

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

Department 20, Honorable Socrates Peter Manoukian, Presiding

Courtroom Clerk: Hien-Trang Tran-Thien

191 North First Street, San Jose, CA 95113

Telephone: 408.882.2320

Department20@scscourt.org

"Every case is important" "No case is more important than any other." —
United States District Judge Edward Weinfeld (<https://www.nytimes.com/1988/01/18/obituaries/judge-edward-weinfeld-86-dies-on-us-bench-nearly-4-decades.html>)

"The Opposing Counsel on the Second-Biggest Case of Your Life Will Be the Trial Judge on the
Biggest Case of Your Life." — Common Wisdom.

As Shakespeare observed, it is not uncommon for legal adversaries to "strive mightily, but eat and
drink as friends." (Shakespeare, *The Taming of the Shrew*, act I, scene ii.)" (*Gregori v. Bank of
America* (1989) 207 Cal.App.3d 291, 309.)

Counsel is duty-bound to know the rules of civil procedure. (See *Ten Eyck v. Industrial Forklifts Co.*
(1989) 216 Cal.App.3d 540, 545.) The rules of civil procedure must apply equally to parties represented
by counsel and those who forgo attorney representation. (*McClain v. Kissler* (2019) 39 Cal.App.5th 399.)

By Standing Order of this Court, all parties appearing in this Court are expected to comply with the
Code of Professionalism adopted by the Santa Clara County Bar Association:

<https://www.sccba.com/code-of-professional-conduct/>

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DATE: Tuesday, 12 March 2024

TIME: 9:00 A.M.

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

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

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

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

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

One tap mobile
+16699006833,,961 4442 7712#

APPEARANCES.

Appearances are usually held on the Zoom virtual platform. However, we are currently allowing in-court appearances as well. If you do intend to appear in person, please advise us when you call to contest the tentative ruling so we can give you current instructions as to how to enter the building. If the doors to the Old Courthouse are locked, please see the deputies at the metal detector next door at 191 North First Street.

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

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

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

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

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

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

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

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

CIVILITY.

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

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

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

COURT REPORTERS.

This session will not be recorded. No electronic recordings, video, still photography or audio capture of this live stream is allowed without the expressed, written permission of the Superior Court of California, County of Santa Clara. State and Local Court rules prohibit

photographing or recording of court proceedings whether in the courtroom or while listening on the Public Access Line or other virtual platform, without a Court Order. See Local General Rule 2(A) and 2(B); **California Rules of Court**, rule 1.150.

This Court no longer provides for Court Reporters in civil actions except in limited circumstances. If you wish to arrange for a court reporter, please use Local Form #CV-5100. All reporters are encouraged to work from a remote location. Please inform this Court if any reporter wishes to work in the courtroom. This Court will approve all requests to bring a court reporter. Counsel should meet and confer on the use of a court reporter so that only one reporter appears and serves as the official reporter for that hearing.

PROTOCOLS DURING THE HEARINGS.

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

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

TROUBLESHOOTING TENTATIVE RULINGS.

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

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

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 1	19CV345499	Sergev Firsov vs Yevgeniy Babichev et al	Order of Examination Against Sergey Firsov. On 13 February 2024, plaintiff filed a challenge for cause against this Judge. By separate order filed on 16 February 2024, that challenge has been STRICKEN. There appears to be a proper proof of service in the file. Unless the parties agree otherwise, both parties are to appear in Department 20 at 9:00 AM via the Zoom virtual platform. The appropriate oath will be administered by the Court and the parties may conduct the examination off-line and report back to the Court. The parties may meet and confer on how to conduct the examination remotely. NO FORMAL TENTATIVE RULING.

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 2	19CV345499	Sergev Firsov vs Yevgeniy Babichev et al	<p>Order of Examination Against Third-Party Kateryna Pomogaibo.</p> <p>There does not appear to be a proof of service in the file.</p> <p>In preparing this file, it appears that Kateryna Pomogaibo filed a "Motion to Recuse" against this Judge. By separate order, that challenge is STRICKEN.</p> <p>Unless the parties agree otherwise, both parties are to appear in Department 20 at 9:00 AM via the Zoom virtual platform. The appropriate oath will be administered by the Court and the parties may conduct the examination off-line and report back to the Court. The parties may meet and confer on how to conduct the examination remotely.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 3	19CV345499	Sergev Firsov vs Yevgeniy Babichev et al	<p>Motion of Plaintiff Sergey Firsov To Quash Imaginary Affidavit of Andrei Romanenko.</p> <p>The motion is DENIED WITHOUT PREJUDICE as the current proceeding is only a precursor to future collection events, at which time Mr. Firsov may make any claim of exemption or other defense.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 4	22CV399869	Han Nguyen vs Mvinix Corporation	<p>Demurrer of Defendant Mvinix Corporation.</p> <p>Defendant Mvinix's demurrer to the first cause of action in plaintiff Nguyen's complaint on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for breach of contract is SUSTAINED with 10 days' leave to amend. Defendant Mvinix's demurrer to plaintiff Nguyen's complaint on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] is otherwise OVERRULED.</p> <p>Moving party defendant is to serve notice of entry of the order.</p> <p>SEE ATTACHED TENTATIVE RULING.</p>
LINE 5	23CV419724	Wells Fargo Bank, N.A. vs Qasim Bahadori	<p>Motion of Plaintiff Wells Fargo Bank for Judgment on the Pleadings.</p> <p>No opposition has been filed.</p> <p>The motion is in good form and is GRANTED in its entirety. Moving party plaintiff is to submit a proposed order and judgment to this Department via the e-filing queue and served notice of entry of judgment on defendant.</p> <p>SEE ATTACHED TENTATIVE RULING.</p>

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 6	23CV426401	Dion Abellon vs General Motors, LLC et al	<p>Demurrer of Defendant General Motors LLC's to Plaintiff's Complaint; Request for Judicial Notice; Notice Of Non-Opposition.</p> <p>OFF CALENDAR without prejudice.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 7	23CV426401	Dion Abellon vs General Motors, LLC et al	<p>Motion of Defendant General Motors LLC to Strike the 4th and 5th Causes of Action in Plaintiff's Complaint; Notice Of Non-Opposition.</p> <p>OFF CALENDAR without prejudice.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 8	21CV384636	Sarah Gryder et al vs Ford Motor Company et al	<p>Motion of Defendant Ford Motor Company for Judgment on the Pleadings As to the Sixth Cause of Action.</p> <p>Defendant Ford Motor Company's motion for judgment on the pleadings of the sixth cause of action of Plaintiff's complaint on the ground that the pleading fails to state facts sufficient to constitute a cause of action [Code Civ. Proc., section 438, subdivision (c)(1)(B)] for fraudulent inducement – concealment is DENIED.</p> <p>SEE ATTACHED TENTATIVE RULING.</p>
LINE 9	22CV397550	Louis Lennard vs Traffic Dept/ City of San José 210 N. 4th St. San José, CA et al	<p>Motion of Defendant City of San José for Summary Judgment/Summary Adjudication.</p> <p>The motion is not opposed. The motion is GRANTED.</p> <p>Defendant files this motion alleging that plaintiff has not pled certain requirements to bring a cause of action against a public entity. Defendant is correct.</p> <p>The filing of a claim for damages against a public entity such as the defendant here "is more than a procedural requirement, it is a condition precedent to plaintiff's maintaining an action against defendant ... an integral part of plaintiff's cause of action." (<i>State v. Superior Court (Bodde)</i> (2004) 32 Cal.4th 1234, 1240-41; see also <i>City of Stockton v. Superior Court</i> (2007) 42 Cal.4th 730, 738 [failure to present a timely claim bars a plaintiff from filing a lawsuit]; <i>City of San José v. Superior Court</i> (1974) 12 Cal.3d 447, 454 ["Compliance with the claims statutes is mandatory, and failure to file a claim is fatal to the cause of action."].)</p> <p>First, the complaint does not identify a basis for statutory liability of a public entity.</p> <p>Second, the complaint does not allege that plaintiff complied with the Government Claims Act.</p> <p>Defendant is to prepare a formal order and judgment and submitted to this Department via the clerk's e-filing queue.</p> <p>NO FORMAL TENTATIVE RULING.</p>

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 10	21CV382787	Re-Model Design & Build, Co. vs Barrie Mullins	<p>Motion of Defendant/Cross-Defendant Mullins, Barrie to Compel Plaintiff to Provide Code Compliant Responses to Discovery Requests.</p> <p>No opposition has been filed. The motion is GRANTED in its entirety. Responding party is to provide code compliant responses without objections within 20 days of the filing and service of this Order.</p> <p>Moving party makes a code-compliant claim for attorney's fees and costs. The request is GRANTED. Responding party shall pay the sum of \$3,859.50 within 20 days of the filing and service of this Order.</p> <p>Moving party is to prepare a formal order had notice of entry of order.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 11	22CV395429	Melissa Pocek vs Apple, Inc.	<p>Motion of Plaintiff to Compel Depositions of Defendants Agents etc.</p> <p>Good cause appearing, this Court will CONTINUE the hearing on this motion to 19 March 2024 at 9:00 AM in this Department to be heard along with the "Me Too" currently set at that time.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 12	22CV408640	Vanessa Ramos vs JPMorgan Chase Bank, N.A. s.d.a. JPMorgan Chase Bank, National Association.	<p>Motion of Defendant JPMorgan Chase Bank, N.A. To Compel Plaintiff to Respond to Form Interrogatories, Set One, and Form Interrogatories, Set Two, and Request for Monetary Sanctions.</p> <p>The motion is MOOT WITHOUT PREJUDICE to a motion by defendant to compel further responses. The parties are encouraged to meet and confer concerning the sufficiency of the responses.</p> <p>The Court will impose monetary sanctions in the amount of \$1,500.00 against plaintiff and in favor of defense counsel.</p> <p>SEE ATTACHED TENTATIVE RULING.</p>
LINE 13	22CV408640	Vanessa Ramos vs JPMorgan Chase Bank, N.A. s.d.a. JPMorgan Chase Bank, National Association.	<p>Motion of Defendant JPMorgan Chase Bank, N.A. To Compel Plaintiff to Respond to Special Interrogatories, Set One, and Request for Monetary Sanctions.</p> <p>SEE LINE #12.</p>
LINE 14	22CV408640	Vanessa Ramos vs JPMorgan Chase Bank, N.A. s.d.a. JPMorgan Chase Bank, National Association.	<p>Motion of Defendant JPMorgan Chase Bank, N.A. To Compel Plaintiff to Respond to Request for Production of Documents, Set One, and Request for Monetary Sanctions.</p> <p>SEE LINE #12.</p>

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 15	22CV399627	California Drywall Co., a California corporation vs Athish Rao an individual et al	<p>Motion of Plaintiff California Drywall Co. to Enforce Settlement Agreement.</p> <p>This Court has questions:</p> <p>First: Does Business & Professions Code, § 7031(a) preclude plaintiff from enforcing the settlement agreement? Plaintiff contends that there is no case authority or statutory basis precluding an unlicensed contractor/plaintiff from entering into a settlement agreement.</p> <p>Second: What effect, if any, does the suspension of the license for five weeks have on the ability of the plaintiff to collect payment on the contract? Does Civil Code, § 1542 apply even though the lack of standing may be asserted at any time?</p> <p>Third: How did Federal Insurance Company breach the settlement agreement? It seems that defendants Full Power Construction, Inc. And FPC Builders, Inc. are the only parties obligated under the settlement agreement That to make any payments to plaintiffs.</p> <p>Fourth: Does plaintiff seek attorney's fees notwithstanding that such fees are not recoverable against a mechanic's lien release bond surety?</p> <p>NO TENTATIVE RULING. The parties should use the Tentative Ruling Protocol to advise the court if they wish to appear and argue on the merits or submit on the papers presented.</p>
LINE 16	23CV410545	David Martin vs Google LLC et al	<p>Motion of Plaintiff to Dismiss Some Defendants and Motion Regarding Appeal.</p> <p>Plaintiff seeks to dismiss defendant Ousley prior to the hearing on her demurrer to the third amended complaint.</p> <p>The motion is DENIED. This Court believes that this defendant or any other defendant is entitled to a hearing on the demurrer if they wish to pursue costs.</p> <p>NO FORMAL TENTATIVE RULING.</p>

LINE #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 17	23CV421546	José Sánchez vs City of San José et al	<p>Motion of Plaintiff for Leave to File a Petition for Relief to File Late Claim or, Alternatively, for Leave to File Late Claim.</p> <p>The Petition is DENIED. (Government Code, §§ 911.4; 911.6; 946.6(b); J.M. v. Huntington Beach Union High School Dist. (2017) 2 Cal.5th 648.</p> <p>Based on the evidence presented by Petitioner, he filed his Claim against the City of San José three months late.</p> <p>After Petitioner received notice that his claim was not timely presented, he mailed an Application for Leave to Present an Untimely Claim. It is unclear whether the Application was ever received by the City. Nevertheless, the Office of the City Clerk did not act upon the Application. Although Petitioner's Application was denied and his Claim was never filed against the City of San José, Petitioner filed a lawsuit against the City. Over five months after filing his lawsuit, Petitioner then filed this untimely Petition.</p> <p>Defendant is to notice of entry of this order.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 18	22CV392899	Sierra Lumber & Fence Co., Inc. vs Aldofina Gonzalez et al	<p>Motion For Assignment Order For Turnover Order and Order Authorizing Levying Officer to Levy In Debtor's Private Places And For Award Of Post-Judgment Attorney's Fees and Reimbursement Of Costs Incurred.</p> <p>No opposition papers have been filed.</p> <p>The motion is GRANTED in its entirety. The judgment creditor is to prepare an appropriate order and submit it to this Department via the clerk's e-filing queue for execution.</p> <p>NO FORMAL TENTATIVE RULING.</p>
LINE 19	20CV368227	Michelle Espinoza vs Santa Clara Valley Transportation Authority et al.	<p>Motion of Plaintiff to Strike/Tax Costs.</p> <p>CONTINUED from 27 February 2024.</p> <p>NO TENTATIVE RULING.</p>
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 #	CASE #	CASE TITLE	TENTATIVE RULING
LINE 28			SEE ATTACHED TENTATIVE RULING.
LINE 29			SEE ATTACHED TENTATIVE RULING.
LINE 30			SEE ATTACHED TENTATIVE RULING.

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Calendar Line 1

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Calendar Line 4

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

DEPARTMENT 20

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(For Clerk's Use Only)

CASE NO.: 22CV399869

Han Bich Nguyen v. Mvinix Corporation, et al.

DATE: 12 March 2024

TIME: 9:00 am

LINE NUMBER: 04

This matter will be heard by the Honorable Judge Socrates Peter Manoukian in Department 20 in the Old Courthouse, 2nd Floor, 161 North First Street, San Jose. Any party opposing the tentative ruling must call Department 20 at 408.808.6856 and the opposing party no later than 4:00 PM on 11 March 2024. Please specify the issue to be contested when calling the Court and Counsel.

**Demurrer of Defendant Mvinix Corporation
To Plaintiff's Complaint.**

I. Statement of Facts.

In or about 2010, plaintiff Han Bich Nguyen ("Nguyen") secured 16.7% of the stock of defendant Mvinix Corporation ("Mvinix"). (Complaint, ¶8.) Approximately one year later, plaintiff Nguyen increased her share of defendant Mvinix to 20% for which she paid adequate consideration. (*Id.*)

Despite being married to Hung Ba Le ("Le") when she acquired defendant Mvinix shares, plaintiff Nguyen deems her shares of defendant Mvinix as her sole and separate property. (Complaint, ¶9.) Plaintiff Nguyen invested her time, labor, and \$25,000 to acquire the 20% ownership interest in defendant Mvinix. (*Id.*)

In or about March 2021, plaintiff Nguyen learned that defendant Mvinix transferred or caused the transfer of her Mvinix shares to Le without her consent or authorization. (Complaint, ¶¶11 and 14.) Further, plaintiff Nguyen learned defendant Mvinix altered her ownership of Mvinix stock from 20% to 6.5% without her knowledge or consent. (Complaint, ¶¶12 and 14.)

Defendant Mvinix failed to observe corporate formalities in giving proper notice of shareholder meetings. (Complaint, ¶13.) Defendant Mvinix's board of directors made decisions adversely affecting a shareholder's rights and interests. (*Id.*)

On 10 June 2022¹, plaintiff Nguyen filed a complaint against defendant Mvinix asserting causes of action for:

- | | |
|-----|--------------------|
| (1) | Breach of Contract |
| (2) | Conversion |
| (3) | Accounting |
| (4) | Declaratory Relief |

On 28 March 2023, defendant Mvinix filed the motion now before the court, a demurrer to plaintiff Nguyen's complaint.

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. (Ca. St. Civil **Rules of Court**, Rule 3.714(b)(1)(C) and (b)(2)(C).)

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.)

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, subd. (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. Analysis.

A. Defendant Mvinix’s demurrer to the first cause of action [breach of contract] in plaintiff Nguyen’s complaint is SUSTAINED.

“To prevail on a cause of action for breach of contract, the plaintiff must prove (1) the contract, (2) the plaintiff’s performance of the contract or excuse for nonperformance, (3) the defendant’s breach, and (4) the resulting damage to the plaintiff.” (*Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186; see also CACI, No. 303.)

If the contract is written, “the terms must be set out verbatim in the body of the complaint or a copy of the written instrument must be attached and incorporated by reference.” (*Otworth v. Southern Pacific Transportation Co.* (1985) 166 Cal.App.3d 452, 459.) Alternatively, “[i]n an action based on a written contract, a plaintiff may plead the legal effect of the contract rather than its precise language.” (*Construction Protective Services, Inc. v. TIG Specialty Ins. Co.* (2002) 29 Cal.4th 189, 199.) “This is more difficult, for it requires a careful analysis of the instrument, comprehensiveness in statement, and avoidance of legal conclusions, and it involves the danger of variance where the instrument proved differs from that alleged; it is not frequently employed. Nevertheless, it is an established method.” (4 Witkin, *California Procedure* (4th ed. 1997) Pleading, §480, p. 573.)

In relevant part, plaintiff Nguyen’s complaint alleges, “In or about 2010, Plaintiff entered into a written contract with Defendants to acquire 20% ownership interest in term [sic] of shares of stock in Defendant MVINIX’s company.” (Complaint, ¶16.) “In or about March 2021, Plaintiff learned that Defendants have taken actions that have deprived Plaintiff’s right to and ownership of the 20% shares of stock of said corporation. Defendants have breached their contractual obligations owed [sic] to Plaintiff.” (Complaint, ¶17.)

Defendant Mvinix contends² plaintiff Nguyen has not sufficiently identified the provisions of the contract which have been purportedly breached. Defendant Mvinix acknowledges plaintiff Nguyen’s additional allegation that her percentage ownership was reduced from 20% to 6.5%. Defendant Mvinix contends, however, that plaintiff Nguyen has not identified any contractual provision which precludes such a reduction.

² In demurring, defendant Mvinix asserts a number of extrinsic facts which the court does not consider in ruling on a demurrer. “A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff’s ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court.” (*Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213 – 214.)

Likewise, to the extent plaintiff Nguyen alleges she has been deprived of ownership, plaintiff Nguyen has not identified a specific contractual provision obligating defendant Mvinix to maintain plaintiff's ownership. The court cannot determine whether the deprivation of plaintiff's stock is based on tortious conduct or is based upon the breach of a contractual obligation.

In opposition, plaintiff Nguyen asserts she does not have the contract in her possession and that she need not plead the contract language verbatim. Plaintiff Nguyen's lack of possession of the contract does not excuse her pleading obligation. Moreover, as noted above, a plaintiff alleging breach of contract must plead the contract's legal effect. The court agrees with defendant Mvinix that plaintiff Nguyen has not sufficiently done so here.

Accordingly, defendant Mvinix's demurrer to the first cause of action in plaintiff Nguyen's complaint on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for breach of contract is SUSTAINED with 10 days' leave to amend.

B. Defendant Mvinix's demurrer to the second cause of action [conversion] in plaintiff Nguyen's complaint is OVERRULED.

"Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion claim are: (1) the plaintiff's ownership or right to possession of the property; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages. Conversion is a strict liability tort. The foundation of the action rests neither in the knowledge nor the intent of the defendant. Instead, the tort consists in the breach of an absolute duty; the act of conversion itself is tortious. Therefore, questions of the defendant's good faith, lack of knowledge, and motive are ordinarily immaterial. [Citations.]" (*Burlesci v. Petersen* (1998) 68 Cal.App.4th 1062, 1066 [80 Cal. Rptr. 2d 704].) The basis of a conversion action "rests upon the unwarranted interference by defendant with the dominion over the property of the plaintiff from which injury to the latter results. Therefore, neither good nor bad faith, neither care nor negligence, neither knowledge nor ignorance, are the gist of the action." [Citations.]" (*Ibid.*)

(*Los Angeles Federal Credit Union v. Madatyan* (2012) 209 Cal.App.4th 1383, 1387; see also CACI, No. 2100.)

Defendant Mvinix argues initially that plaintiff Nguyen cannot allege her ownership or right to possession of the property (defendant Mvinix stock) because plaintiff Nguyen's ownership is derived from a contract which defendant Mvinix asserts does not exist. Defendant Mvinix contends the contract that plaintiff Nguyen relies upon is actually a stock option agreement between defendant Mvinix and Le, plaintiff Nguyen's husband from whom plaintiff Nguyen has sought a divorce.

Defendant Mvinix asserts no contract exists between plaintiff Nguyen and defendant Mvinix. As this court footnoted above, defendant Mvinix's argument is premised upon the assertion of extrinsic evidence which this court does not consider in ruling on a demurrer.

Defendant Mvinix argues further that plaintiff Nguyen's claim for conversion fails because there has been no wrongful taking. This argument is an extension of defendant Mvinix' argument that plaintiff Nguyen has not alleged a contractual provision precluding defendant Mvinix from reducing plaintiff Nguyen's ownership interest in the company from 20% to 6.5%.

Such an argument overlooks plaintiff Nguyen's allegation that defendant Mvinix transferred or caused the transfer of her Mvinix shares to Le without her consent or authorization. This separate allegation is sufficient to allege defendant's conversion by a wrongful act or disposition of property rights.

Accordingly, defendant Mvinix's demurrer to the second cause of action in plaintiff Nguyen's complaint on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for conversion is OVERRULED.

C. Defendant Mvinix's demurrer to the third cause of action [accounting] in plaintiff Nguyen's complaint is OVERRULED.

Without any legal authority, defendant Mvinix argues first that there is no cause of action for accounting as a matter of law. "A cause of action for an accounting requires a showing that a relationship exists between the plaintiff

and defendant that requires an accounting, and that some balance is due the plaintiff that can only be ascertained by an accounting.” (*Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 179.)

Defendant Mvinix argues next that the claim for accounting is derivative of plaintiff Nguyen's first cause of action for breach of contract and since that first cause of action is defective, so too is the accounting cause of action. This argument by defendant Mvinix again relies upon defendant Mvinix's assertion that plaintiff Nguyen has no contractual right of ownership. As previously noted, defendant Mvinix's argument is premised upon the assertion of extrinsic evidence which this court does not consider in ruling on a demurrer.

Accordingly, defendant Mvinix's demurrer to the third cause of action in plaintiff Nguyen's complaint on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for accounting is **OVERRULED**.

D. Defendant Mvinix's demurrer to the fourth cause of action [declaratory relief] in plaintiff Nguyen's complaint is OVERRULED.

Defendant Mvinix contends the fourth cause of action for declaratory relief is wholly derivative of the first cause of action for breach of contract and since the first cause of action for breach of contract is defective, so too is the declaratory relief cause of action. Defendant Mvinix relies upon *Ball v. FleetBoston Financial Corp.* (2008) 164 Cal.App.4th 794, 800 (*Ball*) where the court stated, "Where a trial court has concluded the plaintiff did not state sufficient facts to support a statutory claim and therefore sustained a demurrer as to that claim, a demurrer is also properly sustained as to a claim for declaratory relief which is "wholly derivative" of the statutory claim."

Here, the fourth cause of action alleges, in relevant part, "Defendants now claim that Plaintiff has no ownership interest whatsoever in Defendant MVINIX's company. ... an actual and present controversy has arisen and now exists ... as to the owner rights and obligations between the parties with respect to the 20% share of corporate stock of MVINIX."

The court understands defendant Mvinix to again be arguing that since plaintiff Nguyen does not have a contractual basis for any ownership of defendant Mvinix stock, then she cannot maintain a cause of action for breach of contract or, consequently, declaratory relief. Defendant Mvinix's argument is again premised on the assertion of extrinsic fact (i.e., that no contract existed between plaintiff Nguyen and defendant Mvinix) which this court cannot consider in ruling on a demurrer.

Accordingly, defendant Mvinix's demurrer to the fourth cause of action in plaintiff Nguyen's complaint on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for declaratory relief is **OVERRULED**.

IV. Tentative Ruling.

The tentative ruling was duly posted.

V, Case Management.

The Court will set a Case Management Conference for 17 September 2024 at 10:00 AM in this Department.

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VI. Order.

Defendant Mvinix's demurrer to the first cause of action in plaintiff Nguyen's complaint on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] for breach of contract is SUSTAINED with 10 days' leave to amend. Defendant Mvinix's demurrer to plaintiff Nguyen's complaint on the ground that the pleading does not state facts sufficient to constitute a cause of action [Code Civ. Proc., §430.10, subd. (e)] is otherwise OVERRULED. Moving party defendant is to serve notice of entry of the order.

DATED:

HON. SOCRATES PETER MANOUKIAN

Judge of the Superior Court

County of Santa Clara

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

DEPARTMENT 20

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(For Clerk's Use Only)

CASE NO.: 21CV384636

Sarah Gryder, et al. v. Ford Motor Company; Ford Lincoln Fairfield

DATE: 12 March 2024

TIME: 9:00 am

LINE NUMBER: 08

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 11 March 2024. Please specify the issue to be contested when calling the Court and Counsel.

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**Order on Defendant Ford Motor Company for
Motion for Judgment on the Pleadings.**

I. Statement of Facts.

On or about 15 March 2014, plaintiffs Sarah Gryder and Stanley Moore ("Plaintiffs") purchased a new 2014 Ford Fusion (the "Vehicle") manufactured and distributed by defendant Ford Motor Company ("FMC"). (Complaint, ¶8.) Plaintiffs received an express written warranty which provided in relevant part that in the event a defect developed with the Vehicle during the warranty period, Plaintiffs could deliver the Vehicle for repair services to defendant FMC's representative, and the Vehicle would be repaired. (*Id.* at ¶9.)

Defendant FMC acquired knowledge of the Transmission Defect prior to Plaintiffs acquiring the Vehicle through sources not available to Plaintiffs such as, but not limited to, pre-production and post-production data, early consumer complaints about the Transmission Defect made directly to defendant FMC and its network of dealers, aggregate warranty data, warranty repair and part replacements data received by defendant FMC from its network of dealer, and other sources of internal information. (Complaint, ¶46.)

During the warranty period, the Vehicle developed various defects, including but not limited to, defects related to the powertrain system, including the engine, and/or transmission, defects related to the electrical system, and other defects. (Complaint, ¶10.) Such defects substantially impair the use, value, or safety of the Vehicle. (*Id.* at ¶17.)

Defendant FMC was well aware and knew that the transmission installed in the Vehicle was defective (the "Transmission Defect") but failed to disclose this fact to Plaintiffs at the time of sale and thereafter. (Complaint, ¶44.) Defendant FMC knew or should have known that the Vehicle had the Transmission Defect. (*Id.* at ¶45.) Had Plaintiffs known that the Vehicle had the Transmission Defect, they would not have purchased the Vehicle. (*Id.* at ¶47.)

On 22 June 2021³, the Plaintiffs filed a complaint against defendants Ford and Ford Lincoln Fairfield ("Fairfield") stating causes of action for:

³ This Department intends to comply with the time requirements of the Trial Court Delay Reduction Act (*Government Code*, §§ 68600–68620). The California Rules of Court state that the goal of each trial court should be to manage limited and unlimited civil cases from filing so that 100 percent are disposed of within 24 months. (Ca. St. Civil *Rules of Court*, Rule 3.714(b)(1)(C) and (b)(2)(C).)

- (1) Violation of subdivision (d) of **Civil Code** section 1793.2 [against defendant FMC]
- (2) Violation of subdivision (b) of **Civil Code** section 1793.2 [against defendant FMC]
- (3) Violation of subdivision (a)(3) of **Civil Code** section 1793.2 [against defendant FMC]
- (4) Breach of Express Written Warranty [against defendant FMC]
- (5) Breach of the Implied Warranty of Merchantability [against defendant FMC]
- (6) Fraudulent Inducement – Concealment [against defendant FMC]
- (7) Negligent Repair [against defendant Fairfield]

On 31 January 2024, defendant FMC filed the motion now before the court: a motion for judgment on the pleadings as to the sixth cause of action of Plaintiffs' complaint.

II. Legal Standard.

"A motion for judgment on the pleadings is analogous to a general demurrer. The task of this court is to determine whether the complaint states a cause of action. All facts alleged in the complaint are deemed admitted, and we give the complaint a reasonable interpretation by reading it as a whole and all of its parts in their context. We are not concerned with a plaintiff's possible inability to prove the claims made in the complaint, the allegations of which are accepted as true and liberally construed with a view toward attaining substantial justice." (**Lance Camper Manufacturing Corp. v. Republic Indemnity Co.** (1996) 44 Cal.App.4th 194, 198, internal citations omitted.)

The grounds for the motion "shall appear on the face of the challenged or from any matter of which the court is required to take judicial notice." (**Code Civ. Proc.**, § 438, subd. (d).); see also **Cloud v. Northrup Grumman** (1998) 67 Cal.App.4th 995, 999 [a motion for judgment on the pleadings "attacks only defects disclosed on the face of the pleadings or by matters that can be judicially noticed"].)

III. Defendant FMC's Motion for Judgment on the Pleadings of the Sixth Cause of Action [Fraudulent Inducement – Concealment] is DENIED.

In the sixth cause of action, Plaintiffs allege that defendant FMC committed fraud by allowing the Vehicle to be sold to them without disclosing that it and its transmission were defective and susceptible to sudden and premature failure. (Complaint, ¶43.)

A. Fraudulent Inducement – Concealment.

In demurring, defendant FMC initially argues the fraud claim is not pleaded with the requisite specificity and is not supported by the repair history alleged. (Mot., p. 6, Ins. 4-5.)

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

1. Specificity.

As a general rule, each element in a fraud cause of action must be pleaded with specificity. (**Lazar v. Super. Ct.** (1996) 12 Cal.4th 631, 645; **Cadlo v. Owens-Illinois, Inc.** (2004) 125 Cal.App.4th 513, 519.) The court in **Lazar v. Superior Court** (1996) 12 Cal.4th 631, 645 stated that "this particularity requirement necessitates pleading facts which 'show how, when, where, to whom, and by what means the representations were tendered.' [Citation.]"

Defendant FMC contends that the complaint fails to allege any specific facts relating to what information FMC had at the time of the sale of the Vehicle that would put FMC on notice of a defect. (See Mot., pp. 7-8.) Defendant FMC asserts that all allegations relating to its purported prior knowledge of the Transmission Defect are conclusory and vague. Defendant further argues the complaint fails to identify the sources, testing data, warranty

data, and customer complaints referenced by the pleading, and that as a result, the claim does not meet the heightened pleading requirement for a fraud claim.

Though the particularity requirement generally mandates that a plaintiff plead facts establishing the aforementioned items, it is much more difficult to apply this rule in a case of non-disclosure because, as one court explained, “[h]ow does one show ‘how’ and ‘by what means’ something didn’t happen, or ‘when’ it never happened, or ‘where’ it never happened?” (*Alfaro v. Community Housing Imp. System & Planning Ass’n, Inc.* (2009) 171 Cal.App.4th 1356, 1384.) Where a claim involves fraudulent concealment, courts generally do not require specific allegations, and instead look to whether the allegations provide the defendant with sufficient notice of the claims alleged against them. (*Id.* at pp. 1384-1385; see also *Jones v. ConocoPhillips Co.* (2011) 198 Cal.App.4th 1187, 1200.)

One of the purposes of the specificity requirement is to provide “notice to the defendant, to furnish the defendant with certain definite charged which can be intelligently met.” (*Committee on Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 216, internal quotations omitted.) However, when “it appears from the nature of the allegations that the defendant must necessarily possess full information concerning the facts of the controversy, even under strict rules of common law pleading, one of the canons was that less particularity is required when the facts lie more in the knowledge of the opposite party” (*Id.*, at p. 217.)

Here, Plaintiffs allege that defendant FMC “knew that the Vehicle and its transmission suffered from an inherent defect,” and that FMC intentionally concealed the Transmission Defect. (Complaint, ¶¶48, 50.) Further, the complaint alleges that defendant FMC had exclusive and superior knowledge regarding the Transmission Defect and that Plaintiffs could not reasonably have been expected to learn of or discover the Transmission Defect and its potential consequences before they purchased the Vehicle. (Complaint, ¶49.)

Defendant [FMC] acquired its knowledge of the Transmission Defect and its potential consequences prior to Plaintiffs acquiring the Subject Vehicle, through sources not available to consumers such as Plaintiffs, including but not limited to pre-production testing data, early consumer complaints about the transmission defect made directly to FMC and its network of dealers, aggregate warranty data compiled from FMC network of dealers, testing conducted by FMC in response to these complaints, as well as warranty repair and parts replacement data received by FMC from FMC’s network of dealers, amongst other sources of internal information.

(*Ibid.*) Plaintiffs allege that if they had known the Vehicle and its transmission were defective, they would not have purchased it, thus they assert that they were damaged by the alleged fraud. (*Id.* at ¶51.)

These allegations provide defendant FMC with sufficient notice of the claim at issue here. Plaintiffs have sufficiently alleged facts from which it can be inferred that defendant FMC acted with the intent to defraud when it concealed the Transmission Defect. (See *Lovejoy v. AT&T Corp.* (2001) 92 Cal.App.4th 85, 96 [elements of fraudulent concealment may be met by inferences].)

Defendant FMC further contends Plaintiffs only describe the symptoms of a transmission issue and not a defect itself. (Mot., pp. 7-8.) Defendant FMC relies upon *In re Ford Motor Co. DPS6 Powershift Transmission Products Liability Litigation* (C.D. Cal. 2020) 483 F.Supp.3d 838 for the proposition that merely describing performance problems does not sufficiently identify an alleged defect. The court does not find the case persuasive, and notes that defendant FMC does not direct the court to any California cases requiring the pleading of the actual defect rather than the symptoms.

Therefore, the court agrees with Plaintiffs that they have alleged the elements of the claim with the requisite specificity.

2. Repair History.

Defendant FMC further contends the sixth cause of action fails because there are contradictions between the alleged defect in the Vehicle and the repairs allegedly sought by the Plaintiffs. (Mot., pp. 8-9.) Defendant points to specific allegations that Plaintiffs presented the Vehicle on two occasions for various concerns, including (1) “illumination of the check engine light (‘CEL’), the Vehicle running rough, and a lack of power” (Complaint, ¶11); and

(2) “loud rattling noise at idle, illumination of the CEL, coolant hose leaking, starter inoperative, and a failure to start” (*Id.* at ¶12.)

Defendant FMC urges the court to infer that the Vehicle lacked any Transmission Defect because there is no allegation that Plaintiffs reported transmission concerns when bringing it in for repairs. (Mot., p. 9, Ins. 13-15.) Plaintiffs assert that the allegations show the Vehicle was presented for issues similar to those caused by the Transmission Defect. (Opp., pp. 4-5.)

Here, the court finds that the facts alleged support a reasonable inference that the repairs requested by Plaintiffs were related to the alleged Transmission Defect. Conditions such as the Vehicle “running rough,” its “lack of power,” and a “loud rattling noise at idle” could reasonably relate to the Transmission Defect as alleged in the complaint. (See Complaint, ¶¶11, 12, 45.) Therefore, the court does not find that the sixth cause of action fails due to its allegations regarding of the Vehicle’s repair history.

B. Statute of Limitations.

In challenging the sixth cause of action, Defendant FMC further argues that Plaintiffs’ fraud claim is time-barred. (Mot., pp. 9-11.)

There is no dispute between the parties that the applicable limitations period for a fraud claim is three years pursuant to **Code of Civil Procedure**, section 338, subdivision (d).⁴ Defendant FMC argues that Plaintiffs’ fraud claim accrued on the date they purchased the subject vehicle, 15 March 2014. (Mot., p. 9, Ins. 24-26.) Defendant FMC further argues that Plaintiffs have not pleaded tolling with the required specificity. (Mot., pp. 10-11.) However, these arguments are rooted in a misunderstanding of the correct application of the limitations period.

Per the express language of the code section, a claim for fraud accrues, thereby triggering the three-year limitations period, on the date of “**discovery**, by the aggrieved party, of the facts constituting the fraud.” (**Code Civ. Proc.**, § 338, subd. (d), emphasis added.)

In general, a claim accrues upon the occurrence of the last element essential to the cause of action, even if the plaintiff is unaware of the cause of action. Under the “delayed discovery rule,” however, the accrual date of a cause of action is delayed until the plaintiff is aware of his or her injury and its cause. The plaintiff is charged with this awareness as of the date he or she suspects or should suspect that the injury was caused by someone’s wrongful act. ... [¶] **Code of Civil Procedure** section 338, subdivision (d), effectively codifies the delayed discovery rule in connection with actions for fraud, providing that a cause of action for fraud ‘is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake.

(**Brandon G. v. Gray** (2003) 111 Cal.App.4th 29, 35.)

Here, Plaintiffs specifically allege that they were unaware of the defects in the Vehicle on the day they purchased it. (Complaint, ¶¶47, 51.) Plaintiffs allege they did not know of their claims until they had presented the Vehicle for a reasonable number of repairs. (*Id.* at ¶¶13-15.) “Plaintiffs only became suspicious that the Subject Vehicle suffered from the Transmission Defect *after* presenting the Subject Vehicle to Defendant for a reasonable number of repair attempts to no avail.” (*Id.* at ¶53, emphasis added.) The complaint alleges Plaintiffs left the Vehicle at an FMC-authorized repair facility from 30 August 2017 to 25 October 2017 (a duration of 56 days). (*Id.* at ¶11.) It further alleges Plaintiffs left the Vehicle at an FMC-authorized repair facility from 29 October 2018 to 31 December 2018 (a duration of 63 days). (*Id.* at ¶12.)

Based on these allegations, Plaintiffs became aware of the Transmission Defect *after* the most recent repair specified in the complaint, which ended on 31 December 2018. If one imputes Plaintiffs with knowledge of the Transmission Defect as of that date, the limitations period for the fraud cause of action expired on 31 December

⁴ *Code of Civil Procedure*, section 338 provides the pertinent limitations period as follows: “Within three years: [¶] (d) An action for relief on the ground of fraud or mistake. The cause of action in that case is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake.”

2021. (**Code Civ. Proc.**, § 338, subd. (d).) It follows that, because Plaintiffs filed their complaint on 22 June 2021, the sixth cause of action is not time-barred based on the facts alleged on the face of the complaint.

Therefore, the court finds that the complaint sufficiently states a claim for fraudulent inducement – concealment, and that the cause of action as set forth on the face of the pleading is not barred by the statute of limitations. Accordingly, the motion for judgment on the pleadings is DENIED.

IV. Tentative Ruling.

The tentative ruling was duly posted.

V. Case Management.

The current trial dates shall REMAIN AS SET.

VI. Order.

DATED:

HON. SOCRATES PETER MANOUKIAN

Judge of the Superior Court

County of Santa Clara

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

DEPARTMENT 20

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(For Clerk's Use Only)

CASE NO.: 22CV408640

Vanessa Ramos vs JPMorgan Chase Bank, N.A. etc.

DATE: 12 March 2024

TIME: 9:00 am

LINE NUMBER: 12, 13, 14

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 11 March 2024. Please specify the issue to be contested when calling the Court and Counsel.

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**Order on Motion of Defendant JPMorgan Chase Bank, N.A.
to Compel Plaintiff to Respond to Discovery Requests,
and Request for Monetary Sanctions.**

I. Statement of Facts.

Plaintiff filed this complaint on 14 December 2022.⁵

In her form complaint, plaintiff alleges causes of action for general negligence and for premises liability. She alleges that on or about 15 December 2020, she was seriously injured at the premises located at 2791 Story Road in the City of San Jose, County of Santa Clara, State of California. Defendants maintained the above-described premises so as to cause her to trip and fall when she came into contact with a dangerous condition on the subject property. She sustained injuries as a result of the trip and fall. To compel

II. Defendant's Motion to Compel Discovery Responses.

Defendant filed the discovery motions in question on 19 January 2024.

On 04 August 2023, defendant served upon plaintiff form interrogatories, sets one and two; special interrogatories, set one; and a request for production of documents, set one. When plaintiff fails to respond, on 06 December 2023 defendant notified counsel for plaintiff of the outstanding discovery requests and provided an additional 14 days to provide verified responses without objection.

In response, counsel for plaintiff claimed that they did not receive the discovery requests because the attorney listed on the complaint no longer worked at the firm and therefore the email address for that attorney was no longer monitored. Defense counsel never received any kickback email or automated response regarding that attorney no longer working at the firm for counsel for plaintiff.

⁵ This Department intends to comply with the time requirements of the Trial Court Delay Reduction Act (**Government Code**, §§ 68600–68620). The California Rules of Court state that the goal of each trial court should be to manage limited and unlimited civil cases from filing so that 100 percent are disposed of within 24 months. (Ca. St. Civil **Rules of Court**, Rule 3.714(b)(1)(C) and (b)(2)(C).

Defense counsel re-served the discovery requests. On 12 December 2023, counsel for plaintiff stated that the responses would be provided on 10 January 2024. As of the filing of the motions, responses had not been provided.

In opposition papers filed on 27 February 2024, counsel for plaintiff indicated that verified responses were served that same day. This Court has reviewed the responses.

III. Analysis.

A. Mootness.

Where respondents served untimely discovery responses after parties have filed motions to compel responses, courts have broad discretion as to ruling, including:

- 1) denying the motion as moot, in whole or part, where valid responses without objections have resolved the motion;
- 2) awarding requested sanctions;
- 3) allowing moving party to take the motion off calendar;
- 4) considering the motion as voluntarily narrowed in scope;
- 5) compelling responses without objection, where no legally valid responses have been provided, as to some, or all, interrogatories;
- 6) treating the motion as one to compel further responses, and ruling accordingly, with, or without, a separate statement;
- 7) ordering the parties to meet and confer;
- 8) ordering moving party to file a separate statement; or,
- 9) ordering the motion off calendar while requiring the propounding party to file a motion to compel further responses.

(See *Sinaiko Healthcare Consulting, Inc., v. Klugman* (2007) 148 Cal.App.4th 390, 409.)

In *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants*, the Court recognized that, in exercise of its discretion and based on the circumstances of the particular case, the trial Court is in the best position to determine whether action taken subsequent to the filing of a discovery motion renders that motion moot.

This Court has reviewed the responses attached to the opposition papers. While this Court is not a fan of boilerplate objections, they seem sufficient for purposes of this motion.

The motion is MOOT WITHOUT PREJUDICE to a motion by defendant to compel further responses. The parties are encouraged to meet and confer concerning the sufficiency of the responses.

The 45-day clock for the defendants to bring a motion to compel further responses will begin with the filing and service of this Order.

B. Sanctions.

Defendant makes a code-compliant request for monetary sanctions.

“The court may award sanctions under the Discovery Act in favor of a party who files a motion to compel discovery, even though no opposition to the motion was filed, or opposition to the motion was withdrawn, or the requested discovery was provided to the moving party after the motion was filed.” (California *Rules of Court*, rule 3.1348(a); *Sinaiko Healthcare Consulting, Inc. v. Pacific Healthcare Consultants*, supra at 409.)

Given the long delay in the provision of the responses, this Court believes that the imposition of monetary sanctions is appropriate and will assess sanctions in the amount of \$1,500.00 against plaintiff and in favor of defense counsel. This Court has considered the amount of duplication and the three motions.

IV. Tentative Ruling.

The tentative ruling was duly posted.

V. Case Management.

The Case Management Conference currently set for 26 March 2024 at 10:00 AM in this Department will be RESET to 17 September 2024 at 10:00 AM in Department 20.

VI. Order.

The motion is MOOT WITHOUT PREJUDICE to a motion by defendant to compel further responses. The parties are encouraged to meet and confer concerning the sufficiency of the responses.

The Court will impose monetary sanctions in the amount of \$1,500.00 against plaintiff and in favor of defense counsel.

DATED:

HON. SOCRATES PETER MANOUKIAN

*Judge of the Superior Court
County of Santa Clara*

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