

**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/>

---oooOooo---

DATE: Tuesday, 07 November 2023

TIME: 9:00 A.M.

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

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

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

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

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

One tap mobile
+16699006833,,961 4442 7712#

APPEARANCES.

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

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

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

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

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

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

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

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

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

CIVILITY.

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

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

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

COURT REPORTERS.

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

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

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

PROTOCOLS DURING THE HEARINGS.

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

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

TROUBLESHOOTING TENTATIVE RULINGS.

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

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

| LINE # | CASE # | CASE TITLE | TENTATIVE RULING |
|------------------------|------------|---|--|
| LINE 1 | 23CV414581 | Antonieta Madrigal et al vs Lucile Salter Packard Children's Hospital At Stanford et al | Demurrer and Motion to Strike etc. of Defendants Stanford, Lucille Salter Packard Children’s Hospital, and Stanford Tri-Valley. On 25 October 2023, plaintiffs Rebecca Wolkoff, Antonieta Madrigal, Veronica Jacquez, and Shanel Walls filed an amended complaint. Plaintiff Shanel Walls dismissed her case on 26 October 2023. On 26 October 2023, plaintiff filed a dismissal without prejudice as to defendants Stanford Medicine Children's Health, Stanford Medicine, Stanford Health Care, and Stanford Health Care - Valleycare. No party has filed opposition. Are the motions MOOT? NO FORMAL TENTATIVE RULING. The parties should use the Tentative Ruling Protocol to advise this Court of the status of the matter. |
| LINE 2 | 23CV414581 | Antonieta Madrigal et al vs Lucile Salter Packard Children's Hospital At Stanford et al | Motion of Stanford Tri-Valley for Change of Venue to the County of Alameda. There does not appear to be opposition to this motion. The motion for change of venue is GRANTED. NO FORMAL TENTATIVE RULING. |

| LINE # | CASE # | CASE TITLE | TENTATIVE RULING |
|--------|------------|---|---|
| LINE 3 | 23CV419028 | Flavio Pando et al vs Wells Fargo Bank, N.A. et al. | <p>Application of Larry Carbo, III, Esq. for Admission Pro Hac Vice to Appear As Counsel for Defendants Cellular Sales Management Group LLC.</p> <p>Rules of Court, rule 9.40 authorizes this Court to grant a verified petition of an out-of-state attorney to appear as counsel pro hac vice in a California action. A trial court may permit an attorney who is not a member of the State Bar of California, but who is a member in good standing of any United States court or the highest court in any state, to appear as counsel pro hac vice, in a particular case pending before a Court of this State. (See <i>In Re McCue</i> (1930) 211 Cal. 57, 67.)</p> <p>The application is GRANTED.</p> <p>NO FORMAL TENTATIVE RULING.</p> |
| LINE 4 | 23CV419028 | Flavio Pando et al vs Wells Fargo Bank, N.A. et al. | <p>Application of Julie R. Offerman, the Esq. for Admission Pro Hac Vice to Appear As Counsel for Defendants Cellular Sales Management Group LLC.</p> <p>Rules of Court, rule 9.40 authorizes this Court to grant a verified petition of an out-of-state attorney to appear as counsel pro hac vice in a California action. A trial court may permit an attorney who is not a member of the State Bar of California, but who is a member in good standing of any United States court or the highest court in any state, to appear as counsel pro hac vice, in a particular case pending before a Court of this State. (See <i>In Re McCue</i> (1930) 211 Cal. 57, 67.)</p> <p>The application is GRANTED.</p> <p>NO FORMAL TENTATIVE RULING.</p> |
| LINE 5 | 23CV419028 | Flavio Pando et al vs Wells Fargo Bank, N.A. et al. | <p>Demurrer of Defendant Wells Fargo Bank, N.A. To Plaintiff's Complaint.</p> <p>The demurrer to the entire complaint is OVERRULED.</p> <p>The demurrer to the first, second, and third causes of action on the ground of uncertainty is OVERRULED.</p> <p>The demurrer to the first cause of action is SUSTAINED WITHOUT LEAVE TO AMEND for failure to state a claim.</p> <p>The demurrer to the second and third causes of action for failure to state a claim is OVERRULED.</p> <p>SEE ATTACHED TENTATIVE RULING.</p> |
| LINE 6 | 23CV419028 | Flavio Pando et al vs Wells Fargo Bank, N.A. et al. | <p>Case Management Conference.</p> <p>The matter will be set for a Trial Setting Conference on 06 August 2024 at 11:00 AM in Department 20. The parties should have discovery well underway and consider alternate dispute resolution.</p> <p>SEE LINE #5.</p> |

| LINE # | CASE # | CASE TITLE | TENTATIVE RULING |
|---------|------------|--|---|
| LINE 7 | 20CV370287 | Angelina Mojica vs Il Gp, L.L.C.; Hersha Hospitality Management, LP et al. | <p>Motion of Plaintiff to Compel Defendant Hersha Hospitality Management, LP to Provide Further Responses To Special Interrogatories, Set Two, And For Monetary Sanctions.</p> <p>OFF CALENDAR without prejudice by stipulation.</p> <p>NO FORMAL TENTATIVE RULING.</p> |
| LINE 8 | 21CV376675 | Nieves Cadaoas et al vs Arellano And Ibrahim LLC et al | <p>Motion of Defendants to Compel Edwin De Los Reyes to Comply with Subpoena.</p> <p>CONTINUED from 27 July 2023. The parties should use the Tentative Ruling Protocol to update this Court with the status of the matter.</p> <p>NO FORMAL TENTATIVE RULING.</p> |
| LINE 9 | 22CV402869 | Robert Close vs State Farm Mutual Automobile Insurance Co. | <p>Motion Of Defendant State Farm Mutual Automobile Ins. Co. To Compel Plaintiff To Attend A Neuropsychological Examination.</p> <p>Respondent seeks to compel petitioner to appear for a neuropsychological examination in New York City where he currently resides.</p> <p>Petitioner claims that respondent has not identified the particular psychological tests to be performed. In Carpenter v. Superior Court (2006) 141 Cal.App.4th 249, 259-260, the Court of Appeal held that a trial court has no jurisdiction to order plaintiff to undergo a psychological examination unless the defense first provides the trial court with a list of names of the psychological test which will be administered, and those tests are specifically included in the court's order.</p> <p>Sharon also claims that he has never treated with a psychiatrist, psychologist, or neuropsychologist for any injury related to this accident. He is claiming treatment by a neurologist was necessary for post-concussion including headache and memory issues. He has testified that these matters have resolved.</p> <p>NO FORMAL TENTATIVE RULING. The parties should use the Tentative Ruling Protocol to advise this Court if they wish to submit on the papers presented or appear and argue the merits of the motion.</p> |
| LINE 10 | 23CV411778 | Bernardo Magaña Loya vs General Motors LLC | <p>Motion Of Plaintiff To Compel Defendant General Motors To Provide Further Verified Responses To Special Interrogatories Nos. 3, 10, 11, 18, and 21-24.</p> <p>The parties should further meet and confer on the responses with the limitations described above. This Court will CONTINUE the motion for time to allow the parties to attempt to further resolve the disputes here. The motion will be recalendared for 23 January 2024 at 9:00 AM in this Department.</p> <p>SEE ATTACHED TENTATIVE RULING.</p> |

| LINE # | CASE # | CASE TITLE | TENTATIVE RULING |
|---------|------------|--|--|
| LINE 11 | 23CV411778 | Bernardo Magaña Loya vs General Motors LLC | Motion Of Plaintiff To Compel Defendant General Motors To Provide Further Verified Responses To Request for Production of Documents, Set One. SEE LINE #10. |
| LINE 12 | 23CV411778 | Bernardo Magaña Loya vs General Motors LLC | Motion Of Plaintiff To Compel Defendant General Motors To Provide Further Verified Responses To Form Interrogatories Nos. 12.1, 15.1, and 17.1 by SEE LINE #10. |
| LINE 13 | 19CV357485 | Natasha Doubson vs Elena Kozlova et al. | Motion of Plaintiff to Continue Trial and Keep Discovery Open. OFF CALENDAR. Notice of Settlement filed on 01 November 2023. The matter will be placed on the Dismissal Review Calendar on 14 March 2024 at 10:00 AM in Department 20. NO FORMAL TENTATIVE RULING. |
| LINE 14 | 21CV388912 | José Oliva vs Allen Geoffroy et al | Motion of Plaintiff for Leave to Serve Summons and Complaint by Publication. The Motion is GRANTED. NO FORMAL TENTATIVE RULING. |
| LINE 15 | 22CV399246 | Mohamed Marleen et al vs Malalai Olomi et al | Motion of Martin S. Reid, Esquire to Withdraw As Counsel for Defendant Mohamed Insaaf Mohideen. Counsel for defendant seeks to withdraw as counsel due to a breakdown of the attorney-client relationship. Communication between client and counsel has deteriorated due to an irreconcilable breakdown of the attorney-client relationship. Therefore, counsel counsel is filing this motion to withdraw as counsel. Mr. Reed alleges that his client will not be prejudiced by the withdrawal. The motion to be relieved as counsel is GRANTED. The Order will take effect upon the filing and service of the executed order of this Court and an order that is written on Form MC-053 and that otherwise complies with California Rules of Court , rule 3.1362(e). Counsel should add the next court dates on ¶ 8 pf the proposed order and submit it to this Department via the Clerk's efilng queue. NO FORMAL TENTATIVE RULING. |
| LINE 16 | 22CV399246 | Mohamed Marleen et al vs Malalai Olomi et al | The matter is here today for a trial setting. Given the withdrawal of Mr. Reed, this Court will CONTINUE the Trial Setting Conference to 13 February 2024 at 11:00 AM in Department 20 NO FORMAL TENTATIVE RULING. |

| LINE # | CASE # | CASE TITLE | TENTATIVE RULING |
|---------|-----------|--|---|
| LINE 17 | 2CV396559 | Letisia Cervantes; Victoria Garcia vs Daniel Valencia. | <p>Motion of Plaintiffs for Leave to File A First Amended Complaint.</p> <p>This motion was filed on 24 July 2023. The motion does not appear to be opposed. The motion is in good form and is GRANTED.</p> <p>Plaintiff should present a copy of the proposed cross-complaint to the clerk for filing and obtain a file-endorsed copy. Plaintiff should serve the file-endorsed copy defendant who will have 20 days from the filing and service of the amended cross-complaint within which to RESPOND.</p> <p>NO FORMAL TENTATIVE RULING.</p> |
| LINE 18 | | | SEE ATTACHED TENTATIVE RULING. |
| LINE 19 | | | SEE ATTACHED TENTATIVE RULING. |
| LINE 20 | | | SEE ATTACHED TENTATIVE RULING. |
| LINE 21 | | | SEE ATTACHED TENTATIVE RULING. |
| LINE 22 | | | SEE ATTACHED TENTATIVE RULING. |
| LINE 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. |

---oooOooo---

Calendar Line 1

---oooOooo---

Calendar Line 2

---oooOooo---

Calendar Line 3

---oooOooo---

Calendar Line 4

---oooOooo---

Calendar Line 5

**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.: 23CV419028 Flavio P. Pando and Maria J. Pando v. Wells Fargo Bank, N.A., et al.

DATE: 7 November 2023

TIME: 9:00 am

LINE NUMBER: 05, 06

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 06 November 2023. Please specify the issue to be contested when calling the Court and Counsel.

---oooOooo---

**Order on Demurrer Defendant Wells Fargo Bank, N.A.
to Plaintiff's Complaint.**

I. Statement of Facts.

This is an action for damages brought by plaintiffs Flavio P. Pando and Maria J. Pando (collectively, "Plaintiffs") against defendants Wells Fargo Bank, N.A. ("Wells Fargo") and Cellular Sales Management Group, LLC ("CSMG") (collectively, "Defendants") arising from unauthorized access to Plaintiffs' cell phone and sensitive personal information.

According to the complaint, on 23 August 2022, Plaintiffs visited CSMG's Eastridge Mall store to exchange their son's cell phone. (Complaint at ¶ 6.) Plaintiffs' Verizon PIN number was provided as part of the transaction. (Ibid.) Thereafter, within a day of visiting the store, an unknown and unauthorized individual(s), used Plaintiffs' Verizon PIN to lock out Plaintiffs from their phone service and access their personal information. (Id. at ¶ 7.)

After leaving a Verizon store, Plaintiffs visited a Wells Fargo branch office in San Jose, California and spoke with a banker named "Huy" to explain the ongoing fraud situation and check on Plaintiffs' accounts. (Complaint at ¶ 9.) Huy checked the accounts and indicated that everything looked fine and "not to worry," or words to that effect. (Ibid.)

Plaintiffs thereafter noticed the unauthorized person(s) withdrew approximately \$24,600 from their Wells Fargo accounts. (Complaint at ¶ 10.) Plaintiffs immediately went back to the Wells Fargo branch office to speak with Huy who called the fraud department to submit a claim. (Id. at ¶ 11.) Despite the claim, Wells Fargo did not refund Plaintiffs' money. (Id. at ¶ 12.) Plaintiffs filed a police report regarding the foregoing, and provided notice of the unauthorized transactions to Defendants verbally and/or in writing. (Id. at ¶ 15.)

On 14 July 2023, Plaintiffs filed the operative complaint against Defendants alleging causes of action for:

- (1) Violation of the California Customer Records Act ("CRA");
- (2) Violation of the California Consumer Privacy Act ("CPA");

(3) Negligence.¹

On 25 September 2023, defendant Wells Fargo filed the motion presently before the court, a demurrer to the complaint. Plaintiffs filed written opposition. Wells Fargo filed reply papers.

A further case management conference is also set for 07 November 2023. (Line #6.)

II. Demurrers in General.

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

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

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

III. Wells Fargo’s Demurrer.

Wells Fargo argues the complaint as a whole and each cause of action are subject to demurrer for failure to state a claim and uncertainty. (**Code of Civil Procedure**, § 430.10, subdivisions (e), (f).)

A. Demurrer to Entire Complaint.

According to the notice of motion, defendant Wells Fargo generally and specially demurs to the entire complaint for failure to state a claim and uncertainty.

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

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

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

Uncertainty is a disfavored ground for demurrer; it is typically sustained only where the pleading is so unintelligible and uncertain that the responding party cannot reasonably respond to or recognize the claims alleged against it. (See *Khoury v. Maly's of Cal, Inc.* (1993) 14 Cal.App.4th 612, 616.) “A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures.” (*Ibid.*)

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

Here, defendant Wells Fargo does not advance any substantive argument to the entire complaint for failure to state a claim or uncertainty. Instead, the memorandum of points and authorities in support of the motion separately considers each cause of action in the challenged pleading. Thus, the court will also separately address each cause of action to determine whether a valid cause of action has been stated.

Accordingly, the demurrer to the entire complaint on the grounds of failure to state a claim and uncertainty is OVERRULED.

B. First Cause of Action: Violation of the CRA.

The first cause of action is a claim for violation of the CRA.

The California Customer Records Act (“CRA”), *Civil Code* § 1798.80 et seq. and the California Consumer Privacy Act (“CPA”), *Civil Code*, § 1798.100 et seq., require businesses to implement reasonable measures to protect personal data, and for the common law tort of Negligence.

The CRA requires businesses who maintain personal information about a California resident to “implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure.” (*Civil Code*, § 1798.81.5, subdivision (b).) Customers injured by a violation of this requirement may bring a civil action to recover damages. (*Civil Code*, § 1798.84, subdivision (b).²)

Plaintiffs allege Defendants violated the CRA by failing to implement reasonable measures to protect their personal data and did not comply with the notice of provisions of *Civil Code* section 1798.82 as Plaintiffs were not timely notified of the account breaches. (Complaint at ¶¶ 23-24.)

Defendant Wells Fargo argues the first cause of action is subject to demurrer because: (1) Wells Fargo is a “financial institution” and therefore exempt from the CRA; and (2) Plaintiffs do not allege their personal information was acquired or that Wells Fargo had knowledge of a data breach.

1. Financial Institution Exemption.

Defendant Wells Fargo contends there is no claim stated under the CRA as it is a financial institution and thus exempt under the statute.

The provisions of the CRA do not apply to “financial institutions” as defined in Section 4052 of the *Financial Code* and subject to the California Financial Information Privacy Act. (*Civil Code*, § 1798.81.5, subdivision (e)(2).)

“ ‘Financial institution’ means any institution the business of which is engaging in financial activities as described in Section 1843(k) of Title 12 of the United States Code and doing business in this state.” (*Financial Code*, § 4052, subdivision (c).)

Under 12 U.S.C. § 1843(k)(4)(A), financial activities include “[l]ending, exchanging, transferring, investing for others, or safeguarding money or securities.”

²*Civil Code*, § 1798.84, subdivisions (a) through (h) provide the remedies available for violations of the STL law. As relevant here (and as discussed in greater [*465] detail below), section 1798.86, subdivision (b) provides for a private right of action and damages, subdivision (c) provides for civil penalties, and subdivision (e) permits a court to enjoin any business “that violates, proposes to violate, or has violated this title.”

Here, the complaint does not refer specifically to Wells Fargo by name as a “financial institution.” Nevertheless, the facts alleged describe a Wells Fargo banker, Huy, investigating the fraud situation and checking on Plaintiffs’ accounts. (See Complaint at ¶ 9.) Plaintiffs further allege that Wells Fargo is at fault for failing to return amounts improperly withdrawn from their accounts and take reasonable steps to secure Plaintiffs’ financial information. (Id. at ¶¶ 16, 18, 20, 23.) These allegations, taken together, would suggest that Wells Fargo has a responsibility to safeguard money and thus would be considered a “financial institution” and therefore exempt under the CRA.³

In opposition, Plaintiffs assert that Wells Fargo does not qualify for exempt status as financial institutions do not include providers of professional services. (See **Civil Code**, § 1798.81.5, subdivision (e)(2) [“The term ‘financial institution’ does not include any provider of professional services, or any wholly owned affiliate thereof, that is prohibited by rules of professional ethics and applicable law from voluntarily disclosing confidential client information without the consent of the client.”].) Plaintiffs however do not allege facts or persuasive legal authority demonstrating Wells Fargo was a provider of professional services to support their position. In fact, the only cases cited are from the Eleventh Circuit Court of Appeals and Wisconsin Supreme Court (see OPP at p. 5:8-9), which are not binding on this court and do not consider exemptions under the statute. Therefore, the demurrer is sustainable on this ground. As a consequence, the court declines to consider the alternative argument raised in support of the general demurrer.

2. Leave to Amend.

Should the court sustain the demurrer, Plaintiffs request further leave to amend. (See OPP at p. 10:18-19.)

“The plaintiff bears the burden of proving there is a reasonable possibility of amendment.” (*Rakestraw v. California Physicians’ Service* (2000) 81 Cal.App.4th 39, 43 (*Rakestraw*)). To satisfy this burden, a plaintiff “must show in what manner he (or she) can amend his (or her) complaint and how that amendment will change the legal effect of his pleading.” (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 349.) “Plaintiff must clearly and specifically set forth the ‘applicable substantive law’ [citation] and the legal basis for amendment, i.e., the elements of the cause of action and authority for it. Further, plaintiff must set forth factual allegations that sufficiently state all required elements of that cause of action. [Citations.] Allegations must be factual and specific, not vague or conclusionary.” (*Rakestraw, supra*, at pp. 43-44.)

Here, Plaintiffs do not provide any basis for leave to amend. (See *Brown v. Deutsche Bank National Trust Co.* (2016) 247 Cal.App.4th 275, 282 [“Aside from a cursory request that we ‘grant [her] leave to amend to incorporate[e] additional facts as described previously,’ Brown does not address how she could amend her complaint to assert a valid cause of action.”].)

Furthermore, given the substantive law, it is unlikely that Plaintiffs can submit any amendment that will change the result in this instance. (See *Berkeley Police Assn. v. City of Berkeley* (1977) 76 Cal.App.3d 931, 942 [“[W]here the nature of plaintiff’s claim is clear, but under substantive law no liability exists, leave to amend should be denied, for no amendment could change the result.”].) Thus, the court finds no basis for further amendment.

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

C. Second Cause of Action: Violation of the CPA.

The second cause of action is a claim for violation of the CPA.

The CPA provides a cause of action to any consumer whose nonencrypted and nonredacted personal information “is subject to an unauthorized access and exfiltration, theft, or disclosure as a result of the business’s

³ Given this court’s finding, the court declines Wells Fargo’s request for judicial notice of the fact that it engaged in “financial activities” under **Financial Code** section 4052, subdivision (c).

violation of the duty to implement and maintain reasonable security procedures and practices appropriate to the nature of the information to protect the personal information.” (**Civil Code**, § 1798.150, subdivision (a)(1).)

The CPA cause of action alleges the following in relevant part:

¶ 30: Defendants stored Plaintiffs’ personal information as defined in **Civil Code** section 1798.81.5, subdivision (d)(1)(A), including but not limited to Plaintiffs’ first and last names, account numbers or credit or debit card numbers, in combination with any required security codes, access codes, or passwords that would permit access to an individual’s accounts.

¶ 31: Plaintiffs’ personal information was collected, stored, and/or transmitted by Defendants in a nonencrypted and nonredacted form, or in some other form that permitted unauthorized individuals to access that information in violation of the CPA.

¶ 32: Defendants breached their duty to implement and maintain reasonable security procedures and practices appropriate to the nature of Plaintiffs’ personal information.

¶ 33: As a direct and proximate result of Defendants’ failure to implement and maintain reasonable security procedures and practices appropriate to the nature of Plaintiffs’ personal information, Plaintiffs suffered unauthorized access and disclosure of their personal information. (Complaint at ¶¶ 30-33.)

Defendant Wells Fargo asserts there are insufficient facts to establish a violation under the CPA. The court disagrees as Plaintiffs allege that, due to Wells Fargo’s “failure to implement and maintain reasonable security procedures and practices...Plaintiffs suffered unauthorized access and disclosure of their personal information.” (See Complaint at ¶ 33.) Such allegations are sufficient to state a claim for a violation of the CPA and overcome a pleading challenge on general demurrer. (See *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604 [“[I]n testing a pleading against a demurrer the facts alleged in the pleading are deemed true, however improbable they may be.”]; see also *Alcorn v. Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 496 [court reviewing propriety of ruling on demurrer is not concerned with the “plaintiff’s ability to prove . . . allegations, or the possible difficulty in making such proof”].)

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

D. Third Cause of Action: Negligence.

The third cause of action is a claim for negligence.

The elements of a cause of action for negligence are: (a) a legal duty to use due care; (b) a breach of such legal duty; and (c) the breach as the proximate or legal cause of the resulting injury. (*Truong v. Nguyen* (2007) 156 Cal.App.4th 865, 875.) “In short, to recover on a theory of negligence, Plaintiffs must prove duty, breach, causation, and damages.” (*Ibid.*)

Defendant Wells Fargo argues the third cause of action is subject to demurrer because: (1) the claim is barred by the economic loss rule; and (2) Plaintiffs fail to allege facts establishing causation.

1. Economic Loss Rule.

“In general, there is no recovery in tort for negligently inflicted ‘purely economic losses,’ meaning financial harm unaccompanied by physical or property damage. [Citations.]” (*Sheen v. Wells Fargo Bank, N.A.* (2022) 12 Cal.5th 905, 922.) “[T]he rule functions to bar claims in negligence for pure economic losses in deference to a contract between litigating parties.” (*Ibid.*)

Defendant Wells Fargo contends the negligence claim is barred by the economic loss rule as Plaintiffs do not allege personal injury or physical damage to property. In opposition, Plaintiffs argue, in part, that the special relationship exception applies to defeat the economic loss rule. (See OPP at pp. 9-10.)

In support, Plaintiffs rely primarily on the California Supreme Court decision in *J’Aire Corp. v. Gregory* (1979) 24 Cal.3d 799 (*J’Aire*). There, a restaurant leased space at a county airport. The lease required the county to provide heat and air conditioning. The county entered into a contract with defendant to provide the

heating and air conditioning systems to the restaurant. The restaurant sued defendant, alleging that an unreasonable delay in performing the contract caused it to lose business. The trial court sustained the defendant's demurrer without leave to amend. The Supreme Court reversed holding that where a special relationship exists between the parties, recovery for purely economic loss is not foreclosed. (*Id.* at p. 804.) The Court gave six factors to consider: '(1) the extent to which the transaction was intended to affect the plaintiff, (2) the foreseeability of harm to the plaintiff, (3) the degree of certainty that the plaintiff suffered injury, (4) the closeness of the connection between the defendant's conduct and the injury suffered, (5) the moral blame attached to the defendant's conduct and (6) the policy of preventing future harm."⁴ (*Ibid.*)

Here, Plaintiffs do not allege sufficient facts for the court to determine whether the special relationship exception is applicable. Nor does the opposition engage in any meaningful analysis of the six factors set forth in *J'Aire* to consider whether a special relationship exists. The argument is therefore undeveloped and does not provide a basis for defeating the economic loss rule. (See *Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 52 ["We are not required to examine undeveloped claims or to supply arguments for the litigants"].)

But, Plaintiffs also assert, more persuasively, that they have alleged non-economic damages in paragraph 19 of the complaint (incorporated by reference into the negligence claim by paragraph 36) which provides:

As a result of Wells Fargo's and CSMG's actions, Plaintiffs suffered emotional distress damages and actual damages including the loss of money and time associated with addressing the foregoing unauthorized transactions visiting numerous offices and stores, cancelling numerous credit card and bank accounts, visiting the District Attorney, police department, DMV and Social Security offices, and contacting the three major credit reporting agencies to freeze their credit lines.

The moving papers do not challenge Plaintiffs' request for emotional distress damages and damages associated with lost time and a party cannot demur to a portion of a cause of action. (See *DaFonte v. Up-Right, Inc.* (1992) 2 Cal.4th 593, 595 [emotional distress constitutes "non-economic" damages]; *Stasi v. Immediata Health Group Corp.* (S.D. Cal. 2020) 501 F.Supp.3d 898, 913 ["[T]ime spent responding to a data breach is a non-economic injury, that when alleged to support a negligence claim, defeats an economic loss argument."]; see also *Financial Corp. of America v. Wilburn* (1987) 189 Cal.App.3d 764, 778 ["[A] defendant cannot demur generally to part of a cause of action"] *PH II, Inc. v. Super. Ct.* (1995) 33 Cal.App.4th 1680, 1682 ["A demurrer does not lie to a portion of a cause of action"].) The economic loss argument therefore is not sustainable on demurrer.

2. Causation.

"In a negligence action, the plaintiff must show the defendant's act or omission (breach of duty) was a cause of the plaintiff's injury." (*Vasquez v. Residential Investments, Inc.* (2004) 118 Cal.App.4th 269, 288.) To establish causation, the plaintiff must show: (1) that the defendant's breach of duty was a cause in fact of his or her injury; and (2) that the defendant's breach was the proximate, or legal, cause of the injury. (*Union Pacific Railroad Co. v. Ameron Pole Products LLC* (2019) 43 Cal.App.5th 974, 980 (*Union Pacific Railroad Co.*)).

"California has adopted the 'substantial factor' test for cause in fact determinations. [Citation.] Under that test, a defendant's conduct is a cause of a plaintiff's injury if: (1) the plaintiff would not have suffered the injury but for the defendant's conduct, or (2) the defendant's conduct was one of multiple causes sufficient to cause the alleged harm. [Citations.]" (*Union Pacific Railroad Co., supra*, 43 Cal.App.5th at p. 981.)

Defendant Wells Fargo argues there is no causation to support negligence as Plaintiffs admit the breach into their cell phone by CSMG lead to their purported harm. (See Demurrer at p. 8:16-18.) But, as explained throughout the complaint, the alleged breach includes Wells Fargo's failure to implement and maintain reasonable security procedures and practices which caused Plaintiffs to suffer unauthorized access and disclosure of their personal information. (See Complaint at ¶¶ 32-33, 36, 38-39.) Such allegations are sufficient to satisfy causation and must be accepted as true for purposes of demurrer. (See *Olson v. Toy* (1996) 46 Cal.App.4th 818, 823 [for purposes of demurrer, we accept these allegations as true].)

⁴ The six factors were set forth in the seminal California Supreme Court case in *Biakanja v. Irving* (1958) 49 Cal.2d 647.

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

E. Uncertainty.

According to the notice of motion, defendant Wells Fargo also demurs to each cause of action on the ground of uncertainty. Wells Fargo however does not advance any substantive argument in support of a special demurrer for uncertainty for any cause of action. (See **Landry v. Berryessa Union School Dist.** (1995) 39 Cal.App.4th 691, 699-700 ["When an issue is unsupported by pertinent or cognizable legal argument it may be deemed abandoned and discussion by the reviewing court is unnecessary."]; **Ochoa v. Pacific Gas & Electric Co.** (1998) 61 Cal.App.4th 1480, 1488, fn. 3 [contention was deemed waived because "[a]ppellant did not formulate a coherent legal argument nor did she cite any supporting authority"].)

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

IV. Tentative Ruling.

The Tentative Ruling was duly posted

V. Case Management.

The matter will be set for a Trial Setting Conference on 06 August 2024 at 11:00 AM in Department 20. The parties should have discovery well underway and consider alternate dispute resolution.

VI. Conclusion and Order.

The demurrer to the entire complaint is OVERRULED.

The demurrer to the first, second, and third causes of action on the ground of uncertainty is OVERRULED.

The demurrer to the first cause of action is SUSTAINED WITHOUT LEAVE TO AMEND for failure to state a claim.

The demurrer to the second and third causes of action for failure to state a claim is OVERRULED.

DATED:

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

---oooOooo---

Calendar Line 6

---oooOooo---

Calendar Line 7

---oooOooo---

Calendar Line 8

---oooOooo---

Calendar Line 9

---oooOooo---

Calendar Line 10

**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 23CV411778

Bernardo Magaña Loya vs General Motors LLC

NO.:

DATE: 07 November 2023

TIME: 9:00 am

LINE NUMBER: 10, 11, 12

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 06 November 2023. Please specify the issue to be contested when calling the Court and Counsel.

---oooOooo---

**Orders on Motions of Plaintiff Bernardo Magaña Loya to Compel
Defendant General Motors LLC To Provide Further Responses to
Special Interrogatories, Requests For Production Of Documents,
and to Form Interrogatories.**

I. Statement of Facts.

This action alleges that Defendant General Motors, LLC ("Defendant" or "GM") violated California's Song-Beverly Consumer Warranty Act ("Song-Beverly Act" or "lemon law") by failing to repair Plaintiff's 2019 Chevrolet Silverado, ("Subject Vehicle" or "Vehicle").

Claimed defects include the Suspension, Engine, and Safety System Defects. Plaintiff claims that defendant failed to repair the defects within a reasonable number of attempts, and by refusing to repurchase the vehicle despite its knowledge that Plaintiff's vehicle suffers from those defects.

II. Discovery Motions.

Plaintiff propounded a standard set of Special Interrogatories, Set One, Nos. 3, 10, 11, 18, and 21-24 are broadly divisible into the following categories: (1) those related to the identities of individuals who inspected and/or repaired the Subject Vehicle; (2) the number of days that the Subject Vehicle was out of service for warranty repairs; (3) the steps taken to permanently repair the powertrain concerns that were presented to GM's authorized repair facilities; and (4) GM's investigation, root cause analysis, and proposed repairs for the powertrain concerns.

Plaintiff propounded Requests For Production Of Documents The Requests seek the following general categories of documents: 1) the repairs performed on the Subject Vehicle (i.e. Nos. 5 and 9-12); 2) those relating to GM's internal investigation and analysis of the Defects plaguing Plaintiff's vehicle and establishing that Defendant previously knew of such Defects but nevertheless refused to repurchase the vehicle (i.e., Nos. 14-29, and 49); and 3) those relating to Defendant's warranty and vehicle repurchase policies, procedures, and practices (i.e. 43-45, 47-49, 53-55, and 59).

Finally, plaintiff served Form Interrogatories 12.1, 15.1, and 17.1 which seek basic information regarding the identities of individuals who performed warranty repairs on behalf of Defendant, information and witness

identities supporting Defendant's affirmative defenses and denials, as well as Defendant's denials to Plaintiff's Requests for Admission.

Position, General Motors contends that plaintiff has served 180 separate discovery requests and that it timely responded or served a valid objections to all 180 requests. GM further identified the materials that it did produce.

III. Analysis.

A. Requests for Evidentiary Rulings.

There is no legal basis requiring a court to rule on an evidentiary objection made in connection with a motion other than one for summary judgment or an anti-SLAPP motion. The Court will not make such an evidentiary ruling in connection with a discovery motion. (See generally, *People v. Morris* (1991) 53 Cal.3d 152, 188 [providing that a motion in limine is a motion brought before the trial court for the purpose of excluding evidence].)

B. "Meet & Confer."

GM takes issue with the degree of "meet and confer" undertaken by plaintiff prior to the filing of this motion. While this Court in instances where the "meet and confer" was more akin to a drive-by shooting rather than an attempt to work out the otherwise-simple discovery requests in a reasonable manner, this case was a movement more than that.

The purpose of the "Meet & Confer" requirement is to force lawyers to reexamine their positions, and to narrow their discovery disputes to the irreducible minimum, before calling upon the court to resolve the matter. It also enables parties and counsel to avoid sanctions that are likely to be imposed if the matter comes before the court. (*Stewart v. Colonial Western Agency, Inc.* (2001) 87 Cal.App.4th 1006, 1016-1017.)

Failing to engage in a proper "Meet & Confer" session is a misuse of the discovery process. (*Code of Civil Procedure*, § 2023.010(i).)

Failing to make a "reasonable and good faith attempt" to resolve the issues informally before a motion to compel is filed constitutes a "misuse of the discovery process." Monetary sanctions can be imposed against whichever party is guilty of such conduct even if that party wins the discovery motion in question. (*Code of Civil Procedure*, § 2023.020; *Obregón v. Superior Court (Cimm's, Inc.)* (1998) 67 Cal.App.4th 424, 434-435.)

In some cases, monetary sanctions may be imposed against both counsel at the same time. (See *Volkswagenwerk Aktiengesellschaft v Superior Court (Golsch)* (1981) 122 Cal.App.3d 326, 331-334⁵.)

C. Special and Form Interrogatories.

Defendant claims that the discovery has already been answered and responsive documents have been produced and therefore there is nothing left to compel.

Form Interrogatory 12.1: Defendant takes issue with the use of the term "incident" in these discovery requests. The claim is that this is not applicable to breach of warranty cases is rather designed for personal injury actions.

Two observations:

First, the term "incident" on the form interrogatories DISC-001 is defined as ". . . .includ[ing] circumstances and events surrounding the alleged accident, injury, or other occurrence or breach of contract giving rise to this action or proceeding." The current action sounds a lot like a breach of contract.

⁵ Because of personal dislike for each other, counsel failed to make any real effort to negotiate the disputed issues. The Court could have refused to rule on the motion to compel because of moving party's counsel's failure to "meet and confer." But in order to resolve the matter, it heard the motion, found both lawyers to have violated the requirement, and ordered each to pay \$150.00 out of his own pocket to the other lawyer's client.

Second, the definition offered by defendant would exclude injuries caused over time such as those involving exposure to toxic substances, or contract breaches that occur as a series of events instead of one specific event.

This Court concludes that the use of the term “incident” is not improper.

Form Interrogatory 15.1: This interrogatory seeks identification of each denial of material allegation as well as special or affirmative defenses, and the basis for such allegations. While GM claims that its investigation is ongoing, it should respond with the information it currently has in its possession without prejudice to raising new allegations should discovery reveal them.

Form Interrogatory 17.1: This interrogatory pertains to GM's responses to request for admissions. Again, GM should respond with the information it currently has in his possession without prejudice to raising new allegations.

Special Interrogatory Nos. 3, 10, 11, 18, and 21-24: GM should respond with meaningful responses. This Court could not ascertain just exactly what GM produced in response to which discovery request.

If GM claims that production of the general would be proprietary or otherwise a trade secret, it can file an appropriate privilege log.

GM should respond with information limited to the production to the make and model of the car in question here as well as the particular components whether they were used in only this years model or in other model year vehicles.

D. Request for Production of Documents:

Plaintiff served 63 requests for productions of documents, 32 of which are at issue.

The motion is somewhat problematic for this Court. While General Motors produced many documents, the production should be related to each specific request so that plaintiff knows what documents are being produced in response to a particular request.

This Court believes it is appropriate to limit the production to the make and model of the car in question here as well as the particular components whether they were used in only this years model or in other model year vehicles.

E. Conclusion.

The parties should further meet and confer on the responses with the limitations described above. This Court will CONTINUE the motion for time to allow the parties to attempt to further resolve the disputes here. The motion will be recalendared for 23 January 2024 at 9:00 AM in this Department.

IV. Tentative Ruling.

The tentative ruling was duly posted.

V. Case Management.

The parties have stipulated to a protective order and to mediation.

///

///

///

VI. Order.

The parties should further meet and confer on the responses with the limitations described above. This Court will CONTINUE the motion for time to allow the parties to attempt to further resolve the disputes here. The motion will be recalendared for 23 January 2024 at 9:00 AM in this Department.

DATED:

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

---oooOooo---

Calendar Line 11

---oooOooo---

Calendar Line 12

---oooOooo---

Calendar Line 13

---oooOooo---

Calendar Line 14

---oooOooo---

Calendar Line 15

---oooOooo---

Calendar Line 16

---oooOooo---

Calendar Line 17

---oooOooo---

Calendar Line 18

---oooOooo---

Calendar Line 19

---oooOooo---

Calendar Line 20

---oooOooo---

Calendar Line 21

---oooOooo---

Calendar Line 22

---oooOooo---

Calendar Line 23

---oooOooo---

Calendar Line 24

---oooOooo---

Calendar Line 25

---oooOooo---

Calendar Line 26

---oooOooo---

Calendar Line 27

---oooOooo---

Calendar Line 28

---oooOooo---

Calendar Line 29

---oooOooo---

Calendar Line 30

---oooOooo---