

**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: Thursday, 29 February 2024**

**TIME: 9:00 A.M.**

**This Department uses Zoom for Law and Motion  
and for Case Management Calendars. Please use the Zoom link below.**

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.

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. If the doors to the Old Courthouse are locked, please see the deputies at the metal detector next door at 191 North First Street.

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.

"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](http://www.pronouncenames.com) but that site mispronounces my name.

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	23CV416318	Francine McMahon vs Donna Brown et al	<p><b>Demurrer of Defendants James M Barrett, Esq. and the Law Offices of James M. Barrett to Plaintiff’s Complaint.</b></p> <p>In this matter, plaintiff attempted to file a First Amended Complaint which was rejected by the Clerk of the Court on 15 February 2024.</p> <p>Plaintiff also filed an opposition which contends the demurrer has been rendered moot by the filing of the First Amended Complaint. Since the FAC was rejected, the demurrer is not moot.</p> <p>Plaintiff’s opposition does not address the substantive merits of the demurrer.</p> <p>The demurrer is SUSTAINED with 10 days’ leave to amend.</p> <p>Plaintiff has calendared a motion on 14 March 2024 at 9:00 AM for leave to amend the complaint. Unless defense counsel objects, this Court will deem the motion MOOT and order the matter off calendar without prejudice. The parties should meet and confer and advise this Court of their intentions.</p> <p>NO FORMAL TENTATIVE RULING.</p>

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 2	23CV417159	Home Comforts, Inc. et. al. vs Wal-Mart.com USA LLC	<p><b>Demurrer of Cross-Defendant Alana Yakovlev to Cross-Complaint of Walmart.com.</b></p> <p>OFF CALENDAR per notice of settlement. The matter will be set for Dismissal Review on 16 June 2024 at 10:00 AM in Department 20</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 3	23CV423861	Kyle Roberts vs Wyatt Perkins; Rossana Perkins.	<p><b>Motion of Defendants to Strike Portions Of Plaintiff's Complaint.</b></p> <p>Defendants Perkins's motion to strike the punitive/exemplary damage allegations from plaintiff Roberts's FAC is GRANTED with 20 days' leave to amend.</p> <p>SEE ATTACHED TENTATIVE RULING.</p>
LINE 4	21CV384133	Miguel Vines Bustamante vs Nicole Cizmar	<p><b>Motion of Defendant Nicole Cizmar for Summary Judgment.</b></p> <p>This motion was originally calendared for 09 January 2024. A tentative ruling was duly posted. On the morning of the hearing, plaintiff appeared with counsel Ashley DeGuzman who requested a continuance which was granted. The matter was set for today.</p> <p>Plaintiff has still not filed opposition to this motion.</p> <p>Plaintiff has admitted that the accident occurred at his workplace, that he was on the job at the time of the incident, that the accident happened during his working hours, and that he made a claim for Workers Compensation. He admitted that he suffered no injury. He admitted that he was at fault.</p> <p>Since plaintiff was in the course and scope of his employment at the time of his injury, "[w]orkers [c]ompensation provides the exclusive remedy for an injury sustained by an employee in the course of employment and compensable under the Workers Compensation laws. (<b>Labor Code</b>, §§ 3600(a), 3602(a); <b>Charles J. Vacanti, M.D., Inc. v. State Comp. Ins. Fund</b> ) (2001) 24 Cal.4th 800, 812-813.)" (<b>Singh v. Southland Stone, U.S.A., Inc.</b> (2010) 186 Cal.App.4th 338, 365.</p> <p>The motion of defendant for summary judgment. Is GRANTED. The Department via the e-filing queue for execution.</p> <p>The case will be placed on this Court's Dismissal Review Calendar for 28 March 2024 at 10:00 AM.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 5	21CV384133	Miguel Vines Bustamante vs Nicole Cizmar	<p><b>Further Settlement Conference?</b></p> <p>SEE LINE #4.</p>
LINE 6	22CV408173	Mircea Dragomir et al vs Ryan Lotz	<p><b>Motion of Plaintiff for Summary Judgment/Summary Adjudication.</b></p> <p>The motion of plaintiff for summary judgment is GRANTED.</p> <p>SEE ATTACHED TENTATIVE RULING.</p>

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 7	22CV401041	UHG I LLC vs Anthony Tran	<p><b>Motion Of Defendant Anthony Kiem Tran to Compel Plaintiff to Provide Further Responses to Form Interrogatories, Request for Production of Documents, and for Sanctions.</b></p> <p>The Court has reviewed further documents provided at the last court hearing.</p> <p>This Court will GRANT the motion of defendant to compel further responses etc. Code-Compliant responses are due within 20 days of the filing and service of this Order. Objections are deemed OVERRULED except for assertions of work product or attorney-client privilege, in which case such claims must be supported by an appropriate privilege log. If plaintiff contends that any documents to be produced are trade secrets, the party should meet and confer and completed an appropriate protective order.</p> <p>The request of defendant for monetary sanctions is DENIED since this Court believes that defendant acted with substantial justification.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 8	22CV404885	Margaret Thering vs Rachelle Tomushev; Irina Tomushev; Moisei "Misha" Tomushev; Sam Tomushev; Sazmul Tomashev; Zacariah Pace.	<p><b>Joinder of Defendant Sam Tomushev in Motion of Defendants Rachelle Tomushev And Zacariah Pace To Compel a Second Deposition of Plaintiff.</b></p> <p>The request to join is GRANTED.</p> <p>SEE LINE #9.</p>

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 9	22CV404885	Margaret Thering vs Rachelle Tomushev; Irina Tomushev; Moisei "Misha" Tomushev; Sam Tomushev; Samuil Tomashev; Zacariah Pace.	<p><b>Motion of Defendants Rachelle Tomushev And Zacariah Pace To Compel a Second Deposition of Plaintiff.</b></p> <p>Plaintiff alleges that on 08 May 2022, she was attacked by two dogs while walking her own dog. Most, if not all, of the subject incident was captured by the adjacent property owner's "Ring"-brand surveillance camera.</p> <p>The Video was timely and properly disclosed in discovery.</p> <p>Plaintiff was deposed on 21 July 2023. Defense counsel wanted to question plaintiff using the video to ascertain which of any of either two or three dogs attacked her. When counsel for plaintiff refused, claiming it would be too traumatic for plaintiff to watch the video, defense counsel elected to proceed with the deposition and reserved the right to bring this motion.</p> <p>"Once any party has taken the deposition of any natural person, including that of a party to the action, neither the party who gave, nor any other party who has been served with a deposition notice pursuant to Section 2025.240 may take a subsequent deposition of that deponent." (<b>Code of Civil Procedure</b>, § 2025.610(a).)</p> <p>"Notwithstanding subdivision (a), for good cause shown, the court may grant leave to take a subsequent deposition, and the parties, with the consent of any deponent who is not a party, may stipulate that a subsequent deposition be taken." (<b>Code of Civil Procedure</b>, § 2025.610(b).)</p> <p>In balancing the stress to the plaintiff against the needs of the defense to determine which dog was involved in the attack on plaintiff, this Court feels that it is justified in coming to a conclusion that a further deposition is appropriate.</p> <p>The motion is GRANTED. Plaintiff shall submit to a deposition in a coat-compliant location within 30 days of the filing and service of this Order. The deposition shall take no more than one hour.</p> <p>Any requests of moving parties for costs or sanctions is DENIED except as counsel for plaintiff acted with substantial justification.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 10	22CV408584	Dawn Schultz et al vs Doe 1 et al	<p><b>Demurrer Of Defendants Doe 1, Doe 2 And Doe 3 to Plaintiff's Complaint.</b></p> <p>This case is STAYED pursuant to the order of the Bankruptcy Court in the case of In re Boy Scouts of America, et. al., No. 20-10343 (Bankr. D. Del).</p> <p>On request of the defendants, this Court will revisit these motions based on the order of the Bankruptcy Court.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 11	22CV408584	Dawn Schultz et al vs Doe 1 et al	<p><b>Motion of Defendants Doe 1, Doe 2 And Doe 3 to consolidate Plaintiff's Complaint in this action with Case Numbers 22CV408553 and 22CV409052.</b></p> <p>SEE LINE #10.</p>

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 12	23CV416446	Michael Carpenter vs General Motors, LLC	<p><b>Motion of Plaintiff to Compel Defendant to Provide Further Responses to Special Interrogatories 14, 40-45 and 63..</b></p> <p>As to the special and form interrogatories and request for production of documents, the Court will GRANT and DENY the motions as follows: This Court will order the parties to meet and confer on the responses with the limitations of responses pertaining to the production of the particular components, i.e., the transmission of the make and model of the car in question as well as the, whether they were used only in this year's model or in other model vehicles.</p> <p>The Court will GRANT and DENY the motion concerning the person most knowledgeable as follows: as follows: Defendant is to produce a PMK for deposition on the categories that are actually pertinent to Plaintiff's vehicle. Defendant shall also produce a witness to testify about repairs made to Plaintiff's vehicle, recalls and technical service bulletins, warranties, and the reasons that GM did not repurchase Plaintiff's vehicle.</p> <p>The Court will further order that the parties are to "Meet &amp; Confer" face-to-face either in person or in a video format to work out any differences they may have. A transcription of the further meet and confer will be useful.</p> <p>This Court expects the parties to achieve the foregoing within 30 days of the filing and service of this Order.</p> <p>SEE ATTACHED TENTATIVE RULING.</p>
LINE 13	23CV416446	Michael Carpenter vs General Motors, LLC	<p><b>Motion of Plaintiff to Compel Defendant to Receive Provide Further Responses to Requests for Production Number 1-3, 9, 17, 37-32, and 85-86.</b></p> <p>SEE LINE #12.</p>
LINE 14	23CV416446	Michael Carpenter vs General Motors, LLC	<p><b>Motion of Plaintiff to Compel Defendant to Provide Further Responses to Form Interrogatories Nos. 12.1, 15.1, and 17.1.</b></p> <p>SEE LINE #12.</p>
LINE 15	23CV416446	Michael Carpenter vs General Motors, LLC	<p><b>Motion of Plaintiff to Compel Defendant to Produce Its Person Most Knowledgeable with Production of Documents.</b></p> <p>SEE LINE #12.</p>



LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 16	20CV370579	YDM Management Co., Inc.; Advanced Orthopedic Center, Inc. vs Catherine Llavnes Century Park Ambulatory Surgical Center, LLC. And Related Cross-Complaint.	<p><b>Motion of Defendant/Cross-Complainant Century Park Ambulatory Surgical Center, LLC for Order Setting Aside and Vacating Default and Default Judgment and for Leave to File an Answer and Amended Cross-Complaint.</b></p> <p>The motion of defendant Century Park is GRANTED. Century Park is to provide discovery responses, including appropriate objections, to any outstanding discovery requests within fifteen (15) days of this Court's order. Century Park is to pay the \$3,400.00 for the earlier failure to respond to discovery.</p> <p>This Court intends to set a trial date following the hearing on the law &amp; motion calendar to select a new date. The parties should meet and confer beforehand and agree upon a date beginning in November of this year.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 17	20CV371114	Ryan Husband vs JK Parcel, Inc.; Ryker SF, Inc.; Chigozie Ndekwe	<p><b>Order on Motion of Defendant JK Parcel, Inc. For Attorneys Fees and Costs.</b></p> <p>Plaintiff claims that defendant JK PARCEL is not entitled to attorney's fees on the sole second cause of action for claim and delivery pursued against it. Attorney's fees are only available to a prevailing litigant if there is a suit on a Contract that provides for attorney's fees, a statute provides for attorney's fees or some other legal basis.</p> <p>Plaintiff's complaint alleged two causes of action for breach-of-contract against Mr. Ndekwe and for claim and delivery against Mr. Ndekwe, JK Parcel and Ryker SF. Both causes of action rely upon the note and breaches of the note (Complaint, ¶¶ 13-22.)</p> <p>JK Parcel It relies on <b>Civil Code</b>, § 1717(a) and <b>Reynolds Metals Co. v. Alperson</b> (1979) 25 Cal.3d 124, 128-9 for the purpose that contractual provisions for attorney's fees are a reciprocal remedy for a nonsignatory, sued on a contract as if he were a party to it, when a plaintiff would clearly be entitled to attorney's fees should he prevail in enforcing this contractual obligation against the defendant.</p> <p>The note itself alleges an entitlement to reasonable attorney's fees, costs and other expenses incurred by Plaintiff in enforcing the terms of the [Stock Purchase Agreement] and note. (Complaint, ¶¶ 16-17.) The prayer of the complaint asked for attorney's fees and costs according to proof at trial or by subsequent motion. (Complaint, Prayer, ¶¶ 3-6.)</p> <p>The Court has questions.</p> <p>NO TENTATIVE RULING.</p>



LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 18	21CV382029	Guillermina Guerra; Leonel Contreras; Maria Teresa Manzo vs Piyush Vijay PV Holding Corporation; Avis Budget Group, Inc.	<p><b>Motion of Defendants PV Holding Corp., Avis Budget Group, Inc. And Piyush Vijay to Continue Trial.</b></p> <p>The motion is not opposed. Defendants have shown good cause to justify the continuance. Depositions of the 3 plaintiffs are recently taken and they revealed medical treatment that had not previously been revealed in discovery. Further, the parties have a mediation session scheduled.</p> <p>The motion is GRANTED. The parties are to appear on the law and motion calendar for a SEE ATTACHED TENTATIVE RULING.</p>
LINE 19	23CV410259	John Doe vs Gelareh Homayounfar; Homa Homayounfar	<p><b>Motion of Plaintiff for Reconsideration of Order Granting Attorney's Fees to Defendants (Code of Civil Procedure, §425.16.)</b></p> <p>By virtue of the notice of appeal filed by plaintiff, this Court has lost jurisdiction to proceed on the matter until further order from the Court of Appeal.</p> <p>SEE ATTACHED TENTATIVE RULING.</p>
LINE 20	23CV410259	John Doe vs Gelareh Homayounfar; Homa Homayounfar	<p><b>Motion of Defendant for Reconsideration Of Order Granting Attorney's Fees to pursuant to Code of Civil Procedure, §425.16.</b></p> <p>SEE LINE #20..</p>
LINE 21	24CV428765	Mary Wade vs Shartina Sanchez; Galen R. Kane.	<p><b>Order to Judgment Debtors to Show Cause Why an Order for Sale of a Dwelling Should Not Be Granted.</b></p> <p>A notice of bankruptcy stay of the entire action was filed in Federal court on 20 February 2024.</p> <p>NO FORMAL TENTATIVE RULING</p>
LINE 22			SEE ATTACHED 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

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Calendar Line 2

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Calendar Line 3

**SUPERIOR COURT, STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA  
DEPARTMENT 20**

**161 North First Street, San Jose, CA 95113  
408.882.2320 · 408.882.2296 (fax)  
*smanoukian@scscourt.org*  
*http://www.scscourt.org***

*(For Clerk's Use Only)*

**CASE NO.: 23CV423861**

**Kyle Roberts v. Wyatt Perkins; Rossanna Perkins.**

**DATE: 29 February 2024**

**TIME: 9:00 am**

**LINE NUMBER: 04**

**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 28 February 2024. Please specify the issue to be contested when calling the Court and Counsel.**

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**Order on Motion of Defendants  
to Strike Portions Of Plaintiff's Complaint.**

**I. Statement of Facts.**

Plaintiff Kyle Roberts ("Roberts") alleges that on 25 October 2021, defendant Wyatt Perkins ("Perkins"), then 17 years old, negligently operated a Toyota vehicle at the intersection of Hicks Road and Burke Road in San Jose by traveling at a high rate of speed, crossing a double yellow line, and drifting into the opposite lane of traffic resulting in a head-on crash with plaintiff Roberts's vehicle which was traveling in the opposite lane. (First Amended Complaint ("FAC"), ¶¶MV-1 and GN-1.) Plaintiff Roberts suffered multiple serious injuries as a result. (FAC, ¶GN-1.)

On or about 4 October 2023<sup>1</sup>, plaintiff Roberts filed a Judicial Council form complaint against defendants Perkins and Rossanna Perkins.

On 22 November 2023, plaintiff Roberts filed a Judicial Council FAC, the operative complaint in this action, against defendants Perkins and Rossanna Perkins. The FAC asserts causes of action for:

- (1) Negligence—Motor Vehicle
- (2) General Negligence

Plaintiff Roberts's FAC also includes an exemplary damages attachment which alleges, in relevant part, defendant Perkins "operated his [ ] vehicle in a manner showing a willful and conscious disregard of the rights or safety of the Plaintiff and others, including but not limited to excessive speeding on a dangerous road causing him to cross a double line into the opposite lane of traffic, not paying attention to road conditions and signs, and failing to recognize that he should not be driving under a stressful state of mind."

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<sup>1</sup> 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).)

On 4 December 2023, defendants Perkins and Rossanna Perkins (collectively, “Defendants”) filed the motion now presently before the court, a motion to strike the punitive/ exemplary damage allegations from plaintiff Roberts’s **original** complaint.

## II. Motions to Strike.

“The court may, upon a motion made pursuant to [**Code of Civil Procedure**, § 435, or at any time in its discretion, and upon terms it deems proper: (a) Strike out any irrelevant, false, or improper matter inserted in any pleading. (b) Strike out all or any 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.” (**Code of Civil Procedure**, § 436.)

“A notice of motion to strike must be given within the time allowed to plead, and if a demurrer is interposed, concurrently therewith, and must be noticed for hearing and heard at the same time as the demurrer.” (**Rules of Court**, rule 3.1322(b).)

“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.” (**Rules of Court**, rule 3.1322(b).)

Under general rules of civil procedure, a motion to strike may be brought on the following two grounds:

- a. Strike out any irrelevant, false, or improper matter inserted in any pleading.
- b. Strike out all or any 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. (**Code of Civil Procedure**, § 436.)

Irrelevant matter includes “immaterial allegations.” (**Code of Civil Procedure**, § 431.10, subd. (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, subd. (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 2020) ¶7:168, p. 7(l)-75 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.)

Motions to strike must be utilized cautiously and sparingly because they are not procedural “line item vetoes” for the civil defendant. (**PHII, Inc. v. Superior Court (Ibershof)** (1995) 33 Cal.App.4th 1680, 1683 .) “A motion to strike may be used as a scalpel—to cut out any irrelevant, false, or improper matters inserted therein.” (Weil & Brown, California Practice Guide: **Civil Procedure before Trial** (The Rutter Group 2019) §7:177, p. 7-61 citing **Code of Civil Procedure**, § 436(a) (internal punctuation modified).) “This includes allegations not essential to the claim or defense; allegations neither pertinent to nor supported by an otherwise sufficient claim or defense; or a demand for judgment requesting relief not supported by the allegations of the complaint or cross-complaint.” *Id.* at §7:178 citing **Code of Civil Procedure**, § 431.10(b).) (internal punctuation modified.)

“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. Superior Court** (1998) 67 Cal.App.4th 1253, 1255.) “In ruling on a motion to strike, courts do not read allegations in isolation.” (**Clauson**, 67 Cal.App.4th at 1255.)

As there is no legal basis for further amendment, leave to amend is DENIED. (See **Hoffman v. Smithwoods RV Park, LLC** (2009) 179 Cal.App.4th 390, 401 “[W]here the nature of the plaintiff’s claim is clear, and under substantive law no liability exists, a court should deny leave to amend because no amendment could change the result.”).)

### III. Analysis.

#### A. Defendants Perkins's motion to strike portions of plaintiff Roberts's FAC is GRANTED.

Initially, the court notes that defendants Perkins's motion to strike is directed at plaintiff Roberts's *original* complaint filed on 4 October 2023. Since then, plaintiff Roberts filed the now operative FAC on 22 November 2023.

“ ‘[A]n amendatory pleading supersedes the original one, which ceases to perform any function as a pleading.’ ” (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 884 [92 Cal. Rptr. 162, 479 P.2d 362].) “The amended complaint furnishes the sole basis for the cause of action, and the original complaint ceases to have any effect either as a pleading or as a basis for judgment. [Citation.] [¶] Because there is but one complaint in a civil action [citation], the filing of an amended complaint moots a motion directed to a prior complaint. [Citation.]” (*State Compensation Ins. Fund v. Superior Court* (2010) 184 Cal.App.4th 1124, 1131 [109 Cal. Rptr. 3d 88].) Thus, the filing of an amended complaint renders moot a demurrer to the original complaint. (*Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.* (2004) 122 Cal.App.4th 1049, 1054 [18 Cal. Rptr. 3d 882].)

(*JKC3H8 v. Colton* (2013) 221 Cal.App.4th 468, 477 (*Colton*).)

However, in the interest of judicial economy and because plaintiff opposes the motion on its substantive merits, the court will treat defendants Perkins's motion to strike as though it is directed at plaintiff Roberts's FAC.

Defendants Perkins's motion seeks to strike plaintiff's allegations regarding punitive/ exemplary damages. Pursuant to Civil Code section 3294, punitive damages may be recovered “where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice.”

In *G.D. Searle & Co. v. Superior Court* (1975) 49 Cal.App.3d 22, 26 (*Searle*), the court wrote, “In California the award of damages by way of example or punishment is controlled by *Civil Code* section 3294, which authorizes that kind of award against a tortfeasor who has been guilty of ‘oppression, fraud or malice, express or implied.’” “Notwithstanding relaxed pleading criteria, certain tortious injuries demand firm allegations. Vague, conclusory allegations of fraud or falsity may not be rescued by the rule of liberal construction. When the plaintiff alleges an intentional wrong, a prayer for exemplary damage may be supported by pleading that the wrong was committed willfully or with a design to injure. When nondeliberate injury is charged, allegations that the defendant's conduct was wrongful, willful, wanton, reckless or unlawful do not support a claim for exemplary damages; such allegations do not charge malice.” (*Id.* at p. 29; internal citations omitted.)

“Punitive damage allegations cannot be pleaded generally. The complaint must allege facts showing statutory ‘oppression,’ ‘malice’ or ‘fraud’ (*Civil Code* § 3294(a), (c).)” (Flahavan, Rea & Kelly, *CAL. PRAC. GUIDE: PERSONAL INJURY* (The Rutter Group 2005) ¶5:428, p. 5-165.) “In determining whether a complaint states facts sufficient to sustain punitive damages, the challenged allegations must be read in context with the other facts alleged in the complaint. Further, even though certain language pleads ultimate facts or conclusions of law, such language when read in context with the facts alleged as to defendants' conduct may adequately plead the evil motive requisite to recovery of punitive damages.” (*Monge v. Superior Court* (1986) 176 Cal.App.3d 503 citing *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6 – 7.)

“‘Malice’ means 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.” (*Civil Code* §3294, subd. (c)(1).) To plead a “willful and conscious disregard of the rights of others,” a plaintiff need only allege, “that the defendant was aware of the probable dangerous consequences of his conduct, and that he willfully and deliberately failed to avoid those consequences.” (*Lackner v. North* (2006) 135 Cal.App.4th 1188, 1211 (*Lackner*).)

In the complaint, there are no allegations that defendants Perkins intended to cause injury to plaintiff Roberts. Instead, plaintiff Roberts contends defendant Perkins acted with a willful and conscious disregard of the rights or safety of others, including plaintiff, because it is alleged that defendant Perkins was “excessive[ly] speeding on a dangerous road causing him to cross a double line into the opposite lane of traffic, not paying attention to road conditions and signs, and failing to recognize that he should not be driving under a stressful state of mind.” [Plaintiff Roberts, in opposition, asserts a number of other facts which do not appear in the FAC.



As with demurrers, “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 Civ. Proc.**, §437, subd. (a).) The court will not consider these extrinsic facts in ruling on the motion to strike.]

In the court’s opinion, plaintiff’s allegation, above, is insufficient to establish that defendant Perkins was aware of the probable dangerous consequences and that defendant thereafter “willfully and deliberately failed to avoid those consequences.” (**Lackner**, *supra*, 135 Cal.App.4th at p. 1211.) In **Ford Motor Co. v. Home Ins. Co.** (1981) 116 Cal.App.3d 374, 381, the court wrote, “Nonintentional conduct comes within the definition of malicious acts punishable by the assessment of punitive damages when a party intentionally performs an act from which he knows, or should know, it is highly probable that harm will result.”

The definition of malice also requires that the conduct be despicable. “‘Despicable conduct’ has been described as conduct which is so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by ordinary decent people. [Citation.] Such conduct has been described as ‘[having] the character of outrage frequently associated with crime.’” (**American Airlines, Inc. v. Sheppard, Mullin, Richter & Hampton** (2002) 96 Cal.App.4th 1017, 1050.) “[I]n cases involving conduct performed without intent to harm, a finding of ‘malice’ for punitive purposes requires proof by clear and convincing evidence that defendant’s tortious wrong amounted to ‘despicable conduct’ and that such despicable conduct was carried on with a ‘willful and conscious disregard’ of the rights or safety of others.” (See **College Hospital, Inc. v. Superior Court** (1994) 8 Cal.4th 704 (College Hospital).)

“Malice” is defined as conduct “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.” [Citation.] As noted earlier, the italicized words were added by the 1987 Reform Act. We assume they are not surplusage. [Citation.]

By adding the word “willful” to the “conscious-disregard” prong of malice, the Legislature has arguably conformed the literal words of the statute to existing case law formulations. [Citation.] However, the statute’s reference to “despicable” conduct seems to represent a new substantive limitation on punitive damage awards. Used in its ordinary sense, the adjective “despicable” is a powerful term that refers to circumstances that are “base,” “vile,” or “contemptible.” [Citation.] As amended to include this word, the statute plainly indicates that absent an intent to injure the plaintiff, “malice” requires more than a “willful and conscious” disregard of the plaintiffs’ interests. The additional component of “despicable conduct” must be found.

(**College Hospital**, *supra*, 8 Cal.4th at p. 725.)

“Punitive damages are appropriate if the defendant’s acts are reprehensible, fraudulent or in blatant violation of law or policy. The mere carelessness or ignorance of the defendant does not justify the imposition of punitive damages.... Punitive damages are proper only when the tortious conduct rises to levels of extreme indifference to the plaintiff’s rights, a level which decent citizens should not have to tolerate.” (**Lackner**, *supra*, 135 Cal.App.4th at p. 1210.) In **Lackner**, the court held, as a matter of law on a motion for summary judgment, that a snowboarder who struck a skier while racing through a rest area did not engage in despicable conduct.

At the pleading stage, the facts are not sufficiently developed and the court cannot determine, as a matter of law, whether defendants’ conduct would amount to despicable conduct. However, as explained above, plaintiff has not even pleaded fundamentally any factual allegation “that the defendant was aware of the probable dangerous consequences of his conduct, and that he willfully and deliberately failed to avoid those consequences.” (**Lackner**, *supra*, 135 Cal.App.4th at p. 1211.)

Accordingly, defendants Perkins’s motion to strike the punitive/ exemplary damage allegations from plaintiff Roberts’s FAC is GRANTED with 20 days’ leave to amend.

#### IV. Tentative Ruling.

The tentative ruling was duly posted.

**V. Case Management.**

The Case Management Conference currently set for 19 March 2024 is VACATED and RESET to 27 August 2024 at 10:00 AM in Department 20.

The parties should commence discovery and discuss alternate dispute resolution.

**VI. Order.**

Defendants Perkins's motion to strike the punitive/ exemplary damage allegations from plaintiff Roberts's FAC is GRANTED with 20 days' leave to amend.

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**DATED:**

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**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**

**161 North First Street, San Jose, CA 95113**

**408.882.2320 · 408.882.2296 (fax)**

***smanoukian@scscourt.org***

***http://www.scscourt.org***

*(For Clerk's Use Only)*

**CASE NO.: 22CV408173**

**Mircea Dragomir as Successor Trustee etc. et al v. Ryan Lotz**

**DATE: 29 February 2024**

**TIME: 9:00 am**

**LINE NUMBER: 06**

**This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2<sup>nd</sup> 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 28 February 2024. Please specify the issue to be contested when calling the Court and Counsel.**

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**Order On Motion of Plaintiff  
for Summary Judgment/Summary Adjudication.**

**I. Statement of Facts.**

This motion is not opposed.

Plaintiff filed this complaint on 05 December 2022.<sup>2</sup>

Diane E. Holmgren created a Trust for her son, Timothy Holmgren, that would be funded on her death. Diane E. Holmgren died on 02 December 2, 2008. Timothy Holmgren, in turn, passed away on 18 July 2021. The remainder beneficiaries of the Trust are Timothy Holmgren's brother and nephew.

The Trust owns real Property located at 8092 Croy Road, Morgan Hill, California.

On 28 September 2018, Carol Lotz was appointed successor trustee. She was the immediate predecessor to plaintiff and is the mother of defendant, Ryan Lotz. On 15 August 2022, due to her numerous breaches of her fiduciary duty as trustee, she was removed and plaintiff was appointed.

On 19 April 2019, she purchased the property in question and allowed her son to illegally occupy the property. He continues to live on the property and has damaged it by building illegal structures without permits, an illegal septic tank and Leitchfield system, growing marijuana, and polluting a natural creek.

Defendant failed to respond to properly propounded discovery. As a result, several facts necessary to establish the cause of action for injunctive relief have been deemed admitted.

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<sup>2</sup> 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).

## II. Motion For Summary Judgment.

This motion was filed on 05 December 2023.

As noted above, no opposition papers have been filed. Nevertheless, this Court reviews the papers for a determination that the motion is well taken.

## III. Analysis.

Any party may move for summary judgment. (**Code of Civil Procedure**, § 437c, subd. (a); **Aguilar v. Atlantic Richfield Co.** (2001) 25 Cal.4<sup>th</sup> 826, 843 (**Aguilar**).) The motion “shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” (**Code of Civil Procedure**, § 437c, subd. (c); **Aguilar, supra**, at p. 843.) The object of the summary judgment procedure is “to cut through the parties’ pleadings” to determine whether trial is necessary to resolve the dispute. (**Aguilar, supra**, at p. 843.)

The “party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact...” (**Aguilar, supra**, 25 Cal.4<sup>th</sup> at p. 850; see **Evidence Code**, § 110.) “A prima facie showing is one that is sufficient to support the position of the party in question.” (**Aguilar, supra**, at p. 851.) A defendant moving for summary judgment may satisfy its initial burden either by producing evidence of a complete defense or by showing the plaintiff’s inability to establish a required element of the case. (**Code of Civil Procedure**, § 437c, subd. (p)(2); **Aguilar, supra**, at p. 853.)

If a moving defendant makes the necessary initial showing, the burden of production shifts to the plaintiff to make a prima facie showing of the existence of a triable issue of material fact. (**Code of Civil Procedure**, § 437c, subd. (p)(2); see **Aguilar, supra**, 25 Cal.4<sup>th</sup> at p. 850.) A triable issue of material fact exists “if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.” (**Aguilar, supra**, at p. 850, fn. omitted.) If the plaintiff opposing summary judgment presents evidence demonstrating the existence of a disputed material fact, the motion must be denied. (**Id.** at p. 856.)

Throughout the process, the trial court “must consider all of the evidence and all of the inferences drawn therefrom.” (**Aguilar, supra**, 25 Cal.4<sup>th</sup> at p. 856.) The moving party’s evidence is strictly construed, while the opponent’s is liberally construed. (**Id.** at p. 843.)

Similarly, “[a] party may seek summary adjudication on whether a cause of action, affirmative defense, or punitive damages claim has merit or whether a defendant owed a duty to a plaintiff. A motion for summary adjudication...shall proceed in all procedural respects as a motion for summary judgment.” (**California Bank & Trust v. Lawlor** (2013) 222 Cal.App.4<sup>th</sup> 625, 630, internal citations and quotation marks omitted.)

On 07 September 2023, this Court entered an order deeming certain requests for admissions to be admitted.

The statement of undisputed facts includes these admissions. It demonstrates that Ryan Lotz is a trespasser on the property notwithstanding proper requests to vacate the property. His acts of trespassing and illegal construction has caused and continues to cause damage to the plaintiff.

The motion of plaintiff for summary judgment is GRANTED. Plaintiff is to submit an appropriate judgment and submitted to this Department via the e-filing queue for execution.

## IV. Tentative Ruling.

The tentative ruling was duly posted.

## V. Case Management.

The court trial in this matter currently set for 30 April 2024 is VACATED. The case will be set for Dismissal Review on Thursday, 30 August 2024 at 10:00 AM in Department 20.

**VI. Order.**

The motion of plaintiff for summary judgment is GRANTED. Plaintiff is to give notice of entry of this Order.

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**DATED:**

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**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**

**161 North First Street, San Jose, CA 95113**  
**408.882.2320 · 408.882.2296 (fax)**  
*smanoukian@scscourt.org*  
*http://www.scscourt.org*

*(For Clerk's Use Only)*

**CASE NO.: 23CV416446**

**Michael Carpenter vs General Motors, LLC**

**DATE: 29 February 2024**

**TIME: 9:00 am**

**LINE NUMBER: 12, 13, 14, 15**

**This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2<sup>nd</sup> 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 28 February 2024. 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  
To Discovery Requests.**

**I. Statement of Facts.**

Plaintiff filed this complaint on 19 May 2022.<sup>3</sup> He alleges that on 05 November 2019, he released a 2019 Chevrolet Silverado for personal use and purchased for a total consideration over the term of the lease in the amount of \$31,184.35. He received written warranties and other express and implied warranties including that the vehicle and its components would be free from all defects in material and workmanship and fit for the ordinary purposes for which it was intended etc.

He alleges that there were defects in the automatic transmission that resulted in dangerous functional failures and impairment of use which presented a safety hazard because his ability to control the vehicle speed and acceleration was severely impaired when the transmission improperly hesitated, surged, bucked, lurched, slipped, and shifted harshly.

The complaint alleges causes of action for:

1. Breach of Implied Warranty of Merchantability under The Song-Beverly Act;
2. Breach of Express Warranty under The Song-Beverly Act;
3. Fraudulent Concealment; and
- 4 Violation of Civil Code Section §1750 et seq. (The Consumers Legal Remedies Act);

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<sup>3</sup> 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).

## II. Motion to Compel Further Discovery Responses.

The scenario surrounding this discovery dispute is well familiar to this Court.

Plaintiff served upon defendant a hefty set of discovery requests ostensibly seeking information concerning the defects in question. Defendant has responded with what it believes to be proper responses and claims that the motion seeks irrelevant information beyond that which is at issue in this interesting lawsuit.

## III. Analysis.

### A. Discovery in General.

Discovery is allowed for any matters that are not privileged, relevant to the subject matter involved in the action, and reasonably calculated to lead to the discovery of admissible evidence. (*Code of Civil Procedure*, § 2017.010.) The “relevance to the subject matter” and “reasonably calculated to lead to discovery of admissible evidence” standards are applied liberally with any doubt generally resolved in favor of discovery. (*Colonial Life & Accident Insurance Co. v. Superior Court (Perry)* (1982) 31 Cal.3d 785, 790.) Moreover, for discovery purposes, information is “relevant to the subject matter” if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement thereof. (*Gonzalez v. Superior Court* (1995) 33 Cal.App.4th 1539, 1546.)

“In sum, the relevance of the subject matter standard must be reasonably applied; in accordance with the liberal policies underlying the discovery procedures, doubts as to relevance should generally be resolved in favor of permitting discovery.” (*Pacific Tel. & Tel. Co. v. Superior Court of San Diego County* (1970) 2 Cal. 3d 161, 173.); (*Colonial Life & Accident Insurance Co.*, supra.)

A party is also entitled to use multiple discovery devices to obtain information as long as it is not subjecting a party to unwarranted annoyance, embarrassment, or oppression or undue burden and expense. (See *Code of Civil Procedure*, § 2019.010; *Carter v. Superior Court* (1990) 218 Cal.App.3d 994, 997-998.) All litigants are entitled to exercise all tools of discovery, even those that may overlap. (*Williams v. Superior Court (Marshalls of CA, LLC)* 3 Cal.5th 531, 541.)

Conduct of the parties which manifests a “deliberate indifference to responsibility in discovery” and has “no time for such antics.” (*Collisson & Kaplan v. Hartunian* (1994) 21 Cal.App.4th 1611, 1618.)

This Court has routinely commented that discovery devices should be used as tools to facilitate litigation rather than as weapons to wage litigation. “Courts must insist discovery devices be used as tools to facilitate litigation rather than as weapons to wage litigation. These tools should be well calibrated; the lancet is to be preferred over the sledge hammer.” (*Calcor Space Facility v. Superior Court* (1997) 53 Cal.App.4th 216, 221; *Mannino v. Superior Court* (1983) 142 Cal.App.3d 776<sup>4</sup>; *Obregon v. Superior Court* (1998) 67 Cal.App.4th 424, 431.<sup>5</sup>)

### B. “Meet & Confer.”

“A meet and confer declaration in support of a motion shall state facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.” (*Code of Civil Procedure*, § 2016.040.)

A motion to compel further responses shall be accompanied by a meet and confer declaration “showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.” (*Code of Civil Procedure*, §§ 2016.040, 2030.300(b); 2031.310(b)(2); 2025.420(a).)

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<sup>4</sup> “We are also aware the discovery process is subject to frequent abuse and, like a cancerous growth, can destroy a meritorious cause or defense when the party with the greater resources chooses to employ it in an unethical manner (although this is hardly the circumstance here).”

<sup>5</sup> “Any discovery request, even an initial one, can be misused in an attempt to generate settlement leverage by creating burden, expense, embarrassment, distraction, etc. It is a judge’s responsibility to control such abuse. (Cf. *Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal.App.4th 216, 221 [discovery abuse is a spreading cancer; judges must be aggressive in curbing abuse; discovery statutes are prone to misuse absent judicial consideration for burden; courts must insist that discovery be used to facilitate litigation rather than as a weapon].)”



A reasonable and good faith attempt at informal resolution entails something more than argument with opposing counsel. (*Townsend v. Superior Court (EMC Mortgage Co.)* (1998) 61 Cal.App.4<sup>th</sup> 1431, 1435, 1439.) It requires that the parties present the merits of their respective positions with candor, specificity, and support. (*Id.*) The level of effort at informal resolution that satisfies the “reasonable and good faith attempt” standard depends upon the circumstances of the case. (*Obregón v. Superior Court (Cimm’s, Inc.)* (1998) 67 Cal.App.4<sup>th</sup> 424, 431.) The Court has discretion to deny discovery absent efforts to meet and confer, but must consider whether a less drastic remedy is appropriate given the circumstances presented. (See *Townsend v. Superior Court*, supra, 61 Cal.App.4<sup>th</sup> at p. 1439; *Obregón v. Superior Court*, supra, 67 Cal.App.4<sup>th</sup> at p. 434.)

In cases such as this, this Court has described the “Meet & Confer” as akin to a drive-by shooting. This Court agrees with the defense that the single letter sent by plaintiff was not really an attempt to resolve the matter.

#### **C. Discussion.**

Nevertheless, in the interest of moving this matter off dead center, the Court will proceed to the merits.

Plaintiff is entitled to the Vehicle’s entire repair history because it evidences whether defects exist and whether or not Defendant had a reasonable number of opportunities to repair them; the warranties that accompanied the Vehicle and warranty policies and procedures in place because this is a breach of warranty case. Plaintiff correctly asserts that these documents may lead to evidence about Defendant’s knowledge of the defects.

The Court generally agrees with that defendant to the effect that the defendant need not produce every document ever created pertaining to this vehicle.

This Court agrees with the representations of General Motors that many of the categories requested are overbroad, vague and ambiguous, and not tailored to the issues as well. Some of the categories seek all information concerning certain defects with no limitations all about years, makes, models, time, location, mileage and so forth.

As to the special and form interrogatories and request for production of documents, the Court will GRANT and DENY the motions as follows: This Court will order the parties to meet and confer on the responses with the limitations of responses pertaining to the production of the particular components, i.e., the transmission of the make and model of the car in question as well as the, whether they were used only in this year’s model or in other model vehicles.

The Court will GRANT and DENY the motion concerning the person most knowledgeable as follows: as follows: Defendant is to produce a PMK for deposition on the categories that are actually pertinent to Plaintiff’s vehicle. Defendant shall also produce a witness to testify about repairs made to Plaintiff’s vehicle, recalls and technical service bulletins, warranties, and the reasons that GM did not repurchase Plaintiff’s vehicle.

The Court will further order that the parties are to “Meet & Confer” face-to-face either in person or in a video format to work out any differences they may have. A transcription of the further meet and confer will be useful.

This Court expects the parties to achieve the foregoing within 30 days of the filing and service of this Order.

#### **IV. Tentative Ruling.**

The tentative ruling was duly posted.

#### **V. Case Management.**

The Case Management Conference currently set for 26 March 2024 at 10:00 AM will be RESET to a Trial Setting Conference on 26 March 2024 at 11:00 AM in this Department.

#### **VI. Order.**

As to the special and form interrogatories and request for production of documents, the Court will GRANT and DENY the motions as follows: This Court will order the parties to meet and confer on the responses with the

limitations of responses pertaining to the production of the particular components, i.e., the transmission of the make and model of the car in question as well as the, whether they were used only in this year's model or in other model vehicles.

The Court will GRANT and DENY the motion concerning the person most knowledgeable as follows: as follows: Defendant is to produce a PMK for deposition on the categories that are actually pertinent to Plaintiff's vehicle. Defendant shall also produce a witness to testify about repairs made to Plaintiff's vehicle, recalls and technical service bulletins, warranties, and the reasons that GM did not repurchase Plaintiff's vehicle.

The Court will further order that the parties are to "Meet & Confer" face-to-face either in person or in a video format to work out any differences they may have. A transcription of the further meet and confer will be useful.

This Court expects the parties to achieve the foregoing within 30 days of the filing and service of this Order.

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**DATED:**

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**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**

161 North First Street, San Jose, CA 95113  
408.882.2320 · 408.882.2296 (fax)  
[smanoukian@scscourt.org](mailto:smanoukian@scscourt.org)  
<http://www.scscourt.org>

(For Clerk's Use Only)

CASE NO.: 20CV370579

YDM Management Co., Inc. vs Catherine Llavnes et al.

DATE: 29 February 2024

TIME: 9:00 am

LINE NUMBER:

This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2<sup>nd</sup> 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 28 February 2024. Please specify the issue to be contested when calling the Court and Counsel.

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**Motion of Defendant/Cross-Complainant  
Century Park Ambulatory Surgical Center, LLC  
for Order Setting Aside and Vacating Default and Default Judgment  
and for Leave to File an Answer and Amended Cross-Complaint.**

**I. Statement of Facts.**

Defendant/Cross-Complainant Century Park Ambulatory Surgical Center, LLC, seeks an order setting aside and vacating the default judgment entered against it on 21 November 2023, and granting Century Park leave to file its Answer and Cross-Complaint.

In 2021, Century Park was involved with a litigation with Cross-Defendant Jonathan Nissanoff, MD, and his related entities. Said litigation was within the action filed by YDM Management Co., Inc., and the related action filed by Advanced Orthopedic Center, Inc.

Catherine Llavnes, the manager of Century Park, is claimed to have been responsible in assisting Century Park with the defense of the foregoing litigation. As of December 2021, she was working with attorney Andrew Altholz ("Altholz") to resolve that action on Century Park's behalf. However, in January of 2022, Century Park terminated its agreement with Ms. Llavnes.

As a result of a discovery sanction, moving parties answer was stricken by this Court.

Moving party claims the following: This Court's order striking cross-complaint and answer does not comply with **Code of Civil Procedure** § 177.5, which requires proper written notice for terminating sanctions. Plaintiff never provided the necessary written notice to Century Park in any moving papers. To the extent the Court's order was based on the Court's own motion, there is no record that Century Park received the necessary notice of said motion for the 06 July 2023 hearing, nor an opportunity to be heard. Furthermore, the Court's 06 July 2023 minute order striking Century Park's cross-complaint and answer does not comply with **Code of Civil Procedure**, § 177.5 in that the 06 July 2023 minute order does not recite in detail the conduct or circumstances justifying the order.

Moving party believes that the litigation had concluded and did not know that a default proceeding was entered as a discovery sanction until December of 2023 and was completely unaware that its attorney, Mr. Althoff, was disbarred and thus ineligible to practice law as of 09 October 2022.

Plaintiff YDM Management Co., Inc. filed opposition to the motion. Plaintiff points out that Dr. Marschak, a 50% owner of the moving party, could not be bothered with checking on the status of this lawsuit, nor contacted co-defendant Catherine Llavnes who terminated her relationship some nine months before any of the State Bar issues arose concerning Mr. Altholtz.

## II. Analysis.

The application for discretionary relief under Section 473(b) must be within a reasonable time, in no case exceeding six months after entry of the Court's Order. [§473(b); Weil & Brown, **California Practice Guide: Civil Procedure Before Trial** (The Rutter Group 2019) § 5:364 at pp.5-106, 107.]

This application is timely.

Both parties cite **Huh v. Wang** (2007) 155 Cal.App.4<sup>th</sup> 1406 concerning how the disbarred attorney contributed to the current situation.

In determining whether the attorney's mistake or inadvertence was excusable, the court inquires whether a reasonably prudent person under the same or similar circumstances might have made the same error. In other words, the discretionary relief provision of section 473 only permits relief from attorney error fairly imputable to the client, i.e., mistakes anyone could have made. Conduct falling below the professional standard of care, such as failure to timely object or to properly advance an argument, is not therefore excusable. To hold otherwise would be to eliminate the express statutory requirement of excusability and effectively eviscerate the concept of attorney malpractice. (**Zamora v. Clayborn Contracting Group, Inc.** (2002) 28 Cal.4<sup>th</sup> 249, 258,)

This case goes beyond **Huh** and **Zamora** in that this was beyond simple attorney malpractice but rather an attorney torpedoing the client by not advising that he had been disbarred which would have given notice to defendant to seek other counsel and perhaps rectify the situation before it got worse.

The Court agrees with moving party defendant that factors outside the control of the attorney occurred which resulted in disbarment and the client not knowledgeable about the disbarment. That case involves a very different situation where the disbarred attorney in effect pulled a major fraud on the client.

Not that the following necessarily applies to this case but this Court is aware that attorneys read the tentative rulings posted by this Department even though they do not have matters on the calendar:

The Local Rules of the Santa Clara County Superior Court contain this provision at the very end of the rules posted on this Court's webpage:

"Good cause appearing, upon consideration by and with the approval of the Judges of the Santa Clara Superior Court, it is hereby ORDERED that the Code of Professionalism adopted by the Santa Clara County Bar Association in June 1992 and revised in October 2015 will serve as a guide to the Judges of the Santa Clara Superior Court in the exercise of their individual discretion when adjudicating disputes among attorneys. While the Code does not have the force of law or regulation with respect to the conduct of attorneys, it reflects the view of the members of the Santa Clara County Bar Association regarding appropriate attorney behavior. As such it is helpful in giving judges guidance about the expectations of attorneys concerning acceptable behavior. (Cf. *Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826, 838, fn. 6.)

It is further ORDERED that notice of this standing order shall be published to all attorneys practicing before this Court by appending a copy of this order to the Local Rules of Court.

Dated: November 17, 2016  
/s/ Risë Jones Pichon  
Presiding Judge"

Section 15 of these Rules states: "**DEFAULT.** A lawyer should not seek and opposing party's default to obtain a judgment or substantive order without giving that opposing parties sufficient advance written warning to allow the opposing party to cure the default."



“The law does not favor snap judgments. The policy of the law is to have every litigated case tried upon its merits, and it looks with disfavor upon a party who, regardless of the merits of his case, attempts to take advantage of the mistake, surprise, inadvertence, or neglect of his adversary. Where a party in default makes seasonable application to be relieved therefrom, and files an affidavit of merits alleging a good defense, and the plaintiff files no counter affidavit and makes no showing that he has suffered any prejudice or that injustice will result from the trial of the case upon its merits, very slight evidence will be required to justify a court in setting aside the default. A broad discretion is allowed to courts in granting relief, against default, and it is in cases only where the lower court has abused its discretion that the appellate court will reverse its action. The quiet speed of plaintiffs' attorney in seeking a default judgment without the knowledge of defendants' counsel is not to be commended.” (***Smith v. Los Angeles Bookbinders Union No. 63*** (1955) 133 Cal.App.2d 486, 499–500 (disapproved on other grounds in ***MacLeod v. Tribune Pub. Co.*** (1959) 52 Cal.2d 536, 551).)

In this case, had counsel for plaintiff attempted to contact the disbarred lawyer concerning the events of last year, there was no reason to believe that any response from the disbarred attorney would have been received.

Counsel Wong concludes by asserting that Century Park is willing and can provide responses, including appropriate objections, to any outstanding discovery requests within fifteen (15) days of the Court's order. Century Park did not intentionally waive objections. The Court agrees that Century Park should not be deemed to have waived the right of asserting objections to the discovery requests. The Court finds that under these circumstances, good cause and excusable neglect are present here which justify the granting relief of any waiver of the right to assert objections.

This Court believes that moving party should pay the \$3,400.00 for the earlier failure to respond to discovery. However, if plaintiff seeks the additional sums claim, it should look for the disbarred attorney.

### III. Order.

The motion of defendant Century Park is GRANTED. Century Park is to provide discovery responses, including appropriate objections, to any outstanding discovery requests within fifteen (15) days of this Court's order. Century Park is to pay the \$3,400.00 for the earlier failure to respond to discovery.

This Court intends to set a trial date following the hearing on the motion. The parties should meet and confer and agree upon a date beginning in November of this year.

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DATED:

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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**

**161 North First Street, San Jose, CA 95113  
408.882.2320 · 408.882.2296 (fax)  
smanoukian@scscourt.org  
<http://www.scscourt.org>**

(For Clerk's Use Only)

**CASE NO.: 3CV410259  
DATE: 29 February 2024**

**John Doe vs Gelareh Homayounfar; Homa Homayounfar  
TIME: 9:00 am  
LINE NUMBER: 19, 20**

**This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2<sup>nd</sup> 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 28 February 2024. Please specify the issue to be contested when calling the Court and Counsel.**

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**Order on Motion of Plaintiff for Reconsideration  
of Order Granting Attorney's Fees to Defendants  
(Code of Civil Procedure, §425.16);  
Motion of Defendant for Reconsideration Of  
Order Granting Attorney's Fees Pursuant to  
Code of Civil Procedure, §425.16.**

**I. Statement of Facts.**

This case, according to the 145-page complaint, arises out of a failed marriage between plaintiff and defendant Geraleh Homayounfar and related claims of domestic violence. Defendant contacted law enforcement authorities concerning claims of domestic violence.

In a 26-page order filed on 18 August 2023, Judge Rosen granted Ms. Homayoun's anti-SLAPP motion that she filed pursuant to **Code of Civil Procedure**, § 425.16.

Thereafter, plaintiff filed a challenge for cause against Judge Rosen pursuant to **Code of Civil Procedure**, §§ 170.1(a)(6)(B) and 170.1(a)(6)(A)(iii) with the primary claim Judge Rosen is married to the Hon. Jeff Rosen, District Attorney for the County of Santa Clara, whose office prosecuted plaintiff for charges arising out of this incident. Judge Rosen accepted the challenge by operation of law.

On 21 August 2023, plaintiff filed a motion for reconsideration of the order granting the special motion to strike. That motion was calendared for 21 December 2023.

It seems that on or about 20 December 2023, plaintiff attempted to serve this Judge with a peremptory challenge pursuant to **Code of Civil Procedure**, § 170.6. According to a declaration filed Sterling Madison, the process server hired by plaintiff, service was attempted in Department 20 at 1:30 PM and 1:43 PM on the 20 December 2023. The courtroom was dark due to the absence of this Judge.

On 21 December 2023, this matter was calendared in front of Judge Kulkarni who covered Department 20 in the absence of this Judge. Judge Kulkarni addressed the Plaintiff and said he was standing in for Judge Manoukian. The plaintiff stated that he would still like to file a **Code of Civil Procedure**, § 170.6 against Judge Kulkarni, who orally accepted the challenge amendment. Judge Kulkarni struck the peremptory challenge filed against Judge Manoukian on the previous day, 20 December 2023, no doubt because it was filed less than five days prior to the hearing and plaintiff expected this Judge to be in Department 20.

Additionally, it seems that plaintiff never actually filed the peremptory challenge. A peremptory challenge pursuant to **Code of Civil Procedure**, § 170.6 becomes effective when it is actually filed. A peremptory challenge does not require personal service upon the judge to be challenged, unlike challenges pursuant to Code of Civil Procedure, §§ 170.1 and 170.3.

## II. Motion For Reconsideration.

As noted above, plaintiff filed a motion for reconsideration which is currently on today's calendar.

## III. Analysis.

On 17 August 2023, plaintiff filed a notice of appeal of the same order. A trial court is divested of jurisdiction to adjudicate a motion to reconsider an anti—slap order when the order has been appealed. (**Code of Civil Procedure**, § 916; **Young v. Tri-City Healthcare Dist.** (2012) 210 Cal.App.4th 35; **Varian Medical Systems, Inc. v. Delfino** (2005) 35 Cal.4th 180.)

Therefore, plaintiff has divested this court of jurisdiction.

To the extent that plaintiff seems to be making a motion for reconsideration pursuant to **Code of Civil Procedure**, § 1008, the same result would occur.

Does this rule apply to the motion for attorney's fees that defendant's claim pursuant to **Code of Civil Procedure**, § 425.16 under the "Collateral Orders" doctrine? Probably not, according to *Muller V. Fresno Community Hospital & Medical Center* (2009) 172 Cal.App.4th 887 because the issue of attorney's fees arises out of **Code of Civil Procedure**, § 425.16 and is not some collateral matter distinct and severable from the general subject of the litigation. . . . "

Good cause appearing, the matter will be set for Dismissal Review/Appellate Review on 04 December 2024 at 10:00 AM in Department 20.

## IV. Tentative Ruling.

The tentative ruling was duly posted.

## V. Case Management.

As above.

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**VI. Order.**

By virtue of the notice of appeal filed by plaintiff, this Court has lost jurisdiction to proceed on the matter until further order from the Court of Appeal.<sup>5</sup>

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**DATED:**

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**HON. SOCRATES PETER MANOUKIAN**

*Judge of the Superior Court*

*County of Santa Clara*

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