SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 10
Honorable Frederick S. Chung

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

DATE: May 21, 2024 TIME: 9:00 A.M.

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

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

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

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

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

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV427303	Highlander Home, Inc. v. Walmart, Inc.	Click on LINE 1 or scroll down for ruling in lines 1-2.
LINE 2	23CV427303	Highlander Home, Inc. v. Walmart, Inc.	Click on LINE 1 or scroll down for ruling in lines 1-2.
LINE 3	23CV421587	Weiting Zhan v. Rui Tang	Click on LINE 3 or scroll down for ruling in lines 3-4.
LINE 4	23CV421587	Weiting Zhan v. Rui Tang	Click on LINE 3 or scroll down for ruling in lines 3-4.
LINE 5	23CV425168	Kui Xu v. General Motors, LLC	Click on LINE 5 or scroll down for ruling.
LINE 6	21CV387750	American Express National Bank v. Katye Balajadia	Motion to vacate conditional dismissal and for entry of judgment: this motion was continued from March 7, 2024 for lack of proper notice. Notice is now proper, and the motion remains unopposed. Good cause appearing, the court GRANTS the motion. Plaintiff shall prepare the formal order for the court's signature.
LINE 7	22CV404661	Morseys Corporation et al. v. Select Communications, Inc. et al.	Motion to be relieved as counsel: parties to appear.
LINE 8	22CV404661	Morseys Corporation et al. v. Select Communications, Inc. et al.	Motion to be relieved as counsel: parties to appear.
LINE 9	22CV404661	Morseys Corporation et al. v. Select Communications, Inc. et al.	Motion to be relieved as counsel: parties to appear.
LINE 10	23CV427360	Chris Volek v. Knorex, Inc.	Click on LINE 10 or scroll down for ruling.

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LINE #	CASE #	CASE TITLE	RULING
LINE 11	24CV433015	Karen Kramer v. Janie Edwards	Petition to confirm arbitration award: the petition was served on respondent by substitute service, and it appears that notice is proper. The petition is unopposed, and the court finds good cause to GRANT it. Petitioner shall prepare a final judgment in conformance with the award.

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Calendar Lines 1-2
Case Name: *Highlander Home, Inc. v. Walmart, Inc.*
Case No.: 23CV427303

I. BACKGROUND

This is a breach of contract action brought by plaintiff Highlander Home, Inc. ("Highlander") against defendant Walmart, Inc. ("Walmart"). Highlander alleges that it entered into a "Marketplace Retailer Program Agreement" with Walmart in 2019, which Walmart then breached and improperly terminated.

Highlander filed its original complaint on December 5, 2023. It filed the operative first amended complaint ("FAC") on February 29, 2024. The FAC states four causes of action: (1) Breach of Contract (the "Marketplace Retailer Program Agreement"); (2) Breach of the Implied Covenant of Good Faith and Fair Dealing; (3) Negligence; and (4) Violation of the Unfair Competition Law (Bus. & Prof. Code, §§ 17200 et seq.). There are three exhibits attached to the FAC: Exhibit A is a copy of the terms and conditions of the "Marketplace Retailer Program Agreement"; Exhibits B and C are copies of chat communications.

Currently before the court are a demurrer to the FAC and a motion to strike the FAC, filed by Walmart on April 9, 2024.

II. REQUESTS FOR JUDICIAL NOTICE

Walmart has submitted two identical requests for judicial notice in support of the demurrer and motion to strike. "Judicial notice may not be taken of any matter unless authorized or required by law." (Evid. Code, § 450.) A precondition to judicial notice in either its permissive or mandatory forms is that the matter to be noticed be relevant to the material issue before the court. (*Silverado Modjeska Recreation and Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 307 [citing *People v. Shamrock Foods Co*. (2000) 24 Cal.4th 415, 422, fn. 2].) It is the court, and not the parties, that determines relevance. Evidence Code section 453, subdivision (b), requires a party seeking notice to "[furnish] the court with sufficient information to enable it to take judicial notice of the matter."

In both requests, Walmart seeks judicial notice of a copy of the FAC. Both requests are denied as unnecessary, as the court already must consider the FAC in the course of ruling on the demurrer and motion to strike. (See *Paul v. Patton* (2015) 235 Cal.App.4th 1088, 1091, fn.1 [denying as unnecessary a request for judicial notice of pleading under review on demurrer].)

III. DEMURRER TO THE FAC

A. General Standards

The court, in ruling on a demurrer, treats it "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not

concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp*. (1983) 35 Cal.3d 197, 213-214.) "[A] general demurrer may not be sustained, nor a motion for judgment on the pleadings granted, as to a portion of a cause of action." (*Daniels v. Select Portfolio Servicing, Inc*. (2016) 246 Cal.App.4th 1150, 1167 (*Daniels*) [overruled in part on other grounds in *Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905].)

The court considers only the pleading under attack, any attached exhibits, and any facts or documents that may be properly judicially noticed. (See *Barnett v. Fireman's Fund Ins. Co*. (2001) 90 Cal.App.4th 500, 505 ["[T]o the extent the factual allegations conflict with the content of the exhibits to the complaint, we rely on and accept as true the contents of the exhibits and treat as surplusage the pleader's allegations as to the legal effect of the exhibits."].) The court cannot consider extrinsic evidence in ruling on a demurrer or motion to strike. Accordingly, the court has considered the declaration of Alexis Lewis only to the extent that it describes the meet-and-confer efforts required by statute. Other statements in the declaration, as well as arguments the demurrer based on such statements, have not been considered.

B. Non-Compliance with the Code of Civil Procedure and the California Rules of Court

Walmart's April 9, 2024 Notice of Demurrer and Demurrer states only that Walmart's demurrer to the FAC will be heard on May 21, 2024. It fails to identify any *grounds* for the demurrer or any specific target of the demurrer.

A demurrer can be directed to the entirety of a pleading or to any cause of action therein. (Code Civ. Proc., § 430.50, subd. (a).) The distinction can be significant because a demurrer to an entire pleading can be sustained only if no cause of action states facts sufficient to entitle plaintiffs to any relief. (See *Warren v. Atchison, Topeka & Santa Fe Ry.* (1971) 19 Cal.App.3d 24, 29 [trial court's sustention of demurrer to entire pleading reversed on ground that a cause of action was stated]; 5 Witkin, *Cal. Procedure* (5th ed., 2019) Pleading, § 953 ["A demurrer that merely refers to the complaint as a whole will be sustained only when all counts are defective; if one count is good, the demurrer will be overruled."].)

Code of Civil Procedure section 430.60 states: "A demurrer shall distinctly specify the grounds upon which any of the objections to the complaint, cross-complaint, or answer are taken. Unless it does so, it may be disregarded." The California Rules of Court also require that that the demurrer itself (as opposed to a supporting memorandum) specify the target of any objection and the grounds. (See Cal. Rules of Court, rules 3.1103(c), 3.1112(a), 3.1320(a) ["Each ground of demurrer must be in a separate paragraph and must state whether it applies to the entire complaint, cross-complaint, or answer, or to specified causes of action or defenses."]; see also 5 Witkin, *Cal. Procedure* (5th ed., 2019) Pleading, § 953 ["Each ground of demurrer must be in a separate paragraph and must state whether the demurrer applies to the entire complaint, cross-complaint, or answer, or to specified causes of action or defenses."].) As Walmart identifies only the FAC as a whole in its notice of demurrer and demurrer, the demurrer fails to comply with Code of Civil Procedure section 430.60 and can only be considered a demurrer to the entirety of the FAC on unidentified grounds. The court must overrule the demurrer if any one cause of action is properly stated.

C. The Breach of Contract Cause of Action

In its supporting memorandum, Walmart begins by claiming that the first cause of action for breach of contract fails to state sufficient facts under Code of Civil Procedure section 430.10, subdivision (e).

To state a breach of contract cause of action, a plaintiff must allege: (1) the existence of a valid contract; (2) plaintiff's performance or excuse for nonperformance; (3) defendant's breach; and (4) damage to plaintiff resulting from that breach. (See *Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal.App.4th 221, 228.) A plaintiff's reasonable interpretation of an ambiguous contract is accepted as true on demurrer. (*Id*. at pp. 229-230.)

Walmart argues that under its interpretation of the "Marketplace Retailer Program Agreement," it had no duty to investigate reports of security breaches.[1] Even if this were assumed to be true, it only addresses a portion of the first cause of action, and so it is not a basis for sustaining a demurrer. The same is true for Walmart's second argument—that it was permitted to terminate the "Marketplace Retailer Program Agreement" unilaterally. As the FAC alleges several breaches, this is also not sufficient to sustain a demurrer. (See *Daniels*, *supra*.) Third, Walmart asserts that, based on its interpretation of the "Marketplace Retailer Program Agreement," Highlander cannot establish actual or consequential damages because of impossibility and waiver. This is an assertion of affirmative defenses and does not describe a failure *of pleading*. Rather than address whether the first cause of action states sufficient facts to allege a breach of contract, Walmart argues that it has valid and compelling defenses. This argument completely misapprehends the legal standard on a demurrer.

As a general matter, a claimed affirmative defense is not a basis for sustaining a demurrer unless it appears on the face of the complaint. (See *Ivanoff v. Bank of America, N.A.* (2017) 9 Cal.App.5th 719, 726 [a general demurrer does not ordinarily reach affirmative defenses; a demurrer will only lie where an affirmative defense is clearly raised by the face of the complaint, such as a statute of limitation]; *Stella v. Asset Management Consultants, Inc*. (2017) 8 Cal.App.5th 181, 191 ["'[A] demurrer based on an affirmative defense will be sustained only where the face of the complaint discloses that the action is necessarily barred by the defense.'"].) In this case, it is not apparent from the face of the FAC that the breach of contract claim is "necessarily barred" by impossibility or waiver. Indeed, Walmart's argument in support of its impossibility and waiver defenses relies heavily on extrinsic facts (*e.g.*, "Once Walmart was notified of the alleged breach, Walmart could no longer remit payments through the 'Hyperwallet' ACH, leaving no ACH system remaining for Walmart to remit payments through [sic], rendering future remittances impossible"), making it singularly inappropriate for consideration on a demurrer.

Because the first cause of action for breach of contract states sufficient facts, Walmart's demurrer to the entire FAC is OVERRULED.[2]

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[1] Walmart's argument that Highlander has failed to submit the correct contract, based on the declaration from Alexis Lewis, has not been considered, as it is based on extrinsic evidence.

[2] The court observes that Walmart's other arguments in support of the demurrer suffer from similar infirmities as its arguments regarding the first cause of action: they misapprehend the purpose of a demurrer and rely repeatedly on extrinsic facts. For example, with respect to the fourth cause of action, Walmart argues: "Plaintiff could not have been deceived because Walmart only acted within its contractual rights found in the 2016 Agreement

IV. MOTION TO STRIKE THE FAC

A. General Standards

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

A motion to strike may be brought against a portion of a cause of action that is purportedly defective—*e.g.*, because it seeks an improper remedy. (See *PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680.) At the same time, as Courts of Appeal have emphasized, "[W]e have no intention of creating a procedural 'line item veto' for the civil defendant." (*Id*. at p. 1683.) California Rule of Court 3.1322(a) requires that "[a] notice of motion to strike a portion of a pleading must quote in full the portions sought to be stricken except where the motion is to strike an entire paragraph, cause of action, count, or defense. Specifications in a notice must be numbered consecutively."

B. Discussion

Walmart's Notice of Motion and Motion to Strike fails to identify the target or basis for the motion. It simply states that Walmart "hereby does move this Court for an order striking plaintiff [Highlander's] amended complaint in the above-captioned matter." (Notice of Motion and Motion, p. 1:22-24.) The motion could be denied outright for this failure alone. To the extent that this is intended as a motion to strike the entire FAC on unidentified grounds, the motion is DENIED.

The supporting memorandum indicates that Walmart seeks to strike portions of Paragraphs A-E in the FAC's prayer rather than any portion of any cause of action.

The court DENIES the request to strike the prayer for actual and compensatory damages and for interest. Walmart's request is based on its affirmative defenses of impossibility and waiver, the applicability of which, as noted above, is not apparent from the face of the FAC.

Plaintiff voluntarily and willingly entered into with Walmart." (Memorandum, p. 8:6-8.) This argument relies on multiple factual points that fall outside the scope of the pleadings.

The court GRANTS the request to strike the prayer for "punitive damages" (i.e., "double or treble damages"), based on Highlander's concession on this point. (See Opposition to motion at p. 2:23-24.)

The court GRANTS the motion to strike the prayer for "attorneys' fees" in Paragraphs B and D with 10 DAYS' LEAVE TO AMEND. In the absence of some special agreement, statutory provision, or exceptional circumstances, attorney's fees are to be paid by the party employing the attorney, not by a non-prevailing opponent. (See Code Civ. Proc., § 1021.) Therefore, the contractual or statutory basis for a request for attorney's fees should be alleged within the body of the complaint. (See *Wiley v. Rhodes* (1990) 223 Cal.App.3d 1470, 1474 [due process is satisfied if complaint requests unspecified amount of attorney's fees and alleges entitlement to fees based on contract or statute].) Here, it is not apparent from the face of the FAC what the statutory or contractual basis for attorney's fees is in this case. The court grants leave to amend solely to specify the basis for such a request, if there is one.

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Calendar Lines 3-4
Case Name: *Weiting Zhan v. Rui Tang*
Case No.: 23CV421587

Plaintiff Weiting Zhan has filed two (or three) motions that are presently before the court, depending on how one counts them: (1) a motion for leave to file a second amended complaint, which has morphed into a separate motion for leave to file a *third* amended complaint; and (2) a motion to compel further responses to requests for production of documents. Defendant Rui Tang opposes both (or all three) motions.

This case appears to center on Zhan's allegations that Tang defamed her by intentionally and maliciously mistranslating Zhan's emails from Chinese to English as part of the evidence submitted to the Santa Cruz County Superior Court in a civil harassment case. Tang is a lawyer who represents the party who is adverse to Zhan in that Santa Cruz County case. It appears that all of Zhan's allegations against Tang arise out of Tang's representation of that adverse party.

1. Motion(s) for Leave to Amend

The history of the pleadings in this case is highly unusual:

- On August 29, 2023, Zhan filed a first amended complaint ("FAC").
- On October 12, 2023, Tang filed a demurrer to the FAC.
- On March 11, 2024, while the demurrer to the FAC was still pending, Zhan filed a motion for leave to file a second amended complaint.
- On March 18, 2024, the day before the hearing on the demurrer to the FAC, and the day on which the court posted its tentative ruling, Zhan apparently filed a motion for leave to file a *third* amended complaint.
- On March 19, 2024, the court adopted its tentative ruling sustaining the demurrer to the FAC, with 10 days' leave to amend. The court expressly limited leave to amend to the existing causes of action in the FAC and declined to address the merits of Zhan's *March 11, 2024* motion for leave to amend, given that Tang had not yet had an opportunity to respond to that motion. The court was not yet aware of the *March 18, 2024* motion for leave to amend, as it was not yet reflected in the case file, and so the court did not address that motion at all.
- On March 28, 2024, in apparent response to the court's March 19, 2024 order, Zhan filed a "first amended complaint; memorandum of points and authorities; exhibit and proof of service," which the court interprets as a second amended complaint ("SAC"). It appears that Tang has interpreted this filing as a SAC, as well, as Tang has now filed a demurrer to that pleading, which is scheduled to be heard in seven weeks, on July 9, 2024.

- In the meantime, Tang has filed an opposition brief that addresses both the March 11, 2024 motion for leave to file a second amended complaint and the March 18, 2024 motion for leave to file a third amended complaint.

- Accordingly, the court will address both the March 11 and March 18 motions, which raise similar issues in any event. The court VACATES the August 15, 2024 hearing date that the court clerk's office apparently set for the second of these two motions.

In this case, Tang does not contend that she will be prejudiced by Zhan's proposed amendments; instead, she argues that these proposed amendments would be futile. In an ordinary case, the court would generally grant leave to amend any pleadings quite liberally, as long as the opposing party is not unduly prejudiced by the amendments. (*Harris v. City of Santa Monica* (2013) 56 Cal.4th 203, 240.) It is only in an exceedingly rare case that the court will find that the undisputed facts are so clear that no liability could possibly exist under the proposed amendments—*i.e.*, that the amendments would be futile. This appears to be one of those rare cases. The court has already ruled on a prior demurrer, there is another demurrer pending, and the plaintiff has engaged in a practice of submitting serial amendments in a somewhat disorderly manner, such that there are now *five* different versions of the complaint (the original complaint, the FAC, the SAC, and the two sets of amendments presently before the court).

The court expresses no view regarding the merits of Tang's pending demurrer to the SAC—that matter is not yet fully briefed, and the hearing will remain as set on July 9, 2024. On the other hand, the propriety of the proposed amendments from March 11, 2024 and March 18, 2024 *has* been briefed, and the court has reviewed the proposed amendments, so they are ripe for adjudication. Zhan proposes to add the following allegations:

- Tang knowingly submitted a false statement to the Santa Cruz County court on January 29, 2024, stating the Zhan was "cursing." This false statement was "published" on the court's website. (March 11, 2024 proposed amendment.)

- On the same date, Tang knowingly submitted the false statement to the court that "tens of messages [were] sent out by Plaintiff in various WeChat groups, accusing Client of having affairs with Plaintiff's ex-boyfriend and lying to protect Plaintiff's ex-boyfriend." (March 11, 2024 proposed amendment.)

- On the same date, Tang knowingly submitted the false statement to the court that "repetitive emails [were sent] from Plaintiff to Client questioning why Client was helping Plaintiff's ex-boyfriend and accusing Client of spreading rumor[s] and framing Plaintiff with Plaintiff's ex-boyfriend." (March 11, 2024 proposed amendment.)

- On March 14, 2024, Zhan paid $117 to re-translate defendant's "malicious translation" submitted to the court. Using a cost per page of $39, damages could potentially include a translation cost of $1,287 for 33 pages. (March 18, 2024 proposed amendment.)

- On March 12, 2024, Tang sent meet-and-confer correspondence to Zhan stating that "your way of communication itself is offensive and oppressive, and sometimes confusing." In addition, Tang stated, "If you insist not to submit the request for dismissal, I will inform the firm and prepare other motions against you, including but not limited to a motion for sanctions." (March 18, 2024 proposed amendment.)

The court agrees with Tang that all of these proposed amendments to the pleadings would be futile. All of them were made in the course of Tang's representation of an adverse party in the civil harassment case in Santa Cruz County, or in the course of litigating this very case in Santa Clara County. In its March 19, 2024 order sustaining the demurrer to the FAC, this court found that all of Tang's allegations of defamation in that pleading were made directly in the course of conducting litigation and were therefore subject to the litigation privilege. (See March 19, 2024 Order, pp. 3:20-4:14.) The litigation privilege likewise applies to all of the foregoing proposed amendments, for precisely the same reasons. None of these allegations set forth any possible basis for any civil liability.

Accordingly, the court DENIES the motion(s) for leave to amend.

2. Motion to Compel

Zhan moves to compel further responses to two requests for production of documents from Tang. Although the context of these two requests is not adequately explained in the parties' briefs at all, it appears that their subject matter relates to assertions that were made by Tang's client in the civil harassment case in Santa Cruz County:

> **REQUEST FOR PRODUCTION NO. 1**: The documentation comprises "tens of message sent out by Plaintiff in various WeChat groups, accusing Client of having affairs with Plaintiff's ex-boyfriend and lying to protect Plaintiff's ex-boyfriend."
>
> **REQUEST FOR PRODUCTION NO. 2**: The documentation comprises "Plaintiff's messages to Client's friends trying to locate Client and then cursing Client's friends after they refused to answer Plaintiff's questions."

(Memorandum, pp. 5:3-6:3; Opposition, pp. 4:13-5:7 [syntax and grammar errors in original].) The court surmises that the quoted language in the foregoing requests is taken from a document that was filed by one of the parties in the Santa Cruz case. The court has three issues with this discovery:

First, it appears that this discovery relates to the merits of the Santa Cruz County case. As a result, this is something that should have been raised with that court, not this one. (It may well have been presented to that court, but neither party provides any clarification one way or the other.) To the extent that this discovery is being sought as an end run around a failure to obtain the discovery in the other case, it is improper.

Second, Zhan does not offer any explanation as to how the requested documents are potentially relevant to the allegations in this case. She states that this discovery may be related to "a question regarding the validity of the evidence presented" in the civil harassment case

(Memorandum, p. 5:17-19), but that only confirms that this discovery is related to the merits of that case, not this one.

Third, and most important of all, even if these documents could conceivably have some bearing on the truth or falsity of the allegedly defamatory statements made in the Santa Cruz civil harassment case—something that is not adequately explained in Zhan's papers—it still arises entirely out of statements that were made (and evidence that was admitted) in the course of that litigation, which are entirely encompassed by the litigation privilege. In other words, the requested discovery is potentially relevant, at best, to invalid allegations as to which this court has already sustained a demurrer and denied a motion for leave to amend. Zhan has not identified any *valid* cause of action to which the foregoing discovery might potentially be relevant.

For these reasons, the court finds that Zhan has not shown good cause for compelling further responses to these document requests. The motion to compel is DENIED.

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Calendar Line 5
Case Name: *Kui Xu v. General Motors, LLC*
Case No.: 23CV425168

In this lemon law case, Plaintiff Kui Xu moves to compel a person-most-qualified ("PMQ") deposition of defendant General Motors, LLC ("GM"), including specific categories of documents in connection with that deposition. Xu argues that GM has unreasonably dragged its feet in providing a witness and in producing documents that specifically relate to the vehicle at issue. GM claims that it has already agreed to produce its PMQ witness on the noticed topics, that it has already produced responsive documents in connection with Xu's first set of requests for production of documents (which overlap with these PMQ document requests), and that this motion was unnecessary. At the same time, it appears that this deposition has not yet occurred, despite having been noticed months ago.

The court is not entirely sure why the parties have been unable to move forward. GM does not offer any case-specific arguments in its opposition brief or in its responsive separate statement—instead, it makes generic arguments about overbreadth and undue burden. In addition, it asserts the boilerplate argument that the deposition topics and document requests call for the production of "trade secret" materials. These arguments are totally unsupported, unclear, and vague. No trade secrets have been identified, not even broadly.[3]

The court GRANTS the motion to compel and orders GM to produce its PMQ witness within 30 days of notice of entry of this order. In addition, to the extent that any responsive documents have been withheld on the basis of GM's meritless "trade secret" objection, they must be produced within 30 days of notice of entry of this order. If these responsive documents are confidential or proprietary, they may be produced pursuant to a standard protective order, such as the one contained on the court's website at: https://www.scscourt.org/court_divisions/civil/complex/Model%20Confidentiality%20Order.pdf.

Finally, the court GRANTS IN PART plaintiff's request for monetary sanctions, in the amount of **$1,785** (three hours at $595/hour). The court finds that GM did not act with substantial justification in delaying the PMQ deposition and opposing this motion with generic and unpersuasive arguments.

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[3] At the same time, the court also finds completely unpersuasive Xu's argument that the court should consider other cases in which discovery sanctions have been imposed on GM. The court finds these other cases to be irrelevant, and the court disregards any of the new evidence that Xu submits for the first time with her reply papers.

Calendar Line 10
Case Name: *Chris Volek v. Knorex, Inc.*
Case No.: 23CV427360

Plaintiff Chris Volek moves for leave to amend his first amended complaint to add Khar Heng Choo, the CEO of defendant Knorex, Inc. ("Knorex"), as a defendant in the case. In addition, Volek seeks to add theft allegations under the Penal Code to his proposed second amended complaint, as well as allegations under Business & Professions Code section 17200.

Knorex opposes the motion but does not identify any delay by Volek or any prejudice to Knorex arising from the timing of the proposed amendment, which are the customary areas of inquiry on a motion for leave to amend. Instead, Knorex raises a host of issues that go to the merits of the proposed pleading, including "the true facts of the relationship between the parties" (Opposition, p. 6:7-8), but these arguments are singularly inappropriate on a motion for leave. This is not a trial on the merits or a summary judgment motion, and this motion is not the appropriate forum for the types of arguments raised in Knorex's opposition. Indeed, this is not even a demurrer or other motion on the pleadings. As a consequence, Knorex's arguments regarding the sufficiency of the allegations in the proposed pleading are misplaced. Knorex even challenges the level of particularity in Volek's fraud allegations, but those fraud allegations were *already in the first amended complaint*, and so their sufficiency is not even remotely at issue in this motion, which focuses on the proposed amendments. Again, this is *not* a demurrer or motion for judgment on the pleadings.

In the absence of any showing of delay or prejudice, Knorex would need to oppose this motion by showing that the proposed amendments to the first amended complaint would be futile, but Knorex makes no such showing in its papers.

The court expresses no views regarding the merits of the allegations in the proposed second amended complaint, but the court finds that Volek did not unduly delay in proposing them, that their addition to the case at this time would not be materially prejudicial to Knorex, and that there has been no showing that any of the additional allegations would be futile.

The motion is GRANTED.

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