

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

Department 6

Honorable Evette D. Pennypacker, Presiding

David Criswell, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: (408) 882-2160

DATE: October 19, 2023 TIME: 9:00 A.M.

TO REQUEST ORAL ARGUMENT: Before 4:00 PM today you must notify the:

- (1) Court by calling (408) 808-6856 and
 - (2) Other side by phone or email that you plan to appear at the hearing to contest the ruling
- (California Rule of Court 3.1308(a)(1) and Local Rule 8.E.)

TO APPEAR AT THE HEARING: The Court strongly prefers in person appearances. If you must appear virtually, please use video. To access the courtroom, click or copy and paste this link into your internet browser and scroll down to Department 6:

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TO SET YOUR NEXT hearing date: You no longer need to file a blank notice of motion to obtain a hearing date. **Phone lines are now open for you to call and reserve a date before you file your motion.** If moving papers are not filed within 5 business days of reserving the date, the date will be released for use in other cases. Civil Local Rule 8C is in the amendment process and will be officially changed by January 2024.

Where to call for your hearing date:

408-882-2430

When you can call:

Monday to Friday, 8:30 am to 12:30 pm

LINE	CASE NO.	CASE TITLE	TENTATIVE RULING
<u>1</u>	22CV409375	Todd Rocha v. General Motors LLC	Defendant's Demurrer to the Fifth Cause of Action is OVERRULED . Please scroll down to Lines 1-2 for full tentative ruling. Please scroll down to Line 3 for full tentative ruling. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Court to prepare formal order.
<u>2</u>	22CV409375	Todd Rocha v. General Motors LLC	Defendant's Motion to Strike is DENIED . Please scroll down to Lines 1-2 for full tentative ruling. Please scroll down to Line 1-2 for full tentative ruling. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Court to prepare formal order.
<u>3</u>	23CV412328	Ruben Ramirez v J&M Maintenance & Remodeling, Inc.	Consolidated.
<u>4</u>	21CV390683	Ruben Ramirez v J&M Maintenance & Remodeling, Inc.	Accounting Defendants' Motion to Compel Ruben Ramirez to Provide Further Discovery Responses is CONTINUED to November 28, 2023. Please scroll down to Lines 3-8 for full tentative ruling, which has specific requirements for the parties to complete before the next hearing. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Court to prepare formal order.
<u>5</u>	21CV390683	Ruben Ramirez v J&M Maintenance & Remodeling, Inc.	Plaintiff's Motion to Compel J&M Maintenance & Remodeling, Inc., Jose Cruz, and Martha Ramirez Cruz to Provide Code-Compliant Responses to Special Interrogatories (Set One) \$7,560 in Sanctions is DENIED . Please scroll down to Lines 3-8 for full tentative ruling. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Court to prepare formal order.
<u>6</u>	21CV390683	Ruben Ramirez v J&M Maintenance & Remodeling, Inc.	Plaintiff's Motion to Compel Accounting Defendants to Produce Further Responses to Special Interrogatories (Set One) and \$9,180 in Sanctions is DENIED . Please scroll down to Lines 3-8 for full tentative ruling. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Court to prepare formal order.
<u>7</u>	21CV390683	Ruben Ramirez v J&M Maintenance & Remodeling, Inc.	Ruben Ramirez's Motion for Leave to File Amended Complaint is GRANTED . Please scroll down to Lines 4-8 for full tentative ruling. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Court to prepare formal order.
<u>8</u>	21CV390683	Ruben Ramirez v J&M Maintenance & Remodeling, Inc.	Ruben Ramirez's Motion to Enforce Subpoena for Business Records and for Sanctions is GRANTED, IN PART . Please scroll down to Lines 3-8 for full tentative ruling. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Court to prepare formal order.

<u>9</u>	23CV412270	Ruby Rebosa v Delores Tapay	Defendant's Motion to Compel Plaintiff's Further Responses to Requests for Production (Set One) and for \$2,000 in sanctions is DENIED. Please scroll down to Line 9 for full tentative ruling. The Court further VACATES the January 18 and February 1, 2024 motion to compel hearings and RESETS those hearings for November 16, 2023 at 9 a.m. in Department 6 to be heard with Defendant's motion to Compel Further Responses to Special Interrogatories (Set Two). To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Court to prepare formal order.
<u>10</u>	19CV341732	Calvano/CRP Mountain vs. 1001 Shoreline LLC	Per stipulation, this matter is set for November 28, 2023.
<u>11</u>	22CV405295	Uproar Brewing Company v LVLUP	The Mitzel Group, LLP's Motion to Withdraw is GRANTED. LVLUP/LVL, LLC and Estate for David Ramsay shall have 60 days to file an appearance of new counsel or their answer and cross-complaint will be stricken. The November 21, 2023 case management conference is VACATED and RESET to December 19, 2023 at 10:00 a.m. in Department 6. To request oral argument, call or email the other side and call the court at (408) 808-6856 by 4 p.m. today. (CRC 3.1308(a)(1) and LR 8.E.) Court to prepare formal order.

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Calendar Lines: 1-2

Case Name: *Todd Rocha v. General Motors, LLC*

Case No.: 22CV409375

Before the Court is Defendant General Motors, LLC's ("GM") motion to strike portions of and demurrer to Plaintiff Todd Rocha's First Amended Complaint ("FAC"). Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

This action arises from the purchase of a purportedly defective motor vehicle. The FAC alleges that on or about November 19, 2020, Plaintiff entered a warranty contract with Defendant regarding a 2021 Chevrolet Silverado ("Vehicle"), he delivered the Vehicle to GM's authorized service and repair facilities, at least on 4 separate occasions, and that Defendant failed to repair, adjust, and/or replace any necessary parts to conform the subject vehicle to its applicable warranty (FAC ¶¶ 6, 22-25.) Despite lengthy days spent on repairs and Defendant's representations, Plaintiff continued to experience various transmission problems. (FAC ¶¶ 26, 67.)

Plaintiff further alleges Defendant knew before Plaintiff purchased the Vehicle that the 8-speed transmission used in the Vehicle had one or more defects that caused hard or harsh shifts, jerking, lurching, hesitation on acceleration, surging and/or inability to control the Vehicle's speed; conditions that present a safety hazard and are unreasonably dangerous to consumers. (FAC ¶¶ 67, 68, 75.) Defendant allegedly acquired knowledge of the Transmission Defect through post-production testing data, consumer complaints, warranty data compiled from GM dealers, and repair data among other sources. (FAC ¶¶ 68, 70, 71, 72.)

From September 2014 to February 2019, Defendant issued many service bulletins and update bulletins to its dealers in the United States acknowledging the problems associated with the 8-speed transmission. (FAC ¶72.) Defendant was internally referring to the 8-speed transmission as a "neck snapper" and its engineers considered stopping production in 2015 and 2016. In fact, Defendant's president, John De Nysschen, acknowledged customer frustration surrounding the Defective Transmission internally and with its authorized repair facilities. (FAC ¶ 70.)

Despite their knowledge, Defendant did not inform Plaintiff about the Transmission Defects at the time of sale, nor did they inform him after his purchase. Defendant never sent any bulletins or

notices to Plaintiff or any of its consumers and instead actively concealed the existence of the Defective Transmission and its inability to repair it. (FAC ¶¶ 72, 73, 74.)

Plaintiff, as a reasonable consumer, interacted with sales representatives, considered Defendant's advertisement and marketing materials concerning the Vehicle model prior to purchasing his Vehicle. Defendant marketed and sold its new 8-speed transmission as having "world-class performance" rivaling top performance vehicles, lightning-fast and smooth shifting, along with improved fuel efficiency among other representations. Defendant's own press release on January 13, 2014, introduced the 8-speed transmission as being "tuned for world-class shift-response times," and "delivering shift performance that rivals the dual-clutch/semi-automatic transmissions found in many supercars – but with the smoothness and refinement that comes with a conventional automatic fitted with a torque converter." (FAC ¶¶ 69, 70.)

Plaintiff alleges that the concealed information about the Defective Transmission was material in that a reasonable person would have considered them to be important in deciding whether to purchase the vehicle or not. Had Plaintiff known about the Defective Transmission, he would not have purchased his Vehicle and thus exposed himself to accident, injury, and financial loss. (FAC ¶¶ 78, 80.)

Plaintiff filed this suit on December 30, 2022, and amended his complaint on May 31, 2023, asserting: (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 Implied Warranty of Merchantability, and (5) Fraudulent Inducement – Concealment.

II. Legal Standard

A. Demurrer

A demurrer tests the sufficiency of a complaint and raises only questions of law. (*Schmidt v. Foundation Health* (1995) 35 Cal.App.4th 1702, 1706.) On a demurrer, the court must assume the truth of (1) the properly pleaded factual allegations; (2) facts that can be reasonably inferred from those expressly pleaded; and (3) judicially noticed matters. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

The court may not consider contentions, deductions, or conclusions of fact or law. (*Moore v. Conliffe* (1994) 7 Cal.App.4th 634, 638.) Because a demurrer tests the legal sufficiency of a complaint, a plaintiff must demonstrate that the complaint alleges facts sufficient to establish every element of

each cause of action. (*Rakestraw v. California Physicians Service* (2000) 81 Cal.App.4th 39, 43.) Where the complaint fails to state facts sufficient to constitute a cause of action, courts should sustain the demurrer. (Code of Civ. Proc. §430.10(e); *Zelig v. County of Los Angeles* (2002) 27 Cal.App.4th 1112, 1126.)

Sufficient facts are the essential facts of the case “with reasonable precision and with particularity sufficiently specific to acquaint the defendant with the nature, source, and extent of his cause of action.” (*Gressley v. Williams* (1961) 193 Cal.App.2d 636, 643-644.) Whether the plaintiff will be able to prove the pleaded facts is irrelevant. (*Stevens v. Superior Court* (1986) 180 Cal.App.3d 605, 609-610.) A pleading is required to assert general allegations of ultimate fact. Evidentiary facts are not required. (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 47; *Lim v. The.TV Corp. Internat.* (2002) 99 Cal. App. 4th 684, 690.)

B. Motion to Strike

Any party, within the time allowed to respond to a pleading may serve and file a notice of motion to strike the whole or any part thereof. (Code of Civ. Proc., § 435(b)(1); Cal. Rules of Court (CRC), Rule 3.1322(b).) The court may, upon a motion or at any time in its discretion and upon terms it deems proper: (1) strike out any irrelevant, false, or improper matter inserted in any pleading; or (2) strike out all or any part of any pleading not drawn or filed in conformity with the laws of California, a court rule, or an order of the court. (Code of Civ. Proc., § 436, subds. (a)-(b); *Stafford v. Shultz* (1954) 42 Cal.2d 767, 782 [“Matter in a pleading which is not essential to the claim is surplusage; probative facts are surplusage and may be stricken out or disregarded”].)

III. Analysis

A. Demurrer

Defendant demurs to Plaintiff’s fifth cause of action is for Fraudulent Inducement - Concealment on the ground of failure to state facts sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10) Defendant asserts this claim is insufficiently pled because (1) the allegations lack the requisite specificity, and (2) FAC does not allege a transactional relationship between Plaintiff and GM giving rise to a duty of disclosure.

“In California, fraud must be pled specifically; general and conclusory allegations do not

suffice.” (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) “The elements of fraud, which give rise to the tort action for deceit, are (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or ‘scienter’); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.” (*Id.* at 638.) “The requirement of specificity in a fraud action against a corporation requires the plaintiff to allege the names of the persons who made the allegedly fraudulent representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written.” (*Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 157.) “We acknowledge that the requirement of specificity is relaxed when the allegations indicate that ‘the defendant must necessarily possess full information concerning the facts of the controversy’ (Citation) or ‘when the facts lie more in the knowledge of the opposite party[.]’ (Citation.)” (*Id.* at 158.)

An action for fraud does not lie only where an affirmative misrepresentation is made but also where there has been concealment or nondisclosure. (*Jones v. ConocoPhillips* (2011) 198 Cal.App.4th 1187, 1198 [“Not every fraud arises from an affirmative misstatement of material fact.”]); see also *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 638; 5 Witkin, Summary of Cal. Law (11th ed. 2017) Torts, § 890.) Here, Plaintiff’s fraud cause of action is based on his allegations that Defendant *concealed* facts relating to the Transmission Defect when he purchased the Vehicle. Thus, no affirmative misrepresentations are required.

Plaintiff is correct that the specificity requirement for concealment-based fraud is relaxed. (*Alfaro v. Community Housing Improvement System & Planning Assn., Inc.* (2009) 171 Cal.App.4th 1356, 1384.) However, Plaintiff must still plead sufficient facts to support a claim for fraudulent concealment. “[T]he elements of an action for fraud and deceit based on a concealment are: (1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage.” (*Boschma v. Home Loan Center, Inc.* (2011) 198 Cal.App.4th 230, 248.)

Plaintiff alleges (1) concealment (FAC ¶¶ 33, 35, 41-42, 70, 73-74, 77-78, 80), (2) knowledge of falsity (Id. ¶¶ 66-67, 70-73, 75) (3) intent to induce reliance (Id. ¶ 78), (4) justifiable reliance (Id. ¶¶ 69, 73, 78, 80), and (5) damages (Id. ¶ 80). In a similar and recently decided case of *Dhital v. Nissan N. Am. Inc.* (2022) 84 Cal.App.5th 828, (*Dhital*), the Court of Appeal found such allegations sufficient:

As we have discussed, plaintiffs alleged the CVT transmissions installed in numerous Nissan vehicles (including the one plaintiffs purchased) were defective; Nissan knew of the defects and the hazards they posed; Nissan had exclusive knowledge of the defects but intentionally concealed and failed to disclose that information; Nissan intended to deceive plaintiffs by concealing known transmission problems; plaintiffs would not have purchased the car if they had known of the defects; and plaintiffs suffered damages in the form of money paid to purchase the car.

(*Dhital*, 84 Cal.App.5th at 843-844.)

Plaintiff pleads his fifth cause of action with the requisite specificity.

2. Failure to Allege Transactional Relationship

Defendant also argues the FAC fails to allege a transactional relationship between GM and Plaintiff, or other circumstances giving rise to a duty to disclose, since Plaintiff is not alleged to have purchased the vehicle directly from GM or otherwise entered a transaction with GM.

There are four circumstances in which a duty to disclose may arise: “(1) when the defendant is in a fiduciary relationship with the plaintiff; (2) when the defendant had exclusive knowledge of material facts not known to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations but also suppresses some material facts.” (*LiMandri v. Judkins* (1997) 52 Cal.App.4th 326, 336 (*LiMandri*); *Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, 311 (*Bigler-Engler*).) Where, as here, there is no fiduciary relationship, the duty to disclose generally presupposes a relationship grounded in “some sort of transaction between the parties.” (*Bigler-Engler*, *supra*, 7 Cal.App.5th at p. 311.) Thus, a duty to disclose may arise from the relationship between seller and buyer, employer and prospective employee, doctor and patient, or parties entering into any kind of contractual agreement. (*OCM Principal Opportunities Fund, L.P. v.*

CIBC World Markets Corp. (2007) 157 Cal.App.4th 835, 859 (*OCM Principal*).)

In support of its position, Defendant relies on *Bigler-Engler*, noting the Court of Appeals reversed a verdict for fraudulent concealment against the manufacturer of a medical device because the manufacturer and the plaintiff (who was injured by using the device) did not have the required direct transactional relationship. (*Bigler-Engler*, supra, 7 Cal.App.5th at 314-15.) There, the plaintiff did not obtain the device directly from the manufacturer but from a medical group that sold and leased such devices. (*Id.* at 287, 314.) The Court of Appeals went on to explain the lack of direct dealings between the plaintiff and the manufacturer was fatal to the plaintiff's argument that the manufacturer had a duty to disclose. (*Id.* at 312)

Defendant's argument and its reliance on *Bigler-Engler* is unpersuasive. First, *Bigler-Engler* is factually distinguishable. There, the plaintiff was a patient who sued a physician, the physician's medical group, and the manufacturer of the medical device the physician used. Here, Plaintiff purchased the Vehicle. And, although a manufacturer does not have a transactional relationship with the public at large, a vendor does have a duty to disclose material facts "not only to immediate purchasers, but also to subsequent purchasers when the vendor has reason to expect that the item will be resold." (*OCM Principle Opportunities Fund v. CIBC World Markets Corp.* (2007) 157 Cal.App.4th 835, 859-60.)

Also, Plaintiff does allege a transactional relationship giving rise to Defendant's duty to disclose when he states that on or about November 19, 2020, he entered a warranty contract with Defendant GM. (FAC ¶¶ 6,7.)

Accordingly, Defendant's demurrer to the FAC's fifth cause of action is **OVERRULED**.

B. Motion to Strike

GM moves to strike the FAC's prayer for punitive damages on the grounds that the fraud claim is not actionable and Plaintiff's other claims do not support punitive damages. The Court concludes Plaintiff adequately pleads a cause of action for fraudulent concealment, and punitive damages are explicitly authorized when fraud is pled. (See Civ. Code § 3294.)

Accordingly, Defendant's motion to strike is **DENIED**.

Calendar Lines: 3-8

Case Name: *Ruben Ramirez v J&M Maintenance & Remodeling, Inc.*

Case Nos.: 21CV390683, 23CV412328

Before the Court are numerous motions to compel and Ruben Ramirez’s Motion for Leave to File an Amended Complaint. Pursuant to California Rule of Court 3.1308, the Court issues its tentative rulings.

I. Motion for Leave to File Amended Complaint

“[T]he trial court has wide discretion in allowing the amendment of any pleading. (*Bedolla v. Logan & Frazer* (1975) 52 Cal. App. 3d 118, 135-136.) However, “the exercise of this discretion must be sound and reasonable and not arbitrary or capricious. (*Richter v. Adams*, 43 Cal.App.2d 184, 187; *Eckert v. Graham*, 131 Cal.App. 718, 721.) ‘[It] is a rare case in which ‘a court will be justified in refusing a party leave to amend his pleadings so that he may properly present his case.’ (*Guidery v. Green*, 95 Cal. 630, 633; *Marr v. Rhodes*, 131 Cal. 267, 270.) If the motion to amend is timely made and the granting of the motion will not prejudice the opposing party, it is error to refuse permission to amend and where the refusal also results in a party being deprived of the right to assert a meritorious cause of action or a meritorious defense, it is not only error but an abuse of discretion. (*Nelson v. Superior Court*, 97 Cal.App.2d 78; *Estate of Herbst*, 26 Cal.App.2d 249; *Norton v. Bassett*, 158 Cal. 425, 427.)” (*Morgan v. Superior Court of Los Angeles County* (1959) 172 Cal. App. 2d 527, 530-531 (error for trial court to fail to give leave to amend). However, “even if a good amendment is proposed in proper form, unwarranted delay in presenting it may—of itself—be a valid reason for denial.” (*Roemer v. Retail Credit Co.* (1975) 44 Cal. App. 3d 926, 939-940; see also *Moss Estate Co. v. Adler* (1953) 41 Cal. 2d 581, 585-587.)

Defendants will not suffer prejudice if leave to amend is granted. Defendants refer to the possibility of more expansive discovery. However, the scope of the proposed amendment will not materially change the issues in this case. Nor does the Court find the proposed amendments confusing or contradictory. The case is still in the discovery stage; no trial date has yet been set. Plaintiff’s motion for leave to file an amended complaint is therefore GRANTED.

II. Motion to Enforce Business Records Subpoena

The record on this motion demonstrates the subpoenaed party was working diligently to comply

with Plaintiff's subpoena. In fact, it appears that the vast majority of the materials sought by the subpoena have been produced. All that appears to remain are Drake files as to JMMR for 2011-2015 and 2020-the present, as to Plaintiff for 2013-2018, and for the Cruz Defendants. The Court will therefore GRANT Plaintiff's motion to enforce as to those files.

The parties' cross motions for sanctions are DENIED.

III. Accounting Defendants' Motion to Compel Ruben Ramirez to Provide Further Discovery Responses

Defendants MCC Financial Services, Inc., Mark Lima and Mari Munoz ("Accounting Defendants") move to compel Plaintiff to provide full and complete verified responses, without objections, to the following discovery propounded on March 2, 2023:

1. MCC Financial Services, Inc. Request for Admissions (Set One) (1-35)
2. Mark Lima Request for Admissions (Set One) (1-35)
3. Mari Munoz Request for Admission (Set One) (1-35)
4. MCC Financial Services, Inc. Form Interrogatories (2.11, 9.1, 9.2, 14.1, and 17.1)
5. Mark Lima Form Interrogatories (17.1)
6. Mari Munoz Form Interrogatories (17.1)
7. MCC Financial Services, Inc. Special Interrogatories (1-90)
8. MCC Financial Services, Inc. Requests to Produce Documents (1-30).

Plaintiff contends the Accounting Defendants' motion to compel is faulty in several respects, including that the Accounting Defendants failed to meet and confer before filing the motion; the motion addresses multiple sets of discovery, does not include a separate statement, and is now moot in light of Plaintiff's supplemental responses; and the Accounting Defendant's attempts to remedy these procedural defects by filing amended papers in September are both untimely and tacit admissions of the original flaws. The Accounting Defendants counter that if Plaintiff's counsel had granted a reasonable extension of time, they would have been able to properly meet and confer and file a procedurally compliant motion.

The Court is faced with a record where neither party is acting in accordance with the applicable codes. Plaintiff is correct that the Accounting Defendant's motion to compel is riddled with procedural

errors. However, the Accounting Defendants are correct that Plaintiff's counsel is using the Code of Civil Procedure as a tactical weapon rather than a discovery tool.

Based on the originally filed papers, it appears to the Court that Plaintiff provided no virtually no substantive responses to the Accounting Defendants' discovery requests. Plaintiff's opposition refers to supplemental responses. While the Court agrees that the proper approach would have been for the Accounting Defendants to withdraw this motion to compel and file a motion to compel (if necessary) regarding the supplemental responses, the Court does not wish to further delay these proceedings by requiring the parties to jump through these hoops. Instead, the Court orders the following:

1. The parties shall meet and confer regarding Plaintiff's supplemental responses in person or by Zoom (or other virtual meeting platform) on or before November 3, 2023. Meeting by telephone or email is not sufficient.
2. On or before November 17, 2023, the parties shall submit a joint letter brief to the Court without argument of no more than 3 pages, listing (a) discovery Plaintiff agrees to supplement, (b) the date by which Plaintiff will serve the supplemental discovery, and (c) what requests the parties remain unable to agree on. The letter brief shall be filed, served, and emailed to Department6@scscourt.org. Plaintiff should note that the Court expects to see a reasonable approach to providing relevant discovery in the form of real agreements.
3. On November 28, 2023, the Court will hold a further hearing regarding the Accounting Defendant's motion to compel, focused on the requests the parties remain unable to agree on.

IV. Plaintiff's Motion to Compel J&M Maintenance & Remodeling, Inc., Jose Cruz, and Martha Ramirez Cruz to Provide Code-Compliant Responses to Special Interrogatories (Set One) \$7,560 in Sanctions

Plaintiff hand served special interrogatories on JMMR, Jose Cruz and Martha Ramirez Cruz ("JMMR Defendants") on April 5, 2023. JMMR Defendants served written responses on May 8, 2023 and verifications on May 9, 2023. Plaintiff corresponded with JMMR Defendants asking that the objections be withdrawn and substantive responses produced. JMMR Defendants declined to withdraw their objections, and provided no additional responses as of June 26, 2023 when Plaintiff filed this

motion to compel.

The JMMR Defendants' counsel was not in the office on the day the discovery was purportedly hand served, and the proof of service left with the discovery was unsigned. On April 6, 2023, the JMMR Defendants received the discovery by email, thus calculate the response deadline to be May 8, 2023, which would make their responses timely. The JMMR Defendants further contend they contacted Plaintiff's counsel on multiple occasions to seek a two-week extension of time because they were still in the process of gathering information to respond to Plaintiff's discovery demands; Plaintiff's counsel did not provide an extension and did not believe one was appropriate.

On this record, there is good cause to find that the JMMR Defendants' objections are not waived. The Court further finds that the JMMR Defendants did answer the interrogatories, and Plaintiff fails to provide facts to support an order compelling further response. (Code Civ. Pro. §2031.210(b)(1); *Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98 (A party seeking to compel is required to "set forth specific facts showing good cause justifying the discovery sought by the demand.")) Accordingly, Plaintiff's motion to compel and for sanctions is DENIED.

V. Plaintiff's Motion to Compel Accounting Defendants to Produce Further Responses to Special Interrogatories (Set One) and \$9,180 in Sanctions

On April 5, 2023, Plaintiff propounded special interrogatories on the Accounting Defendants. The Accounting Defendants did not serve their responses until May 10, 2023. Plaintiff attempted to meet and confer with Accounting Defendants and obtain code-compliant responses without objections. The Accounting Defendants did not serve supplemental responses as of the date of Plaintiff's June 27, 2023 motion to compel.

The Accounting Defendants' initial responses do contain numerous objections, however, they also contain substantial substantive information, and Defendant fails to provide facts to support compelling further responses. (Code Civ. Pro. §2031.210(b)(1); *Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98 (A party seeking to compel is required to "set forth specific facts showing good cause justifying the discovery sought by the demand.")) The Court also finds on this record that the Accounting Defendants' objections should not be found waived.

Accordingly, Plaintiff's motion to compel and for sanctions is DENIED.

Calendar Line: 9

Case Name: *Ruby Rebosa v Dolores Tapay*

Case Nos.: 23CV412270

Before the Court is Defendant's Motion to Compel Plaintiff's Further Responses to Requests for Production (Set One). Pursuant to California Rule of Court 3.1308, the Court issues its tentative ruling.

I. Background

According to the Complaint, Plaintiff Ruby Rebosa was employed by Defendant Dolores Tapay as Ms. Tapay's in-home caregiver. (Complaint, ¶1.) Plaintiff alleges that in late 2018 Ms. Tapay hired her on an hourly basis to be a driver for at a pay rate of \$20 per hour and was then hired to provide Ms. Tapay 24 hour in home care after Ms. Tapay suffered a fall. (Complaint, ¶6.) Ms. Tapay agreed to pay Plaintiff \$3500 per month for providing full support and assistance with all activities of daily living. (Complaint, ¶6-7.) Plaintiff worked for Ms. Tapay in this way from October 1, 2019 until October 31, 2021 with only very limited time off. Plaintiff alleges she was not paid overtime hours for this entire period and filed this lawsuit on February 28, 2023 asserting (1) wage theft in violation of the Domestic Worker Bill of Rights (Labor Code §§1454 and 1194); (2) failure to pay minimum wages in violation of Labor Code §§ 1194 and 1197); (3) violation of Labor Code § 1194.2; (4) violation of labor code §§ 202 and 203; and (5) violation of Business & Professions Code § 17200.

Ms. Tapay characterizes the parties' relationship differently, alleging "outrageous abuse and control perpetrated by Plaintiff, an unscrupulous and avaricious service provider, who took advantage of Ms. Tapay, an elderly widow." Ms. Tapay accordingly filed a cross-complaint against Ms. Rebosa on May 17, 2023, alleging (1) financial abuse of an elder; (2) neglect of an elder; and (3) intentional infliction of emotional distress.

Before the Court now is the first of four motions to compel Defendant filed. This one seeks to compel Plaintiff's further responses to requests for production of documents (set one).

II. Legal Standard

The party to whom a request for production of documents has been directed can make one of three responses: (1) a statement that the party will comply with the demand, (2) a representation that the party lacks the ability to comply, or (3) an objection. (Code Civ. Pro. §2031.210(a).) A party may move for an order compelling a further response to a document demand on the ground that (1) an

objection is without merit or too general, (2) a statement of compliance with the demand is incomplete, or (3) a representation of inability to comply is inadequate, incomplete, or evasive. (Code Civ. Pro. §2031.210(a).) A party seeking to compel is required to “set forth specific facts showing good cause justifying the discovery sought by the demand.” (Code Civ. Pro. §2031.210(b)(1); *Kirkland v. Superior Court* (2002) 95 Cal.App.4th 92, 98.) This burden may be satisfied by a fact-specific showing of relevance. (*TBG Ins. Services Corp. v. Superior Court* (2002) 96 Cal.App.4th 443, 448.) Information is relevant to the subject matter of the action if it might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement. (*Gonzalez v. Superior Court* (1995) 33 Cal.App.4th 1539, 1546.)

Discovery management plainly lies “within the sound discretion of the trial court.” (*People v. Sup. Ct.* (2001) 94 Cal.App.4th 980, 987; *see also Orange County Water Dist. v. The Arnold Eng’g Co.* (2018) 31 Cal.App.5th 96, 119 (judge’s discretionary functions include managing discovery and trial proceedings before them).) In fact, case law teaches that it is up to judges to make sure that the discovery process is not abused. (See *Calcor Space Facility, Inc. v. Superior Court* (1997) 53 Cal. App. 4th 216, 221 (discovery abuse is a spreading cancer; judges must be aggressive in curbing abuse; discovery statutes are prone to misuse absent judicial consideration for burden; courts must insist that discovery be used to facilitate litigation rather than as a weapon); *accord Obregon v. Superior Court* (1998) 67 Cal. App. 4th 424, 43.)

Code of Civil Procedure section 2023.020 states: “the court shall impose a monetary sanction ordering that any party or attorney who fails to confer as required pay the reasonable expenses, including attorney’s fees, incurred by anyone as result of that conduct.” (See also *Moore v. Mercer* (2016) 4 Cal.App.5th 424, 448 (failure to participate in meet and confer process in good faith is independent discovery abuse for which sanctions are authorized by statute); *Ellis v. Toshiba Am. Info. Sys., Inc.* (2013) 218 Cal.App.4th 843, 879-880 (substantial monetary sanction appropriate for failure to cooperate in setting protocol for expert inspection as ordered).) This monetary sanction is mandatory regardless of how the court rules on the offending party’s motion. (Code Civ. Proc. §2023.020.)

III. Analysis

The Court studied the parties’ separate statements, declarations, and attachments. The Court

finds Plaintiff served code compliant responses to Defendant's discovery requests. Plaintiff was also forthcoming in meet and confer regarding where she searched for documents and in identifying additional searchable locations even after her initial responses were served. At each step, Plaintiff identified what she was and was not producing. Plaintiff continued to supplement her responses and has provided verified responses stating exactly what she has produced and is not willing to produce. The only materials Plaintiff is withholding are attorney-client communications and work product. The Court declines to order Plaintiff to engage in the never-ending and useless endeavor of logging such documents; which Plaintiff properly withheld. By contrast, Defendant provides no facts to explain what Defendant contends is missing from Plaintiff's production or responses. Accordingly, Defendant's motion to compel is DENIED.

Defendant's motion for sanctions is also DENIED. The Court shares Plaintiff's concerns regarding the tone of Defendant's discovery activities. Discovery is an investigatory tool, not a weapon. Defendant's refusal to grant Plaintiff an extension of time to respond to Defendant's discovery so that Plaintiff could have sufficient time to analyze Defendant's information and Defendants' numerous motions to compel suggest a lack of effort at meaningful meet and confer, collegiality, and cooperation. The Court encourages Defendant to review the remaining motions to compel to ensure that they are substantially justified and really cannot be resolved through meaningful dialogue.

Nevertheless, Plaintiff's request for sanctions is also DENIED. Plaintiff invites the Court to "issue monetary sanctions against Defendant TAPAY and Mr. Wilson, in the amount it deems just and appropriate, to deter their wholly improper conduct." (Opposition, p. 19.) While the trial court has broad discretion to impose discovery sanctions, and a judge's sanction order will not be reversed absent "a manifest abuse of discretion that exceeds the bounds of reason" (*Rutledge v. Hewlett-Packard Co.* (2015) 238 Cal.App.4th 1164, 1191) a sanction should not provide a windfall to the other party by putting that party in a better position than it would have been in if the party had obtained the discovery. (*Kwan Software Eng'g, Inc. v. Hennings* (2020) 58 Cal.App.5th 57, 74-75.) The basic purpose of a discovery sanction is to compel disclosure of discoverable information. (*Rutledge*, 238 Cal.App.4th at 1193.) Sanctions may not be imposed solely to punish the offending party. (*Id.*; *Kwan*, 58 Cal.App.5th at 74-75.) On this record, where Plaintiff did not submit information regarding the expenses she

incurred to respond to this motion to which Defendant could have responded in reply, the Court must deny Plaintiff's request for sanctions.

Defendant's remaining motions to compel are all RESET for November 16, 2023 at 9 a.m. in Department 6.