentation;
- (5) Violation of the Rosenthal Fair Debt Collection Practices Act, Civil Code, § 1788, et seq.;
- (6) Elder Abuse;
- (7) Interpleader.

The following motions are currently before the court: (1) a demurrer and motion to strike to the SACC by cross-defendant Arrow; and (2) a demurrer to the SACC by cross-defendant UACC. Cross-complainant Abdo filed written oppositions. Cross-defendants filed reply papers.

A further case management conference is also set for 12 December 2023.

³ Cross-defendants Aegis, Jomax, and Ginsberg are represented by the same counsel of record.

II. Demurrers in General.

A complaint must contain substantive factual allegations sufficiently apprising the defendant of the issues to be addressed. (See **Williams v. Beechnut Nutrition Corp.** (1986) 185 Cal.App.3d 135, 139, fn. 2.)

A demurrer tests the legal sufficiency of a complaint. It is properly sustained where the complaint or an individual cause of action fails to “state facts sufficient to constitute a cause of action.” (**Code of Civil Procedure**, § 430.10, subdivision (e).) “[C]onclusionary allegations . . . without facts to support them” are insufficient on demurrer. (**Ankeny v. Lockheed Missiles and Space Co.** (1979) 88 Cal.App.3d 531, 537.) “It is fundamental that a demurrer is an attack against the complaint on its face, it should not be sustained unless the complaint shows that the action may not be pursued.” (**Yolo County Dept. of Social Services v. Municipal Court** (1980) 107 Cal.App.3d 842, 846-847.)

“It is not the ordinary function of a demurrer to test the truth of the plaintiff’s allegations or the accuracy with which he describes the defendant’s conduct. A demurrer tests only the legal sufficiency of the pleading.” (**Committee on Children’s Television, Inc. v. General Foods Corp.** (1983) 35 Cal.3d 197, 213.) “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.’ [Citation.]” (*Id.* at pp. 213-214; see **Cook v. De La Guerra** (1864) 24 Cal. 237, 239 “[I]t is not the office of a demurrer to state facts, but to raise an issue of law upon the facts stated in the pleading demurred to.”).)

III. Motions to Strike in General.

A court may strike out any irrelevant, false, or improper matter asserted in a pleading. (**Code of Civil Procedure**, § 436, subdivision (a).) A court may also strike out all or any part of a pleading not filed in conformity with the laws of the State of California. (**Code of Civil Procedure**, § 436, subdivision (b).) The grounds for a motion to strike shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice. (**Code of Civil Procedure**, § 437, subdivision. (a).)

Irrelevant matter includes “immaterial allegations.” (**Code of Civil Procedure**, § 431.10, subdivision (c).) “An immaterial allegation in a pleading is any of the following: (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; (3) A demand for judgment requesting relief not supported by the allegations of the complaint or cross-complaint.” (**Code of Civil Procedure**, § 431.10, subdivision (b).)

“As with demurrers, the grounds for a motion to strike must appear on the face of the pleading under attack, or from matter which the court may judicially notice.” (Weil & Brown, et al., California Practice Guide: **Civil Procedure Before Trial** (The Rutter Group 2022) ¶ 7:168, p. 7(l)-76 citing **Code of Civil Procedure**, § 437.) “Thus, for example, defendant cannot base a motion to strike the complaint on affidavits or declarations containing extrinsic evidence showing that the allegations are ‘false’ or ‘sham.’ Such challenges lie only if these defects appear on the face of the complaint, or from matters judicially noticeable.” (*Id.* at ¶ 7:169, pp. 7(l)-75 to 7(l)-76.)

“In passing on the correctness of a ruling on a motion to strike, judges read allegations of a pleading subject to the motion to strike as a whole, all parts in their context, and assume their truth.” (**Clauson v. Super. Ct.** (1998) 67 Cal.App.4th 1253, 1255.) “In ruling on a motion to strike, courts do not read allegations in isolation.” (*Ibid.*)

IV. Arrow’s Demurrer to the SACC.

Cross-defendant Arrow argues the second, third, fourth, fifth, seventh, and eighth causes of action are subject to demurrer on grounds including, failure to state a claim, uncertainty and statute of limitations. (**Code of Civil Procedure**, § 430.10, subdivisions (e), (f); see **SLPR, L.L.C. v. San Diego Unified Port Dist.** (2020) 49 Cal.App.5th 284, 316 [“A statute of limitations defense may be asserted by general demurrer if the complaint shows on its face that the statute bars the action.”].)

A. Table of Contents/Table of Authorities.

In opposition, cross-complainant Abdo asserts the demurrer should be overruled as cross-defendant Arrow did not submit a table of contents and table of authorities in support of its memorandum.

“A memorandum that exceeds 10 pages must include a table of contents and a table of authorities.” (**California Rules of Court, rule 3.1113(f).**)

“A memorandum that exceeds the page limits of these rules must be filed and considered in the same manner as a late-filed paper.” (**California Rules of Court, rule 3.1113(g).**)

Here, cross-defendant Arrow filed a memorandum totaling 17 pages. But, the actual substance of the memorandum of points and authorities constitute approximately 12 pages. Thus, to the extent that the memorandum violates the rules of court, the defect is minimal and there appears to be no prejudice to cross-complainant Abdo who filed and served substantive opposition to the motion. (See **Greer v. Board of Education** (1975) 47 Cal.App.3d 98, 117 [“No prejudice has been demonstrated because of the procedural errors of the board.”].) The court therefore overlooks this procedural defect but reminds counsel for Arrow to file and serve future papers in compliance with the rules of court.

B. Untimely Demurrer.

In opposition, cross-complainant Abdo also contends the demurrer should be overruled as it was not timely filed in this action. A party may file a demurrer within 30 days of service of the complaint (or cross-complaint). (**Code of Civil Procedure, § 430.40, subdivision (a).**)

Here, the SACC was filed on 27 December 2022 and served via substitute service on cross-defendant Arrow which was completed on 4 February 2023. Arrow however did not file the instant demurrer until 3 July 2023. Nevertheless, cross-complainant Abdo argues this court, at the hearing on 30 May 2023, instructed counsel for Arrow to file its demurrer within 30 days and Arrow failed to do so. (See Abdo Decl. at ¶ 1.)

But, as an initial matter, the court is not allowed to consider declarations on demurrer. (See **Donabedian v. Mercury Ins. Co.** (2004) 116 Cal.App.4th 968, 994 [in reviewing the ruling on demurrer, a court cannot consider the substance of declarations]; see also **Tenet Healthsystem Desert, Inc. v. Blue Cross of California** (2016) 245 Cal.App.4th 821, 834 [“Because a demurrer challenges defects on the face of the complaint, it can refer to matters outside the pleading only if those matters are subject to judicial notice”].) And, even if this evidence was proper, the delay in filing the demurrer of only a few days is minimal and again did not result in any prejudice to cross-complainant Abdo.

Furthermore, the court has discretion to consider an untimely demurrer. (See **Jackson v. Doe** (2011) 192 Cal.App.4th 742, 750 [appellate court determined that trial court properly exercised its discretion in considering untimely demurrer]; **McAllister v. County of Monterey** (2007) 147 Cal.App.4th 253, 282 [appellate court held that trial court’s decision to entertain second demurrer did not affect plaintiff’s substantial rights].) Finally, this court adheres to the policy that cases be tried on the merits whenever possible. (See **Juarez v. Wash Depot Holdings, Inc.** (2018) 24 Cal.App.5th 1197, 1202 [policy of the law is to have every litigated case tried upon its merits]; see also **Kapitanski v. Von’s Grocery Co.** (1983) 146 Cal.App.3d 29, 32 [Cognizant of the strong policy favoring the disposition of cases on their merits...judges frequently consider documents which have been untimely filed.].) The court thus exercises its discretion to consider the demurrer.

C. Demurrer to Entire SACC – Lack of Duty.

Cross-defendant Arrow demurs to the entire SACC on the ground that Arrow, an insurance broker, did not owe a duty to cross-complainant Abdo, who signed an application for a surety bond.

“Ordinarily, an insurance agent assumes only those duties normally found in any agency relationship. This includes the obligation to use reasonable care, diligence, and judgment in procuring the insurance requested by an insured. [Citations.] The mere existence of such a relationship imposes no duty on the agent to advise the insured on specific insurance matters. [Citation.] ‘An agent may point out to [the insured] the advantages of additional coverage, but he is under no obligation to do so; nor is the insured under an obligation to respond.’ [Citation.]” (**Jones v. Grewe** (1987) 189 Cal.App.3d 950, 954 (**Jones**).)

As a preliminary matter, this argument is procedurally improper as this ground for demurrer was not raised in the notice of motion. (See **California Rules of Court**, rule 3.1112(d)(3); *Luri v. Greenwald* (2003) 107 Cal.App.4th 1119, 1125 ["A basic principle of motion practice is that the moving party must specify for the court and the opposing party the grounds upon which that party seeks relief."]; see also *Gonzales v. Super. Ct.* (1987) 189 Cal.App.3d 1542, 1545 ["It is elemental that a notice of motion must state in writing the 'grounds upon which it will be made.'"]). On the merits, the argument fails as duty is not an element of any the challenged claims on demurrer. Furthermore, cases like *Jones* and others cited in the moving papers address primarily duty in the context of negligence claims which are not at issue on this motion.

Accordingly, the demurrer to the SACC on the ground that cross-defendant Arrow does not owe a duty of care to cross-complainant Abdo is **OVERRULED**.

D. Second Cause of Action: Unlawful, Unfair, or Fraudulent Business Practices.

"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.)

As to cross-defendant Arrow, the second cause of action alleges:

Aegis and Arrow engaged in deceptive, unlawful and unfair business act and/or practice by intentionally concealed the fact that Abdo will remain responsible for all obligations of Aegis indemnity of Aegis even though Abdo signed on behalf of Jalal. In reliance on Aegis and Arrow misrepresentation, concealment of vital information by Arrow and Aegis regarding Abdo's responsibility of signing indemnity on behalf of Jalal, Abdo signed Aegis surety bond indemnity believing he is not responsible. Had Arrow and Hudson informed Abdo that he will be held accountable, he would definitely not sign Hudson's indemnity. Further, Arrow and Aegis engaged in deceptive acts when they knowingly and deliberately represented false information in the application for surety bond which deceived Abdo to believe the application is for Jalal as said in Para 28 above. As a result of Aegis and Arrow deceptive acts of not disclosing that signing the indemnity documents on behalf of Jalal, Abdo was denied the refinancing of his home costing him \$2,000 a month since 2018 (\$96,000 total). (SACC at ¶ 53.)

In addition, paragraph 55 alleges in part that "Hudson and Arrow engaged in an 'unlawful' business act and/or practice by knowingly and deliberately misrepresented facts (concealed vital facts)." (SACC at ¶ 55.)

Cross-defendant Arrow argues this claim is subject to demurrer on the following grounds: (1) statute of limitations; (2) failure to state a claim; and (3) uncertainty.

1. Statute of Limitations.

A statute of limitations prescribes the period "beyond which a plaintiff may not bring a cause of action. [Citations.]" (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 806.) It "strikes a balance among conflicting interests. If it is unfair to bar a plaintiff from recovering on a meritorious claim, it is also unfair to require a defendant to defend against possibly false allegations concerning long-forgotten events, when important evidence may no longer be available." (*Poosh v. Philip Morris USA, Inc.* (2011) 51 Cal.4th 788, 797.)

"A plaintiff must bring a claim within the limitations period after accrual of the cause of action. In other words, statutes of limitation do not begin to run until a cause of action accrues. Generally speaking, a cause of action accrues at the time when the cause of action is complete with all its elements." (*V.C. v. Los Angeles Unified School Dist.* (2006) 139 Cal.App.4th 499, 509-510, internal citations and quotation marks omitted.)

Although the statute of limitations is a factual issue, it can be subject to demurrer if the pleading discloses that the statute of limitations has expired regarding one or more causes of action. (*Fuller v. First Franklin Financial Corp.* (2013) 216 Cal.App.4th 955, 962.) If a demurrer demonstrates that a pleading is untimely on its

face, it becomes the plaintiff's burden "even at the pleading stage" to establish an exception to the limitations period. (*Aryeh v. Cannon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1197.)

A court may sustain a demurrer on the ground of failure to state sufficient facts if "the complaint shows on its face the statute [of limitations] bars the action." (*E-Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1315 (*E-Fab, Inc.*)). A demurrer is not sustainable if there is only a possibility the cause of action is time-barred; the statute of limitations defense must be clearly and affirmatively apparent from the allegations in the pleading. (*Id.* at pp. 1315-1316.)

When evaluating whether a claim is time-barred, a court must determine (1) which statute of limitations applies and (2) when the claim accrued. (*E-Fab, Inc.*, *supra*, 153 Cal.App.4th at p. 1316.)

The statute of limitations for a UCL violation is four years. (**Business & Professions Code**, § 17208; *Cansino v. Bank of America* (2014) 224 Cal.App.4th 1462, 1475.) Nevertheless, cross-defendant Arrow urges the court to apply a two-year statute of limitations to the UCL claim, citing *Smyth v. USAA Property & Casualty Ins. Co.* (1992) 5 Cal.App.4th 1470, 1476-1478 and *Ventura County Nat. Bank v. Macker* (1996) 49 Cal.App.4th 1528, 1528-1531. (See Demurrer at p. 9:12-17.) These cases however are not persuasive as they do not address claims under the UCL and application of a two-year statute of limitations. (See *City of Palo Alto v. Public Employment Relations Bd.* (2016) 5 Cal.App.5th 1271, 1292 ["cases are not authority for propositions not considered"].) The statute of limitations argument is therefore not sustainable on demurrer.

Consequently, the demurrer to the second cause of action on the ground that it is barred by the statute of limitations is **OVERRULED**.

2. Failure to State a Claim.

"The absence of any allegation essential to a cause of action renders it vulnerable to a general demurrer. A ruling on a general demurrer is thus a method of deciding the merits of the cause of action on assumed facts without a trial." [Citation.] 'Conversely, a general demurrer will be overruled if the complaint contains allegations of every fact essential to the statement of a cause of action, regardless of mistaken theory or imperfections of form that make it subject to special demurrer.' [Citation.] (*Morris v. JPMorgan Chase Bank, N.A.* (2022) 78 Cal.App.5th 279, 291-292 (*Morris*)).

"A complaint, with certain exceptions, need only contain a 'statement of the facts constituting the cause of action, in ordinary and concise language' [citation] and will be upheld 'so long as [it] gives notice of the issues sufficient to enable preparation of a defense.'" [Citation.] "[T]o withstand a demurrer, a complaint must allege ultimate facts, not evidentiary facts or conclusions of law." [Citation.] (*Morris*, *supra*, 78 Cal.App.5th at p. 292.)

Under the UCL, an "unlawful" business activity includes anything that can properly be called a business practice and that at the same time is forbidden by law. (*Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, 717-718.) "Virtually any law—federal, state or local—can serve as a predicate for an action under **Business and Professions Code** section 17200." (*Id.* at p. 718.) "Thus, it is fairly said that section 17200 'borrows' violations of other laws and treats them as 'unlawful' practices independently actionable under the unfair competition law." (*Ibid.*)

Here, cross-defendant Arrow correctly argues there is no unlawful business practice in connection with the UCL claim as cross-complainant Abdo fails to allege any violation of law. (See Demurrer at p. 11:21-22.) But, as stated above, the UCL cause of action also alleges *unfair* conduct on the part of cross-defendant Arrow which is not addressed in the moving papers with legal authorities and supporting argument. (See *People v. Casa Blanca Convalescent Homes* (1984) 159 Cal.App.3d 509, 530 ["[A]n 'unfair' business practice occurs when it offends an established public policy or when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers."]; see also *State Farm Fire & Casualty Co. v. Super. Ct.* (1996) 45 Cal.App.4th 1093, 1103 [the unfair standard is intentionally broad and provides an independent basis for relief].) Nor is a party permitted to demur to a portion of a cause of action. (See *PH II, Inc. v. Super. Ct.* (1995) 33 Cal.App.4th 1680, 1682 ["A demurrer does not lie to a portion of a cause of action."].) Thus, the demurrer is not sustainable on this ground.

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

3. Uncertainty.

Uncertainty is a disfavored ground for demurrer; it is typically sustained only where the pleading is so unintelligible and uncertain that the responding party cannot reasonably respond to or recognize the claims alleged against it. (See *Khoury v. Maly's of Cal., Inc.* (1993) 14 Cal.App.4th 612, 616.) "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." (*Ibid.*)

"[U]nder our liberal pleading rules, where the complaint contains substantive factual allegations sufficiently apprising defendant of the issues it is being asked to meet, a demurrer for uncertainty should be overruled or plaintiff given leave to amend." (*Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139, fn. 2.)

Here, cross-defendant Arrow does not set forth any argument in support of the demurrer for uncertainty.

Therefore, the demurrer to the second cause of action on the ground of uncertainty is OVERRULED.

E. Third Cause of Action: Fraud, Deceit and Concealment.

The elements of fraud, which gives rise to the tort for deceit, are: (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or "scienter"); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage. (*Lazar v. Super. Ct.* (1996) 12 Cal.4th 631, 638.)

As to cross-defendant Arrow, the third cause of action alleges in relevant part:

Aegis, Hudson, Arrow, FWC and all cross-defendants in this cause of action intentionally concealed (did not disclose) that signing on behalf of Jalal by Abdo will not relieve Abdo from being responsible or accountable to the indemnities. The intentional non-disclosure of this deceived Abdo which made him act contrary to his interest as there is no benefit gained by Abdo for signing indemnities. In reliance on the representation which concealed vital information as mentioned above, Abdo signed the indemnities on behalf of Jalal. In fact, that nondisclosure did not only induced Abdo to sign Aegis' and Hudson's indemnities but also induced him not to cancel Aegis' indemnity when his relationship with FWC was fully terminated on 6/29/2017. There were no claims made on Aegis' indemnity prior to the termination of relationship between Abdo and FWC. Had Aegis and Arrow disclosed all facts regarding Abdo responsibility to the indemnity, Abdo, at a minimum, would have canceled Aegis' indemnity when Abdo/FWC relationship was terminated and took no responsibilities for any claim. (SACC at ¶ 62.)

Cross-defendant Arrow argues this claim is subject to demurrer on the following grounds: (1) statute of limitations; (2) failure to state a claim; and (3) uncertainty.

Although the third cause of action is titled "Fraud, Deceit and Concealment," cross-defendant Arrow correctly points out there is no claim stated for any fraudulent misrepresentation. Rather, as both sides acknowledge, this appears to be a cause of action for concealment.

The elements of fraudulent concealment are: (1) concealment or suppression of material fact, (2) duty to disclose the fact, (3) intent to conceal or suppress with intent to defraud, (4) plaintiff must have been unaware of the fact and would not have acted in such a manner had the plaintiff known of the concealment or suppression, and (5) resulting damage. (*Jones v. ConocoPhillips* (2011) 198 Cal.App.4th 1187, 1198; *Marketing West, Inc. v. Sanyo Fisher (USA) Corp.* (1992) 6 Cal.App.4th 603, 612-613.)

"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.)

Here, cross-defendant Arrow persuasively argues there are no facts alleged to support a duty (or duty to disclose) to establish a viable claim for concealment. (See Demurrer at p. 13:8-11.) Nor has the concealment claim been pled with the required specificity to state a cause of action. (See *Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828, 843-844 [“Fraud, including concealment, must be pleaded with specificity.”].) Cross-complainant Abdo sets forth certain facts in opposition which may support a claim for concealment and thus further leave to amend will be granted. (See OPP at pp. 8:19-9:28.)

Consequently, the demurrer to the third cause of action will be SUSTAINED WITH 10 DAYS’ LEAVE TO AMEND for failure to state a claim. Having sustained the demurrer on this ground, the court declines to address the demurrer for uncertainty and statute of limitations.

F. Fourth Cause of Action: Negligent Misrepresentation.

“The elements of a negligent misrepresentation are ‘(1) the misrepresentation of a past or existing material fact, (2) without reasonable ground for believing it to be true, (3) with intent to induce another’s reliance on the fact misrepresented, (4) justifiable reliance on the misrepresentation, and (5) resulting damage.’ [Citation.] Negligent misrepresentation does not require knowledge of falsity, unlike a cause of action for fraud. [Citation.]” (*Tindell v. Murphy* (2018) 22 Cal.App.5th 1239, 1252.)

The negligent misrepresentation claim is set forth in paragraphs 71-78 and mirrors the allegations contained in the fraud cause of action. As stated above, there is no specific misrepresentation, negligent or fraudulent, alleged against cross-defendant Arrow. Instead, only a claim for concealment which fails for reasons explained above.

Accordingly, the demurrer to the fourth cause of action is SUSTAINED WITH 10 DAYS’ LEAVE TO AMEND for failure to state a claim. Having sustained the demurrer on this ground, the court declines to address the demurrer for uncertainty and statute of limitations.

G. Fifth Cause of Action: Intentional Misrepresentation.

The demurrer to the fifth cause of action [Intentional Misrepresentation] is SUSTAINED WITH 10 DAYS’ LEAVE TO AMEND for the same reasons stated above in connection with the demurrer to the fourth cause of action for negligent misrepresentation.

H. Seventh Cause of Action: Elder Abuse.

The seventh cause of action is a claim for financial elder abuse. (SACC at ¶ 95.)

“‘Financial abuse’ of an elder or dependent adult occurs when a person or entity does any of the following:

- (1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
- (2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
- (3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined in Section 15610.70. (**Welfare & Institutions Code**, § 15610.30, subdivision (a).)

“A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult.” (**Welfare & Institutions Code**, § 15610.30, subdivision (b).)

“For purposes of this section, a person or entity takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of any property right, including by means of an

agreement, donative transfer, or testamentary bequest, regardless of whether the property is held directly or by a representative of an elder or dependent adult.” (**Welfare & Institutions Code**, § 15610.30, subdivision (c).)

Financial elder abuse claims, like other statutory claims, must be pled with particularity. (See **Covenant Care, Inc. v. Super. Ct.** (2004) 32 Cal.4th 771, 790 [financial elder abuse claims must be pled with particularity]; **Carter v. Prime Healthcare Paradise Valley LLC** (2011) 198 Cal.App.4th 396, 407, 410.)

To support financial elder abuse, cross-complainant Abdo alleges in relevant part:

¶ 96: “Arrow, Aegis, FWC, Jalal, Mohamad, and Hudson withheld (concealed), misrepresent and did not disclose vital information that signing on behalf of others will not relief Abdo from any obligation which induced to sign on behalf of Jalal. Cross-defendants FWC, Jalal and promised to indemnify Abdo in case he is ever sued due to any action or relationship with FWC. Also, cross-defendants FWC, Jalal, Mohammad, and UACC represented that no vehicle will be sold without title and all documents required by applicable laws. They sold vehicles without titles and failed to complete all forms and document as required by applicable laws. Furthermore, FWC, Jalal and Mohamad took, hid, and retained vehicles that Abdo allegedly is a personal guarantor.” (SACC at ¶ 96.)

As to cross-defendant Arrow, the gist of this claim is that Arrow (and other cross-defendants) failed to disclose vital information to Abdo regarding his signing of the application/indemnity on behalf of Jalal. But, as pointed out in the moving papers, there is no claim stated for financial elder abuse as there are no allegations that Arrow took, secreted, obtained, retained or appropriated real or personal property of cross-complainant Abdo.

Therefore, the demurrer to the seventh cause of action is SUSTAINED WITH 10 DAYS’ LEAVE TO AMEND for failure to state a claim. Having sustained the demurrer on this ground, the court declines to address the demurrer for uncertainty.

I. Eighth Cause of Action: In Interpleader.

Cross-defendant Arrow contends the eighth cause of action for interpleader should be dismissed as cross-complainant Abdo agreed to withdraw the claim during the parties’ meet and confer. (See Demurrer at p. 17:3-7.) Abdo apparently concedes this point as he fails to address it in opposition. (See **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].)

Consequently, the demurrer to the eighth cause of action is SUSTAINED WITHOUT LEAVE TO AMEND for failure to state a claim.

V. Arrow’s Motion to Strike to the SACC.

Cross-defendant Arrow moves to strike allegations related to punitive damages and restitution. (See Notice of Motion at p. 3.)

A. Meet and Confer.

In opposition, cross-complainant Abdo contends cross-defendant Arrow did not meet and confer in connection with the motion to strike. (See OPP at p. 3:5-7.)

Before filing a motion to strike, the moving party shall “meet and confer in person or by telephone” with the opposing party to determine “whether an agreement can be reached that resolves the objections to be raised in the motion to strike.” (**Code of Civil Procedure**, § 435.5, subdivision (a).) This conference should occur at least five days before the deadline to file the motion to strike. (**Code of Civil Procedure**, § 435.5, subdivision (a)(2).)

When filing the motion to strike, the moving party must include a declaration stating either “the means by which the moving party met and conferred with [the other party] and that the parties did not reach an agreement resolving the objections raised by the motion to strike” or [the other party] “failed to respond to the meet and confer request of the moving party or otherwise failed to meet and confer in good faith.” (**Code of Civil Procedure**, § 435.5, subdivision (a)(3).) “A determination by the court that the meet and confer process was insufficient is not grounds to grant or deny the motion to strike. (**Code of Civil Procedure**, § 435.5, subdivision (a)(4).)

In support of the motions, counsel for cross-defendant Arrow submitted two declarations claiming meet and confer consisted of a email sent to Abdo on 30 March 2023, a follow up phone call that went unanswered, and a hard copy of the email sent via regular mail. (See Buckner Decl. at ¶ 3.) The declarations however appear to be identical and only address the demurrer, not the motion to strike. Thus, there is no competent evidence before the court establishing that Arrow met and conferred with respect to issues raised in the motion to strike. But, as stated above, insufficient meet and confer is not grounds for denying the motion. Therefore, the court will consider the merits of the motion to strike. The court reminds counsel for Arrow to comply with the Code of Civil Procedure and specifically, meet and confer requirements, with respect to future motions.

B. Untimely Motion to Strike.

In opposition, cross-complainant Abdo also asserts the motion to strike was untimely filed. (See OPP at p. 3:8-14.) The court however considered and rejected this argument in connection with the demurrer. Thus, for reasons explained above, the court considers the motion to strike.

C. Punitive Damages.

The motion to strike the request for punitive damages is MOOT as the court sustained the demurrer to the fraud claims for reasons stated above.

D. Restitution.

The motion to strike the request for restitution is DENIED as cross-complainant Abdo has set forth a viable claim under the UCL against cross-defendant Arrow that survived demurrer for reasons explained above. (See *Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 68 [“The measure of recovery for unfair business practices is restitution, not damages.”]; *Zhang v. Super. Ct.* (2013) 57 Cal.4th 364, 371 [Restitution is confined to restoration of any interest in money or property, real or personal, which may have been acquired by means of unfair competition.]; see also *Walker v. Countrywide Home Loans, Inc.* (2002) 98 Cal.App.4th 1158, 1179 [relief under unfair competition law is generally limited to injunctive relief and restitution].)

VI. UACC’s Demurrer to the SACC.

Cross-defendant UACC argues the second, third, fourth, fifth and seventh causes of action are subject to demurrer for failure to state a claim and uncertainty. (**Code of Civil Procedure**, § 430.10, subdivisions (e), (f).)

A. Untimely Demurrer.

In opposition, cross-complainant Abdo contends the demurrer should be overruled as it was untimely filed. (See OPP at pp. 3:22-4:16.) According to court records, a default was entered against cross-defendant UACC and later set aside by stipulation and order on 22 March 2023. In setting aside the default, this court ordered UACC to file a responsive pleading within 15 days receipt of the order. But, UACC did not file the instant demurrer until 10 August 2023 and thus the motion appears to be untimely. In reply, cross-defendant UACC identifies other circumstances that were in play which led to the untimely filing of the demurrer. (See Sirey Reply Decl.) Even so, as stated above, the court has discretion to consider an untimely demurrer and will do so again here.

B. Requests for Judicial Notice.

Cross-defendant UACC filed requests for judicial notice in support of the motion and with the reply papers. The requests for judicial notice are DENIED as they are not relevant to resolving issues raised by the demurrer for reasons explained below. (See *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6 [a court need not take judicial notice of a matter unless it “is necessary, helpful, or relevant”].)

C. Second Cause of Action: Unlawful, Unfair, or Fraudulent Business Practices.

As to cross-defendant UACC, the second cause of action alleges:

UACC, Jalal, Mohamed engaged in deceptive, unlawful, and unfair business act and/or practice by failing to file paperwork with DMV which would quiet title, register, and have license plates issued for Ms. Riley's car. Even though Ms. Riley informed UACC that she does not want the car nor does she want to continue making payments since UACC failed to provide the proper documents to register or get license plates for the car, UACC demanded more payments even though it received over \$4500. Abdo was damaged by \$15,695 the value of the car plus the cost of dealing with this lawsuit. UACC knew that demanding payments for vehicle that cannot be registered or used is deceptive and unfair but did not care. UACC did not intend to perform on its commitment but continue to demand payments. The fact that UACC could not complete the registration or provide license plate was known to UACC, FWC, Jalal, and Mohammad only. (SACC at ¶ 52.)

Here, cross-defendant UACC correctly asserts there is no unlawful business practice in connection with the UCL claim as cross-complainant Abdo fails to allege any violation of law. (See Demurrer at p. 8:18-18.) In opposition, Abdo suggests the UACC is responsible for unfair business practices including financing vehicles without titles, concealing the truth about selling vehicles without titles, and demanding payment from the public for vehicles that cannot be driven or registered. (See OPP at p. 4:24-28.) But, such unfair practices are not readily apparent from the SACC and thus Abdo will be given an opportunity to allege these facts in an amended pleading.

Accordingly, the demurrer to the second cause of action is SUSTAINED WITH 10 DAYS' LEAVE TO AMEND for failure to state a claim. Having sustained the demurrer on this ground, the court declines to address the demurrer for uncertainty.

D. Third Cause of Action: Fraud, Deceit and Concealment.

As to cross-defendant UACC, the third cause of action alleges:

FWC, Jalal, and Mohamad and UACC intentionally concealed and failed to disclose that they were selling and financing vehicles that cannot be registered with the DMV. Their intentional nondisclosure of facts, as shown above, makes their respective nondisclosure deceptive and damaged Abdo in the amount of \$15,695. (SACC at ¶ 64.)

Here, the third cause of action against cross-defendant UACC appears to be a claim for concealment, not misrepresentation. Cross-complainant Abdo however fails to plead his concealment claim with specificity to state a cause of action. The court notes Abdo provides certain facts in opposition which may support a claim for concealment and thus further leave to amend will be granted. (See OPP at pp. 6:22-7:15.)

Therefore, the demurrer to the third cause of action will be SUSTAINED WITH 10 DAYS' LEAVE TO AMEND for failure to state a claim. Having sustained the demurrer on this ground, the court declines to address the demurrer for uncertainty.

E. Fourth Cause of Action: Negligent Misrepresentation.

The negligent misrepresentation claim is set forth in paragraphs 71-78 and mirrors the allegations contained in the fraud cause of action. As stated above, there is no specific misrepresentation, negligent or fraudulent, alleged against cross-defendant UACC. In fact, cross-complainant Abdo does not even refer to UACC by name in the fourth cause of action and thus no claim for negligent misrepresentation has been stated.

Accordingly, the demurrer to the fourth cause of action is SUSTAINED WITH 10 DAYS' LEAVE TO AMEND for failure to state a claim. Having sustained the demurrer on this ground, the court declines to address the demurrer for uncertainty.

F. Fifth Cause of Action: Intentional Misrepresentation.

The demurrer to the fifth cause of action [Intentional Misrepresentation] is SUSTAINED WITH 10 DAYS' LEAVE TO AMEND for the same reasons stated above in connection with the demurrer to the fourth cause of action for negligent misrepresentation.

G. Seventh Cause of Action: Elder Abuse.

As to cross-defendant UACC, the seventh cause of action alleges in pertinent part::

¶ 96: ...”Also, cross-defendants FWC, Jalal, Mohamad, and UACC represented that no vehicle will be sold without title and all documents required by applicable laws. They sold vehicles without titles and failed to complete all forms and document as required by applicable laws...” (SACC at ¶ 96.)

¶ 98: ...”Further Abdo already was harmed by over \$100,000 by FWC, Jalal, UACC and Mohamad...” (SACC at ¶ 98.)

Here, cross-defendant UACC persuasively argues there are no facts alleged to support a claim for financial elder abuse. Thus, the demurrer is sustainable on this ground but cross-complainant Abdo will be given an opportunity for leave to amend.

Accordingly, the demurrer to the seventh cause of action is SUSTAINED WITH 10 DAYS’ LEAVE TO AMEND for failure to state a claim. Having sustained the demurrer on this ground, the court declines to address the demurrer for uncertainty.

H. Damages.

Cross-defendant UACC also demurs to the SACC on the ground that UACC did not engage in any conduct resulting in damages suffered by cross-complainant Abdo. This argument however is procedurally improper as it was not included in the notice of motion as a ground for demurrer. Regardless, the court declines to consider this alternative ground as the demurrer is sustained in its entirety for reasons stated above.

VII. Conclusion and Order.

The demurrer to the entire SACC for lack of duty by cross-defendant Arrow is OVERRULED.

The demurrer to the second cause of action by cross-defendant Arrow is OVERRULED in its entirety.

The demurrer to the third, fourth, fifth, and seventh causes of action by cross-defendant Arrow is SUSTAINED WITH 10 DAYS’ LEAVE TO AMEND for failure to state a claim.

The demurrer to the eighth cause of action by cross-defendant Arrow is SUSTAINED WITHOUT LEAVE TO AMEND for failure to state a claim.

The motion to strike punitive damages by cross-defendant Arrow is MOOT.

The motion to strike the request for restitution by cross-defendant Arrow is DENIED.

The demurrer to the second, third, fourth, fifth, and seventh causes of action by cross-defendant UACC is SUSTAINED WITH 10 DAYS’ LEAVE TO AMEND for failure to state a claim.

DATED:

HON. SOCRATES PETER MANOUKIAN

Judge of the Superior Court

County of Santa Clara

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

DEPARTMENT 20

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(For Clerk's Use Only)

CASE NO.: 22CV408294

DATE 10 October 2023

TIME: 9:00 am

Jeffrey Rocca v. General Motors, LLC

LINE NUMBER: 09

This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2nd Floor, 161 North First Street, San Jose. Any party opposing the tentative ruling must call Department 20 at 408.808.6856 and the opposing party no later than 4:00 PM on 30 August 2023. Please specify the issue to be contested when calling the Court and Counsel.

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**Order on Motion of Plaintiff to Compel Defendant
to Provide Further Responses and Documents
in Response to Plaintiff's Request for Production, Set Number One.**

I. Statement of Facts.

Plaintiff filed this complaint on 08 December 2022.⁴

Plaintiff alleges that defendant General Motors, LLC ("Defendant" or "GM") violated California's Song-Beverly Consumer Warranty Act ("Song-Beverly Act" or "lemon law") by failing to repair Plaintiff's 2021 GMC Yukon XL vehicle and the subject Body System Defect within a reasonable number of attempts, and by failing to repurchase the vehicle despite its knowledge that Plaintiff's vehicle suffers from the defect.

In ¶ 12 of the complaint, plaintiff alleges that the 2021 GMC Yukon contained defects in the body system, door system, transmission system, exhaust, engine, braking system, and any other complaints made by plaintiff, whether or not contained in the records or on any repair orders.

II. Motion to Compel Further Production.

Plaintiff propounded her Request for Production of Documents, Set No. One, seeking production of documents which are broadly divisible into the following two categories:

1. those relating to Defendant's internal investigation and analysis of claimed power train defects in Plaintiff's vehicle and establishing that Defendant previously knew of such Defect and knew it could

⁴ This Department intends to comply with the time requirements of the Trial Court Delay Reduction Act (**Government Code**, §§ 68600–68620). The California Rules of Court state that the goal of each trial court should be to manage limited and unlimited civil cases from filing so that 100 percent are disposed of within 24 months. (**Ca. St. Civil Rules of Court**, Rule 3.714(b)(1)(C) and (b)(2)(C)).

not repair them regardless of repair attempts but nevertheless failed to repurchase the vehicle (i.e., Nos. 10, 16-17, 19-21); and

2. those relating to Defendant's warranty and vehicle repurchase policies, procedures, and practices (i.e., Nos. 7, 34, 36).

III. Analysis.

A. Defendant's Responses.

Plaintiff contends that the responses produced by defendant General Motors were "boilerplate objections," and that "numerous" meet and confer letters were unproductive.

Defendant contends that it should respond only as to request pertaining to the particular automobile in question.

C. Discussion.

This Court has seen discovery fights between parties in lemon law cases on this very subject on too many occasions to count.

This Court that the term "powertrain" can refer to the engine, transmission, transfer case, driveshaft and universal joints, and differential.

In addition to the six specified defects in ¶ 12a-f of the complaint, plaintiff also seeks documents containing to "and any additional complaints made by plaintiff, whether or not contained in the records or on any repair orders." This Court believes that it would require a large degree avoidance on the part General Motors, LLC produce documents about complaints not made by plaintiff as set forth in ¶ 12g.

This Court observes the counsel in this case for both sides or the same counsel on the line 7 on today's calendar entitled 22CV398594 Jessica Madoni v. General Motors LLC. The case involves the same issue, lack of facility of the claimed defects, and therefore this Court will make the same order as it did in the Madoni matter.

This Court will continue the hearing on this matter to 16 November 2023 at 9:00 AM in this Department. Within the next 5 days, plaintiff is to provide to defendant a list of specific claims defects in the power train. The parties are then to meet and confer and provide this Court with a list of points on which they agree and on which they disagree. If defendant claims privilege on any request, an appropriate privilege log shall be produced. The parties are to provide their supplemental "meet and confer" agreement to this Court five court days prior to the hearing on the motion.

IV. Tentative Ruling.

The tentative ruling in this matter was duly posted.

V. Conclusion and Order.

On this Court's own motion, the hearing will be CONTINUED to 16 November 2023 at 9:00 AM.

DATED:

HON. SOCRATES PETER MANOUKIAN
Judge of the Superior Court
County of Santa Clara

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