SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 10
Honorable Frederick S. Chung

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

DATE: September 28, 2023 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 in the proceedings. Please use telephone-only appearances as a last resort.

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.

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	2014-1-CV-271941	Carol Tran v. Mobile Tummy, Inc. et al.	Order of examination: parties to appear.
LINE 2	22CV405171	Iman Sharifirad v. General Motors, LLC	Click on LINE 2 or scroll down for ruling in lines 2-3.
LINE 3	22CV405171	Iman Sharifirad v. General Motors, LLC	Click on LINE 2 or scroll down for ruling in lines 2-3.
LINE 4	19CV359455	Hayden Abene v. DL Bar LLC	OFF CALENDAR
LINE 5	19CV340967	Safe Products for Californians, LLC v. Vital Amine, Inc.	Motion to deem RFAs admitted: parties to appear. Click on LINE 5 or scroll down for the court's tentative ruling in lines 5-7.
LINE 6	19CV340967	Safe Products for Californians, LLC v. Vital Amine, Inc.	Motion to compel responses to interrogatories: parties to appear. Click on LINE 5 or scroll down for the court's tentative ruling in lines 5-7.
LINE 7	19CV340967	Safe Products for Californians, LLC v. Vital Amine, Inc.	Motion to compel responses to document requests: parties to appear. Click on LINE 5 or scroll down for the court's tentative ruling in lines 5-7.
LINE 8	22CV407844	Steven Meyer et al. v. The Board of Trustees of the Leland Stanford Junior University et al.	Click on LINE 8 or scroll down for ruling in lines 8-9.
LINE 9	22CV407844	Steven Meyer et al. v. The Board of Trustees of the Leland Stanford Junior University et al.	Click on LINE 8 or scroll down for ruling in lines 8-9.

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LINE 10	22CV404186	Wells Fargo Bank, N.A. v. Melmar G. Agarin	Motion for requests for admissions to be deemed admitted: notice is now proper, and the motion remains unopposed. Good cause appearing, the court GRANTS the motion. Moving party to prepare formal order.
LINE 11	2010-1-CV-186621	Josephine B. Pecoraro et al. v. GBR Magic Sands MHP LLC et al.	Click on LINE 11 or scroll down for ruling.
LINE 12	2013-1-CV-240935	Hector Rivera et al. v. City of Sunnyvale et al.	OFF CALENDAR
LINE 13	17CV310069	Cavalry SPV I, LLC v. Fe M. Rivero	Motion for entry of judgment: although there is no amended notice of hearing on file, it appears that notice is proper, given plaintiff's filing of a proof of service on July 26, 2023. Parties to appear. If plaintiff can confirm that the July 26, 2023 proof of service included the September 28, 2023 hearing date, the court will grant the motion, based on the stipulation for entry of judgment between the parties.
LINE 14	21CV392545	Liberty Mutual Insurance Company v. Nam Mai	Click on LINE 14 or scroll down for ruling.
LINE 15	20CV375104	Empire Investments, LLC v. Art Mar et al.	Motion for leave to amend: no tentative ruling. Parties to appear, per the court's 9/26/23 order.

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Calendar Lines 2-3
Case Name: *Iman Sharifirad v. General Motors, LLC*
Case No.: 22CV405171

I. BACKGROUND

This is a lemon law action brought by plaintiff Iman Sharifirad ("Sharifirad") against defendant General Motors, LLC ("GM") and various Does, based on Sharifirad's leasing of a 2020 Chevrolet Bolt EV with an allegedly defective battery.

Sharifirad filed the original complaint on October 6, 2022, and then she filed the operative First Amended Complaint ("FAC") on April 28, 2023.[1] The FAC states five causes of action: (1) Violation of Civil Code Section 1793.2(D); (2) Violation of Civil Code Section 1793.2(B); (3) Violation of Civil Code Section 1793.2(A)(3); (4) Breach of the Implied Warranty of Merchantability; and (5) Fraud (specifically, fraudulent inducement-concealment).

The FAC alleges that, as part of the vehicle lease, Sharifirad entered into a warranty contract with GM on or about January 4, 2021. (See FAC at ¶¶ 6-7.) A copy of the warranty contract is attached to the FAC as Exhibit A. The FAC also claims that GM has known since 2016 "that the model year 2017 or newer Chevrolet Bolt EV vehicles, including 2020 Chevrolet Bolt vehicles such as the Subject Vehicle . . . contained one or more design and/or manufacturing defects in the battery," and "GM and its dealerships failed to disclose the existence of the Battery Defect to Plaintiff both prior to entering into the lease and during successive repair visits as the symptoms, issues, or problems associated with the Battery System Defect arose and persisted." (See FAC at ¶¶ 21-24.)

The FAC further alleges that "Plaintiff is a reasonable consumer who interacted with sales representatives, considered GM's advertisement, and/or other marketing materials concerning Chevy Vehicles prior to purchasing [the] Subject Vehicle. Had GM and its dealership(s) revealed the Battery Defect in these disclosures, Plaintiff would have been aware of it and would not have leased [the] Subject Vehicle." (FAC at ¶ 34.) Paragraph 35 goes on to state that, by distributing its vehicles to its licensed dealerships and placing them into the stream of commerce, GM had a duty to disclose the existence and scope of the battery defect.

The FAC's fifth cause of action for fraud states (again) that GM knew of the battery defect "through sources not available to consumers such as Plaintiff" prior to Sharifirad's purchase of the vehicle, and that GM and its agents intentionally concealed and failed to disclose it. (FAC at ¶¶ 84-85; see, generally, FAC at ¶¶ 80-92, which incorporates all prior allegations by reference)

According to the FAC, GM had a duty to disclose the battery defect; GM was in a superior position to know "from various internal sources" the true state of facts and Sharifirad "could not have reasonably been expected to learn of or discover the Vehicle's Battery Defect and its potential consequences until well after Plaintiff leased the Vehicle." (FAC at ¶ 88.)

Currently before the court is GM's demurrer to the FAC's fifth cause of action (only) and GM's motion to strike the phrase "For punitive damages" from the FAC's prayer.

[1] Sharifirad's FAC refers to herself as a "he," but her subsequent briefing refers to herself as "she."

II. DEMURRER

A. General Standards

The court, in ruling on a demurrer, treats it "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The FAC here states several factual and legal conclusions, including various statements about the tolling of statutes of limitations that are not necessarily accepted as true on demurrer. "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.)

B. GM's Basis for Demurrer

GM's demurrer claims that the fifth cause of action for fraud fails to state sufficient facts for two reasons: insufficient specificity and failure to allege a direct "transactional relationship" with GM. (See May 30, 2023 Notice of Demurrer and Demurrer.)[2]

C. Analysis

GM's demurrer to the fifth cause of action is OVERRULED.

1. Failure to Set Forth Sufficient Facts

GM's argument that the fifth cause of action fails because it is not alleged with sufficient particularity is unpersuasive, as this is a pleading challenge to a fraudulent concealment claim.

As a general rule, each element in a fraud cause of action must be pleaded with particularity. (*Lazar v. Super. Ct*. (1996) 12 Cal.4th 631, 645; *Cadlo v. Owens-Illinois, Inc.* (2004) 125 Cal.App.4th 513, 519.)[3] Normally, what this means is that the complaint must specify "facts which show how, when, where, to whom, and by what means the representations were tendered." (*Stansfield v. Starkey* (1990) 220 Cal.App.3d 59, 74.)

This specific pleading requirement is significantly relaxed in the case of fraud by concealment or omission because, as one court has explained, "[h]ow does one show 'how' and 'by what means' something didn't happen, or 'when' it never happened, or 'where' it never happened?" (*Alfaro v. Community Housing Imp. System & Planning Ass'n., Inc*. (2009) 171 Cal.App.4th 1356, 1384.) Additionally, one of the purposes of the specificity requirement is to provide "notice to the defendant, to furnish the defendant with certain definite charges which can be intelligently met." (*Committee on Children's Television, Inc. v. General Foods*

[2] The court has not considered GM's assertion—raised for the first time in its reply brief—that the fifth cause of action fails to allege damages adequately.

[3] Contrary to what Sharifirad suggests in her opposition, this is not the same level of detail as is required for statutory claims. A plaintiff must plead facts supporting the elements of a statutory claim with "reasonable particularity." (*Gutierrez v. Carmax Auto Superstores California* (2018) 19 Cal.App.5th 1234, 1261.) That "is a more lenient pleading standard than is applied to common law fraud claims." (*Ibid*.)

Corp. (1983) 35 Cal.3d 197, 216, internal quotations omitted.) Therefore, when "it appears from the nature of the allegations that the defendant must necessarily possess full information concerning the facts of the controversy, even under strict rules of common law pleading, one of the canons was that less particularity is required when the facts lie more in the knowledge of the opposite party . . . ." (*Id*. at p. 217; see also *Bushell v. JPMorgan Chase Bank, N.A.* (2013) 220 Cal.App.4th 915, 931 ["plaintiffs did not have to specify the . . . personnel who prepared these documents because that information is uniquely within [defendant's] knowledge"].)

The essential elements of a fraud cause of action based on concealment, nondisclosure or omission are: (1) the defendant had a duty to disclose the concealed or suppressed fact to the plaintiff; (2) the defendant intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, and (3) the plaintiff was damaged as a result. (*Jones v. ConocoPhillips* (2011) 198 Cal.App.4th 1187, 1198.)

Here, the FAC's general allegations and fifth cause of action sufficiently allege that GM possessed full knowledge of the alleged battery defect, well before Sharifirad leased the subject vehicle, but failed to disclose it. A defendant's knowledge and intent are facts that may be generally pled even in a fraud claim. (See 5 Witkin, *Cal. Procedure* (5th Ed., 2019) Pleading §§ 726, 728 ["Intent, like knowledge, is a fact. Hence, the averment that the representation was made with the intent to deceive the plaintiff, or any other general allegation with similar purport, is sufficient."].) GM's contention that the FAC fails to identify the specific individuals at GM who concealed facts from Sharifirad is not enough to sustain the demurrer.

2. Failure to Allege a "Transactional Relationship"

GM's second argument, that the fifth cause of action fails to state sufficient facts because it does not allege a "transactional relationship" between Sharifirad and GM, is also unpersuasive. GM relies heavily on the decision in *Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276 (*Bigler*) for the proposition that a "direct" relationship is required for a fraudulent concealment claim. *Bigler* did not involve a pleading challenge, but rather an appeal of a jury verdict in a case arising from the use of a medical device, and it has nothing to say about pleading requirements.

"A failure to disclose a fact can constitute actionable fraud or deceit in four circumstances: (1) when the defendant is the plaintiff's fiduciary; (2) when the defendant has exclusive knowledge of material facts not known or reasonably accessible to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations that are misleading because some other material fact has not been disclosed." (*Collins v. eMachines, Inc.* (2011) 202 Cal App 4th 249, 255. "[O]ther than the first instance, in which there must be a fiduciary relationship between the parties, 'the other three circumstances in which nondisclosure may be actionable presuppose[ ] the existence of some other relationship between the plaintiff and defendant in which a duty to disclose can arise . . . '[W]here material facts are known to one party and not to the other, failure to disclose them is not actionable fraud unless there is some relationship between the parties which gives rise to a duty to disclose such known facts.'" (*Hoffman v. 162 North Wolfe LLC* (2014) 228 Cal.App.4th 1178, 1187 [internal citations omitted].)

The FAC explicitly alleges a direct contractual relationship between the parties: *i.e.*, the warranty agreement attached to the FAC as Exhibit A. The FAC also clearly alleges that Sharifirad "interacted with sales representatives, considered GM's advertisement, and/or other marketing materials concerning Chevy Vehicles" before leasing the vehicle. These allegations, which are accepted as true on demurrer, contrast sharply with the facts in *Bigler*, where the Court of Appeal found that the manufacturer of the medical device (Breg, Inc.) "did not transact with Engler or her parents in any way. Engler obtained her Polar Care device from Oasis, based on a prescription written by Chao, all without Breg's involvement. The evidence does not show Breg knew—prior to this lawsuit—that Engler was a potential user of the Polar Care device, that she was prescribed the Polar Care device, or that she used the Polar Care device. The evidence also does not show that Breg directly advertised its products to consumers such as Engler or that it derived any monetary benefit directly from Engler's individual rental of the Polar Care device." (*Bigler, supra,* 7 Cal.App.5th at p. 314.)

Sharifirad's allegations regarding the warranty and communications with sales agents are sufficient to state a transactional relationship and thereby overcome this demurrer.

III. MOTION TO STRIKE

A. General Standards

Under Code of Civil Procedure section 436, a court may strike out any irrelevant, false, or improper matter inserted into any pleading or strike out all or part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court. The grounds for a motion to strike must appear on the face of the challenged pleading or from matters of which the court may take judicial notice. (Code Civ. Proc., § 437(a); see also *City and County of San Francisco v. Strahlendorf* (1992) 7 Cal.App.4th 1911, 1913.) Immaterial or irrelevant allegations include: (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 determination of whether an allegation is immaterial is made by the court.

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.) While a motion to strike can be used to target a portion of a cause of action, a requested remedy, or a portion of a pleading's general allegations, courts have held that "we have no intention of creating a procedural 'line item veto' for the civil defendant." (*PH II, Inc. v. Superior Cour*t (1995) 33 Cal.App.4th 1680, 1683.)

B. Basis for GM's Motion

As noted above, GM seeks to strike the phrase "For punitive damages" from the prayer for relief (paragraph "d"). (See May 30, 2023 Notice of Motion at p. 2:1-2.) This request is not particular to any specific cause of action.

C. Analysis

The court DENIES GM's motion to strike.

As the court has ruled that the fifth cause of action sufficiently alleges fraudulent concealment, this necessarily means that the complaint sets forth enough of a basis for a punitive damages claim.

To recover punitive damages, a plaintiff must plead facts sufficient to show that the defendant is guilty of oppression, fraud, or malice. (See Civ. Code, § 3294.) "'Fraud means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." (Civ. Code, § 3294, subd. (c)(3).) Any properly pleaded claim for intentional misrepresentation or fraud will support recovery of punitive damages. (See *Stevens v. Sup. Ct. (St. Francis Med. Ctr.)* (1986) 180 Cal.App.3d 605, 610; *Alliance Mortgage Co. v. Rothwell* (1995) 10 Cal.4th 1226, 1241 [stating that punitive damages recoverable for fraud actions involving intentional, but not negligent, misrepresentations].)

IV. CONCLUSION

Defendant GM is directed to file an answer to the FAC within 10 days, with the time running from the date of service of the notice of the court's final order. (See Code Civ. Proc., § 472a, subds. (b) and (d); Cal. Rules of Court, rule 3.1320(g) and (j).)

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Calendar Lines 5-7
Case Name: *Safe Products for Californians, LLC v. Vital Amine, Inc.*
Case No.: 19CV340967

These motions were originally scheduled to be heard on August 22, 2023. On the afternoon of August 21, 2023, the court posted the following tentative ruling:

> Plaintiff Safe Products for Californians, LLC ("Plaintiff") moves to compel responses to document requests, form interrogatories, and special interrogatories from defendant Vital Amine, Inc. ("Defendant"). In addition, Plaintiff moves for an order that its requests for admissions to Defendant be deemed admitted. Finally, Plaintiff requests monetary sanctions in the amount of $2,687.00.
>
> These motions could very well have been obviated if Defendant had provided timely responses to these requests. Instead, it appears that Defendant is taking an extreme "deadliner" approach to discovery. In its opposition brief, dated August 9, 2023, Defendant acknowledges that it has not yet served responses to the document requests or interrogatories, but it claims that it will do so by August 15, 2023, one week before the hearing. In addition, Defendant has now served belated responses to the requests for admissions ("RFAs"), so the requests may no longer be deemed admitted under *St. Mary v. Superior Court* (2014) 223 Cal.App.4th 762, 775-776 (*St. Mary*). Nevertheless, Plaintiff argues in reply that these RFA responses are still deficient and that Defendant has waived any objections, given the tardiness of the responses.
>
> The court has reviewed the RFAs and responses, and it agrees with Plaintiff that Defendant has waived any objections. At the same time, because Defendant has now served responses, the court "'has no discretion but to deny the motion'" for the RFAs to be deemed admitted. (*St. Mary*, *supra*, 223 Cal.App.4th at p. 776 [quoting *Demyer v. Costa Mesa Mobile Home Estates* (1995) 36 Cal.App.4th 393, 395–396].) To the extent that Plaintiff takes issue with the substance of these RFA responses, it must bring a motion to compel further responses, which is a different motion from the one that has been noticed for this hearing. (See *St. Mary*, 223 Cal.App.4th at p. 776.)[4]
>
> As for the responses to the document requests and interrogatories, the court has not received any update as to whether Defendant has provided responses, as promised, as of August 15, 2023, and so the court orders the PARTIES TO APPEAR to address the current status of the discovery responses.

[4] Even though the issue is not fully teed up, the court will observe the following, in the hope that it will forestall further motion practice: (1) it does not appear that Defendant has actually withheld any information in its RFA responses based on its boilerplate objections, which are largely irrelevant; (2) although the responses may contain some ambiguities, it appears that the only reasonable interpretation of the response to RFA No. 2 is that Defendant admits that it sells or offers to sell the "PRODUCTS" to consumers in California, and the only reasonable interpretation of the response to RFA No. 4 is that Defendant admits that "certain" of its "PRODUCTS" contain lead (and this does not necessarily contradict the response to RFA No. 5); and (3) the response to RFA No. 14 appears to be sufficiently code compliant.

> Finally, as to the request for monetary sanctions, the court notes that sanctions are mandatory as to the RFA responses (Code Civ. Proc., § 2033.280, subd. (c)), and Defendant has also failed to show any "substantial justification" in its failure to provide timely responses to the document requests and interrogatories. The court finds that the amount requested by Plaintiff is reasonable. Accordingly, the court GRANTS in full Plaintiff's request for $2,687.00 in monetary sanctions.

At the hearing, Defendant requested a 30-day continuance of the motions in an effort to resolve this matter, and Plaintiff agreed. Since then, the court has not received any update from the parties. Accordingly, the parties should appear to inform the court of the current status. If Defendant does not appear, the court will adopt its earlier tentative ruling.

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Calendar Lines 8-9
Case Name: *Steven Meyer* et al. *v. The Board of Trustees of the Leland Stanford Junior University* et al.
Case No.: 22CV407844

The parties have presented opposing discovery motions. Defendants (hereinafter, "Stanford") filed their motion first, seeking the production of a "mirror drive" of decedent Katie Meyer's laptop. Plaintiffs (the "Meyers" or "Plaintiffs") filed their motion two days later, seeking further responses to 18 requests for production of documents, seven special interrogatories, and six form interrogatories. The court GRANTS Stanford's motion, and the court GRANTS in part and DENIES in part the Meyers' motion.

1. Stanford's Motion to Compel Compliance (the "Mirror Drive")

The court finds that the Meyers agreed to produce the "mirror drive" of Katie's laptop in responses verified under oath by both of them (on March 10, 2023) and then backtracked on this agreement, including expressly serving "amended" responses (on June 9, 2023) after Stanford filed this motion. On this basis alone, the motion must be granted under Code of Civil Procedure section 2031.320, subdivision (a). The Meyers' argument that they "never agreed to provide an absolute mirror image of the decedent's computer, and only 'responsive,' 'non-privileged information'" is baseless. (Opp. at pp. 5:21-8:26) Not only is it contrary to a plain English interpretation of the March 10, 2023 responses, but it is also belied by the June 9, 2023 amendment (as Stanford points out). If the Meyers "never agreed" to produce the mirror image, why was there a need to amend the responses in June to say so explicitly? The amendment is the functional equivalent of an admission that the original responses agreed to produce the mirror image.

In addition, the court finds that a mirror image of Katie's laptop is directly relevant to the central issues in this case, including Katie's state of mind and her activities on her computer. (By contrast, the court finds the opposition brief's "what about" argument regarding mirror images of the individual defendants' laptops to be a red herring.) Thus, regardless of whether the Meyers agreed to produce the "mirror drive," it must still be produced.

The Meyers object to the production of the entire drive on the ground that it implicates third-party privacy rights. They suggest that Stanford propose search terms to be run on the drive, in order to extract a narrower subset of relevant documents. The court finds this to be an unsatisfactory solution, for several reasons:

- First, the opposition brief is far too generic and vague in its description of any actual privacy issues: it discusses general privacy principles at extreme length (pages 9-13) but it give short shrift to the specific privacy concerns here. The closest it comes to identifying any "private information" on the "mirror drive" is in a single phrase at the bottom of page 4 and top of page 5, where it refers to what "would be expected [of] any person in their early twenties." This fails to specify the privacy concerns, if any, that may exist.

- Second, the court assumes that the "mirror drive" will be produced pursuant to a stipulated protective order that will protect any confidential or private information from improper use or dissemination.

- Third, the requirement of using search terms will only serve to delay the production of relevant information and significantly increase the cost of discovery.

- Most important of all, and as already noted above, the court finds that the "mirror drive" is directly relevant to the central issues in this case, including Katie's mental health and mental state. Those issues have been pushed to the forefront by the Meyers' own allegations in the amended complaint, and so the uncomfortable reality is that much of Katie's private life—including her deepest, darkest thoughts—may be potentially relevant to this case. Even if it was private, it is clearly discoverable.

Rather than propose search terms to extract *relevant* documents from the drive, Plaintiffs could have proposed the inverse: they could have identified categories of indisputably *irrelevant* information to be extracted from the drive by their forensic expert before producing it. That would have been a far more realistic approach to the issue. But they failed to propose that to Stanford, and they have failed to advance that as a possible option here.

The court orders the Meyers to produce "mirror drive" within 30 days of this order, unless the parties are able to agree to a different compromise within that timeframe.

2. The Meyers' Motion to Compel Further Responses to Various Requests

The court understands that the Meyers filed their motion on May 24, 2023, before they received supplemental responses to some of the discovery requests, as well as before they received additional documents from Stanford. As a result, the court expected to see a significant narrowing of the disputes in the parties' September 14, 2023 opposition and September 20, 2023 reply. The court is disappointed to see that very little has been explicitly taken off the table, and the only issue affirmatively removed by the Plaintiffs is the form interrogatories (and even then, only with the caveat that it is "without waiving [Plaintiffs'] opportunity to re-raise these requests" – Reply at p. 7, fn. 6).

Nevertheless, it appears to the court that the basic nature of this motion to compel, at least with respect to many of the document requests, has morphed from a motion to *compel further responses* (under Code of Civil Procedure section 2031.310, subdivision (a)) to a motion to *compel compliance* (under Code of Civil Procedure section 2031.320, subdivision (a)), based on the court's reading of the Meyers' reply brief. Those are two completely different motions, the latter of which is not properly teed up for this hearing, given that Stanford served the supplemental responses at issue on June 9, 2023, after this motion was filed.[5] In the reply brief, the Meyers' focus is no longer on Stanford's written responses, but rather on the adequacy of Stanford's document production. It is not clear to the court whether Plaintiffs' counsel realizes that the nature of their motion has changed in this manner, but that makes it difficult for the court to address what can only be described as a moving target.

The court addresses the specific requests in dispute, as follows:

[5] Only section 2031.310 is mentioned in the Meyers' opening brief; section 2031.320 appears nowhere in either the opening brief or the reply.

Requests for Production Nos. 2, 3, 5, 6, and 9: Plaintiffs do not address the sufficiency of Stanford's June 9, 2023 supplemental responses; instead, the reply brief complains about the limited scope of Stanford's document production to date. As noted above, this latter issue is not properly before the court and must be addressed in a motion to compel compliance. DENIED.

Requests for Production Nos. 12, 13, 20, 21, 22, and 46: The court concludes that requests seeking "each and every document" relating to various aspects of Stanford's Title IX processes and procedures are exceedingly overbroad. In addition, Plaintiffs have not explained how these documents are either relevant or reasonably calculated to lead to the discovery of admissible evidence, given that there were no Title IX proceedings in Katie's case and given that there is no gender discrimination cause of action remaining in this case. For the same reason, Request No. 46, which seeks all documents that "relate or otherwise pertain to" claims of sexual harassment or sexual assault during the last 10 years, is also exceedingly overbroad and does not appear to be potentially relevant. DENIED.

Requests for Production Nos. 27 and 28: The court agrees with Stanford that these requests were not fairly included in the parties' meet-and-confer discussions prior to the filing of the motion. Plaintiffs do not address this point in their reply. Instead, the reply again focuses on Stanford's document production, which is not properly before the court. DENIED.

Request for Production No. 25: Although the court agrees with the Meyers that documents concerning the "Football Player" are potentially relevant to the case, the court finds the scope of this particular request, which seeks "each and every document related to the Football Player" to be overbroad. For example, the court does not see any relevance to the Football Player's academic transcripts or athletic records. Stanford states that it has already produced some documents relating to the Football Player (in "the context of the OCS proceeding involving him and Katie"), but it is unclear from the parties' briefs whether Stanford has also produced (or agreed to produce) documents concerning any disciplinary proceedings that either were initiated or attempted to be initiated against the Football Player, including any complaints that were submitted to Stanford about him, even if those complaints did not result in any formal proceedings. To the extent that those documents have not been produced and are not encompassed in Stanford's written responses (the court does not see them in Stanford's original responses), the court orders that they should be produced, with the appropriate redactions under FERPA. GRANTED IN PART.

Request for Production No. 41: The court does not understand what is being sought by this request. "All written, recorded, or signed statements of any party . . . concerning the subject matter of this action" is extremely vague and generic—and potentially overbroad. DENIED.

Request for Production No. 43: Many of the documents that are potentially responsive to this request are likely privileged. It may well be that *all* responsive documents are privileged. In addition, it is not clear how broadly the word "incident" is being used in this request. Rather than make Stanford prepare a privilege log that potentially encompasses all documents prepared by or for counsel in this entire case, the court narrows the scope of this request to: "Any documents that were prepared (but not by or for any lawyer) as an immediate result of Katie's suicide, before this suit was filed." GRANTED IN PART.

Request for Production No. 45: The court does not see the potential relevance of the personnel files of the individual defendants, and Plaintiffs fail to articulate any rationale for production in their separate statement. The "whataboutism" in the separate statement is singularly unpersuasive. DENIED.

Request for Production No. 47: Stanford states that it will provide a written response to this request if it is re-propounded. The court finds that extra administrative step to be unnecessary and orders Stanford to respond within 30 days of the date of this order. GRANTED.

Special Interrogatories Nos. 9-11: For the same reasons stated above with respect to RFP No. 25, the court finds that these interrogatories seek potentially relevant information. The court is not familiar with the intricacies of FERPA, but the court believes that Stanford should be able to provide at least some answers to these interrogatories without violating FERPA. They may need to be answers at a relatively high level of generality, but in any event, Plaintiffs are entitled to more responsive answers than have been provided to date. GRANTED.

Special Interrogatory No. 15: As with RFP No. 45, the court struggles to see the potential relevance of the information sought by this extremely overbroad interrogatory. DENIED.

Special Interrogatory No. 18: Stanford points out that the parties met and conferred to narrow the scope of this interrogatory. Rather than address this directly, Plaintiffs' reply brief focuses on complaints about the adequacy of Stanford's document production (as with RFP Nos. 2, 3, 5, 6, and 9 above). That is not properly before the court. DENIED.

Special Interrogatories Nos. 19-20: Again, it appears that the parties met and conferred to resolve their differences regarding these interrogatories, and rather than address the supplemental responses, Plaintiffs' reply brief complains about the adequacy of Stanford's production of "documents from the databases identified in [Stanford's] supplemental responses." DENIED.

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Calendar Line 11
Case Name: *Josephine B. Pecoraro* et al. *v. GBR Magic Sands MHP, LLC* et al.
Case No.: 2010-1-CV-186621

The court DENIES defendant GBR Magic Sands MHP, LLC's ("GBR's") motion to consolidate four cases that are currently in three different departments of this court (Nos. 2010-1-CV-186621, 2011-1-CV-2118155, 17CV313947, and 22CV395262).[6] If these cases were in a more similar procedural posture, then the undersigned would have been more likely to consolidate them, as GBR has shown that they share many common issues of law and fact, as well as many common parties. What GBR has not shown, however, is how consolidation at this exceedingly late stage of the proceedings—after three of the four cases have already been appealed, two of the four cases are still on appeal, and one of the cases is on remand from the Court of Appeal—will conserve any resources or help avoid any inconsistent outcomes. Even more critically, GBR has not shown that consolidating *Pecoraro II* with one or more of the other three cases can be accomplished without materially interfering with the Court of Appeal's December 16, 2022 opinion directing a retrial of the matter.

Pecoraro I already reached a final judgment many years ago. As plaintiffs note, the only part of the case that remains—and is already on appeal—is a post-judgment order. As a result, nothing is currently happening in *Pecoraro I* at the trial court level, and there is no obvious need to consolidate it with any of the other cases.

Similarly, *Pecoraro III* is currently on an appeal of an anti-SLAPP ruling. Therefore, there is no urgent need to consolidate that case with any pending case in the trial court. The court struggles to discern any judicial economy or savings to the parties—or avoidance of inconsistent rulings—that would result from consolidating this case at this time, notwithstanding the overlap that has been shown by GBR regarding the issues and parties in this case and the other cases.

By contrast, *Pecoraro II* reached a final judgment, was remanded by the Court of Appeal, and is now back for a retrial on damages, which is scheduled to take place on October 16, 2023—*i.e.*, *in less than three weeks*. Any consolidation with any of the other cases will undoubtedly materially interfere with the Court of Appeal's decision directing the scope of the retrial, as well as with this court's decision granting a preferential trial setting under Code of Civil Procedure section 36. GBR claims that it is "prepared to proceed to trial on the consolidated cases on the scheduled date" (Reply at p. 8:26-27), but the court does not see how this is even remotely possible. The Court of Appeal has remanded *Pecoraro II* for a retrial on damages *only*, and yet *Pecoraro III* still has not had any adjudication as to liability or damages (much less as to the elder abuse issues that remain stayed pending the anti-SLAPP appeal). Even if GBR were to stipulate to liability in *Pecoraro III*—and the court strongly doubts that GBR is willing to do that—there is no realistic possibility that the case would be able to proceed to trial without significant delays. The court does understand GBR's position to be that it *is* allowed to reopen liability and "causation" issues in the retrial of *Pecoraro II*, but this court already rejected that argument in its August 8, 2023 order denying GBR's motion to compel and granting plaintiffs' motion for a protective order.

[6] The court adopts GBR's nomenclature and refers to these cases as "*Pecoraro I*," "*Loubar*," "*Pecoraro II*," and "*Pecoraro III*," respectively.

According to plaintiffs, *LouBar* is currently dormant with no significant filings since 2021.

Given the absence of any present need to consolidate the cases for the sake of judicial economy or any savings to the parties themselves, the only concern that remains is the possibility of inconsistent outcomes across different departments. But the court finds that this can adequately be addressed by having the cases reassigned to a single department, at least for pretrial purposes. (The trials themselves may or may not be set concurrently or separately, depending on appellate outcomes.) Thus, the court intends to seek to have the cases reassigned. The undersigned will reach out to the judges in Departments 16 and 20 of this court, as well as to the clerk's office, to propose reassignment to a single department—most likely Department 10—unless the court hears a compelling reason from the parties not to do so.

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Calendar Line 14
Case Name: *Liberty Mutual Insurance Company v. Nam Mai* et al.
Case No.: 21CV392545

Defendant Nam Mai moves to set aside any default or default judgment against him under Code of Civil Procedure sections 473(b) and 473.5. Plaintiff Liberty Mutual Insurance Company ("Liberty Mutual") does not oppose the motion, but it has filed a "limited opposition" objecting to "the filing of [a] motion for a stay" by Mai. (Opp. at p. 1:25.)

First, it does not appear that any default or default judgment has yet been entered in this case. Therefore, it is not clear whether this motion is actually necessary. Nevertheless, given the lack of opposition, the court GRANTS the motion to set aside and instructs Mai to file his answer (a copy of which is attached to his motion) within 10 days of this order.

Second, as for any motion to stay, Liberty Mutual's arguments are premature, as the motion is not yet on file (even though a copy of it is also attached to Mai's motion to set aside) and no hearing date has yet been set. After Mai files his answer, he may formally file and serve his motion to stay and obtain a hearing date for the motion, and then Liberty Mutual may respond to it—its deadline to respond will be based on the hearing date.

IT IS SO ORDERED.

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