SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 10
Honorable Frederick S. Chung

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

DATE: May 30, 2024 TIME: 9:00 A.M.

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

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

Scheduling motion hearings: Please go to https://reservations.scscourt.org or call 408-882-2430 between 8:30 a.m. and 12:30 p.m. (Mon.-Fri.) to reserve a hearing date for your motion *before* you file and serve it. You must then file your motion papers no more than five court days after reserving the hearing date, or else the date will be released to other cases.

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

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

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

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LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV413514	Elian Maldonado Angulo v. Giselle Monique Manzanares et al.	Click on LINE 1 or scroll down for ruling.
LINE 2	23CV414532	Olivia Ceja Escovar v. General Motors, LLC	Click on LINE 2 or scroll down for ruling in lines 2-3.
LINE 3	23CV414532	Olivia Ceja Escovar v. General Motors, LLC	Click on LINE 2 or scroll down for ruling in lines 2-3.
LINE 4	20CV363735	City of San Jose v. Sacramental Native American Church et al.	Motion for RFAs to be deemed admitted, for issue sanctions, and for monetary sanctions: the motion is MOOT as to defendants Sacramental Native American Church and Corinna Reyes; the motion is GRANTED as to defendant Davide Berti. Notice is proper as to Berti, and he has not submitted any opposition to the motion, nor did he provide any responses to the discovery requests, notwithstanding the court's prior orders compelling responses and ordering monetary sanctions. The court finds plaintiff's request for an additional $2,925 in monetary sanctions to be reasonable. Plaintiff shall submit the proposed order for the court's signature.
LINE 5	22CV397491	Barjinderpal Gill v. Amy Lui et al.	Click on LINE 5 or scroll down for ruling.
LINE 6	19CV342114	Chang Long Realty Development LLC v. Xi Hua Sun et al.	Click on LINE 6 or scroll down for ruling.
LINE 7	20CV366393	N.R. Waterloo, LLC v. Dennis Treadaway et al.	Click on LINE 7 or scroll down for ruling.

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Calendar Line 1
Case Name: *Elian Maldonado Angulo v. Giselle Monique Manzanares et al.*
Case No.: 23CV413514

I. BACKGROUND

This case arises out of a motor vehicle accident that occurred on October 28, 2022. Plaintiff Elian Maldonado Angulo ("Plaintiff") alleges that he was struck by a car driven by Giselle Monique Manzanares ("Giselle") near the intersection of Lawrence Expressway and El Camino Real in Santa Clara California.[1] (Complaint, ¶ 14.) Plaintiff filed his complaint on March 23, 2023 against Giselle, as well as against Anjelene Manzanares ("Anjelene"), Randy Manzanares ("Randy"), KSS Investment, LLC, Essex Property Trust, Inc., Essex Property Corp. (collectively, "Defendants"), and Does 1-100. The complaint alleges that Anjelene and/or Randy own the car that Giselle was driving. (Complaint, ¶ 15.)

The complaint asserts the following causes of action:

1) Motor Vehicle Negligence (against Giselle);
2) Negligent Entrustment of a Motor Vehicle (against Anjelene and Randy);
3) Dangerous Condition of Public Property (against Does 1-50); and
4) General Negligence (against KSS Investment, LLC, Essex Property Trust, Inc., Essex Property Corp., and Does 1-50).

Plaintiff subsequently amended his complaint to name Does 1-6. Doe 1 is the County of Santa Clara (the "County"). Doe 2 is the City of Santa Clara (the "City"). Doe 3 is the State of California (the "State"). Doe 4 is the California Department of Transportation ("Transportation Dept."). Doe 5 is CalTrans. Doe 6 is SCS Gateway, LLC. Plaintiff has not amended any allegations within the complaint.

Currently before the court is the City's demurrer to the complaint, filed on January 26, 2024. Plaintiff opposes.

II. DEMURRER TO THE COMPLAINT

A. Legal Standard

In ruling on a demurrer, the court treats it "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688 [citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318].) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 213-214.) In liberally construing the allegations in a pleading, the court draws inferences favorable to the pleader. (*Perez v. Golden Empire Transit Dist.* (2012) 209 Cal.App.4th 1228, 1239.)

[1] At times, the court refers to some parties by their first names for purposes of clarity. No disrespect is intended. (See *Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1136, fn. 1.)

B. Analysis

1. Government Claims Act

The City first argues that Plaintiff has failed to allege compliance with the Government Claims Act. (Demurrer, p. 3:21-23.) Plaintiff responds that his allegation that he "will have complied with the applicable claims statutes upon service of this Complaint and the naming of the Government as a named DOE Defendants(s)" is sufficient. (Opposition, p. 4:9-12 [citing Complaint, ¶ 10].)

"Before suing a public entity, the plaintiff must present a timely written claim for damages to the entity. (Gov. Code, § 911.2; *State of California v. Superior Ct.* (2004) 32 Cal.4th 1234, 1239 (*Bodde*), but see Gov. Code, § 905 [itemized exceptions].)" (*Shirk v. Vista Unified School Dist.* (2007) 42 Cal.4th 201, 208 (*Shirk*) [overruled by statute on other grounds].) The purpose of the Government Claims Act (Gov. Code, § 900 et seq.) is to apprise the governmental body of imminent legal action so the entity may investigate and evaluate the claim and, where appropriate, avoid litigation by settling meritorious claims. (*Krainock v. Superior Ct.* (1990) 216 Cal.App.3d 1473, 1477; see also *Gehman v. Superior Ct.* (1979) 96 Cal.App.3d 257, 262.)

"Timely claim presentation is not merely a procedural requirement, but is . . . a condition precedent to plaintiff's maintaining an action against defendant, and thus an element of the plaintiff's cause of action. Complaints that do not allege facts demonstrating either that a claim was timely presented or that compliance with the claims statute is excused are subject to a general demurrer for not stating facts sufficient to constitute a cause of action." (*Shirk, supra*, 42 Cal.4th at p. 209 [internal citations and quotations omitted] [citing *Bodde, supra*, 32 Cal.4th at pp. 1240, 1245].)

"Claims for personal injury must be presented not later than six months after the accrual of the cause of action, and claims relating to any other cause of action must be filed within one year of the accrual of the cause of action. Accrual for purposes of the [Government Claims] Act is the date of accrual that would pertain under the statute of limitations applicable to a dispute between private litigants." (*Willis v. City of Carlsbad* (2020) 48 Cal.App.5th 1104, 1118 (*Willis*) [internal citations and quotations omitted].) "If a claim is not timely presented, a written application may be made to the public entity for leave to present such claim." (*Id*. at p. 1119.)

In this case, the complaint lacks any allegations that Plaintiff timely presented a claim with the City, or that compliance with the requirement is excused. An allegation that Plaintiff "will have" filed a claim is insufficient. Indeed, the court does not even understand what that means—either the claim was timely filed or it was not. Moreover, there is no allegation that the City was asked to act upon a claim by Plaintiff. (See *Willis, supra,* 48 Cal.App.5th at p. 1118 ["Only after the public entity's board has acted upon or is deemed to have rejected the claim may the injured person bring a lawsuit alleging a cause of action . . . against the public entity."].)

Accordingly, the court will SUSTAIN the City's demurrer on the ground that the complaint fails to allege compliance with the Government Claims Act.

2. Uncertainty

The City also argues that the complaint is uncertain because it does not sufficiently describe how the collision occurred, and because the photographs in Plaintiff's complaint supposedly contradict the allegations that the traffic signals were not operational at the time of the accident. (See Demurrer, pp. 8:10-12, 10:3-12.)

A party may file a special demurrer on the ground of uncertainty to challenge a pleading as uncertain, ambiguous, or unintelligible. (Code Civ. Proc., § 430.10, subd. (f).) Uncertainty is a disfavored ground for demurrer; it is typically sustained only where the pleading is so unintelligible and uncertain that the responding party cannot reasonably respond to or recognize the claims alleged against it. (See *Khoury v. Maly's of Cal., Inc.* (1993) 14 Cal.App.4th 612, 616.) "A demurrer for uncertainty is strictly construed, even where a complaint is in some respects uncertain, because ambiguities can be clarified under modern discovery procedures." (*Ibid*.) "[U]nder our liberal pleading rules, where the complaint contains substantive factual allegations sufficiently apprising defendant of the issues it is being asked to meet, a demurrer for uncertainty should be overruled or plaintiff given leave to amend." (*Williams v. Beechnut Nutrition Corp.* (1986) 185 Cal.App.3d 135, 139, fn. 2.)

Here, the City attempts to find numerous faults with the level of detail in the complaint's factual allegations, but the fact that the complaint does not contain more information about the facts of the collision, about the alleged negligence of the car's driver (Giselle), or about the photos attached to the complaint does not render it uncertain.[2] All of these details can be fleshed out in the course of discovery. The basic allegations of the complaint are certainly intelligible. Accordingly, the court OVERRULES the demurrer on the ground of uncertainty.

3. Third Cause of Action - Dangerous Condition of Public Property

The City contends that the third cause of action for dangerous condition of public property fails to state sufficient facts under Code of Civil Procedure section 430.10, subdivision (e), because: 1) Plaintiff does not clearly identify a statutory basis for it; 2) the City does not own the subject roadway and therefore cannot be liable for a dangerous condition of public property; and (3) the City is immune from liability. (Demurrer, pp. 4:4-8:6.)

The City first asserts that because it is a public entity, a plaintiff must allege a statutory duty to protect the plaintiff from the type of harm suffered. (Demurrer, p. 4:5-7 [citing *Eastburn v. Reg. Fire Prot. Auth.* (2003) 31 Cal.4th 1175, 1183].) The City contends that the third cause of action relies solely on Government Code sections 815.2 and 815.4 and merely alleges that "the Government is liable to Plaintiff due to the aforementioned acts and/or omissions *of their employees and/or contractors performed within the scope of his or her employment agency*." (Demurrer, p. 4:14-19 [citing Complaint, ¶ 39] [emphasis added].) According to the City, this is a vicarious liability claim, focused on the acts of "employees and/or contractors" rather than the City itself. Citing *Longfellow v. County of San Luis Obispo* (1983) 144 Cal.App.3d 379, the City points out that public entity liability for a

[2] The City argues erroneously that the court can find a factual contradiction in the photos *as a matter of law*. This reflects a lack of understanding of the legal standard on a demurrer.

dangerous condition of public property cannot be based on a theory of vicarious liability. "With respect to the plaintiff['s] cause of action pursuant to section 815.2 of the Government Code, the law [is] settled . . . that public entity liability for property defects is not governed by the general rule of vicarious liability provided in section 815.2[.]" (*Id.* at p. 383 [citing *Van Kempen v. Hayward Area Park Etc. Dist.* (1972) 23 Cal.App.3d 822].)

In opposition, Plaintiff argues the third cause of action also cites Government Code section 830 *et seq.*, in paragraph 41 of the Complaint, and that section 830 addresses direct liability of governmental entities. (Opposition, p. 4:22-25.) In reply, the City counters that 13 of the 14 paragraphs in Plaintiff's third cause of action are based on Government Code sections 815.2 and 815.4, and that to the extent the third cause of action is based on vicarious liability, it is subject to demurrer. (Reply, p. 3:9-16.)

As a general matter, a party may not demur to a portion of a cause of action, even if it is the vast majority of the allegations in a cause of action. (*PH II, Inc. v. Superior Court* (1995) 33 Cal.App.4th 1680, 1681.) Nevertheless, "[o]ne of the essential elements that must be pled [in a tort claim against a public entity] is the existence of a specific statutory duty." (*Becerra v. County of Santa Cruz* (1998) 68 Cal.App.4th 1450, 1458.) Further, statutory causes of action must be pled with specificity. (See, e.g., *Lopez v. Southern Cal. Rapid Transit Dist.* (1985) 40 Cal.3d 780, 795 ["[B]ecause under the Tort Claims Act all governmental tort liability is based on statute, the general rule that statutory causes of action must be pleaded with particularity is applicable. Thus, 'to state a cause of action against a public entity, every fact material to the existence of its statutory liability must be pleaded with particularity.'"] [citation omitted].) Specificity in pleading a statutory cause of action is necessary, in part, in order to make "clear and unequivocal" that there was a duty to act. (See e.g., *Susman v. Los Angeles* (1969) 269 Cal.App.2d 803, 809.)

Here, the statutory allegations are missing basic details. The complaint alleges that "the Government" is liable to Plaintiff for a dangerous condition on "the Government's property" and pursuant to Government Code sections 815.2 and 815.4, the Government is liable for the acts of its contractors. (Complaint, ¶¶ 37, 39.) The complaint additionally alleges that the Government had actual or constructive notice of the dangerous condition under Government Code section 835.2. (*Id.* at ¶ 41.) But the complaint does not specifically and adequately allege the dangerous condition on the City's property.[3] Moreover, it indiscriminately groups Does 1-50 together as "the Government" without an explanation as to the entity defendants' liability. (See Demurrer, p. 6:3-14.) These bare allegations are not sufficient to state a cause of action. (See, e.g., *Brenner v. City of El Cajon* (2003) 113 Cal.App.4th 434, 439 [a claim alleging a dangerous condition may not rely on generalized allegations].) Accordingly, the court will SUSTAIN the demurrer to the third cause of action for failing to allege sufficient facts. At the same time, the court will grant 15 days' leave to amend, given that it appears that Plaintiff could do much better to provide specific details beyond what he provided in the original complaint. The mere addition of "Doe" amendments was plainly not enough.

[3] Instead, the complaint generally (and vaguely) alleges a number of conditions including a lack of proper light, traffic control devices, crosswalks, lack of markings on the roadway, and lack of traffic signals and/or pedestrian traffic signals. (See Complaint, ¶¶ 37-38.)

Because the court is finding that Plaintiff's factual allegations are insufficient for the statutory cause of action, the court need not address the City's remaining arguments regarding the third cause of action. (At the same time, the court will observe that the City's argument that it does not own the property at issue appears to be a factual contention based on extrinsic evidence, notwithstanding its reliance on Streets and Highway Code sections 233 and 382, and is therefore inappropriate for a demurrer.)[4]

4. Fourth Cause of Action

The City argues that the fourth cause of action for general negligence is barred as a matter of law because common law tort claims against a public entity were abolished by the Government Claims Act. (Demurrer, p. 11:2-3.) In opposition, Plaintiff has agreed to dismiss the fourth cause of action against the City, without prejudice. (Opposition, p. 7:5-10.) Accordingly, the demurrer to the fourth cause of action is now moot.

III. CONCLUSION

The demurrer to the complaint on the ground that it is uncertain is OVERRULED. The demurrer to the complaint for failure to comply with the Government Claims Act is SUSTAINED with 15 days' leave to amend. The demurrer to the third cause of action is SUSTAINED with 15 days' leave to amend. The demurrer to the fourth cause of action is OVERRULED as MOOT.

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[4] The City asserts in a footnote that the references to "Government Code sections 815.2 and 815.4 should be stricken pursuant to Code of Civil Procedure section 436 because the allegations are not drawn with California law." (Memorandum, p. 5, fn. 2.) The City has not made a proper motion to strike, and so the court disregards this suggestion (which is moot, in any event).

Calendar Lines 2-3
Case Name: *Olivia Ceja Escovar v. General Motors, LLC*
Case No.: 23CV414532

I. BACKGROUND

This is a "lemon law" action under the Song-Beverly Consumer Warranty Act by plaintiff Olivia Escovar ("Escovar") against defendant General Motors LLC ("GM") and Doe defendants. The lawsuit is based on Escovar's purchase of a 2021 Chevrolet Silverado from a GM authorized dealer, Gilroy Chevrolet Cadillac, in Gilroy, California. As part of the purchase, Escovar alleges that she entered into a written warranty contract with GM. Escovar also alleges that the vehicle suffered from transmission, suspension, and electrical defects.

Escovar filed her original complaint on April 11, 2023. She filed the operative first amended complaint ("FAC") on October 11, 2023. The FAC states five causes of action: (1) Violation of Civil Code section 1793.2, subdivision (d); (2) Violation of Civil Code section 1793.2, subdivision (b); (3) Violation of Civil Code section 1793.2, subdivision (a)(3); (4) Breach of the Implied Warranty of Merchantability, and (5) Fraudulent Inducement—Concealment. Attached to the FAC as Exhibit A is a copy of the warranty contract.

The FAC alleges that GM was aware of at least the "transmission defect" well before Escovar purchased the subject vehicle. (See FAC, ¶¶ 66-68, 70-72, 75-76.) Escovar relied on advertising by GM, including commercials, billboards, and the GM label affixed to the subject vehicle, in making her decision to purchase it, and she also discussed the vehicle with "GM's authorized sales representatives at Gilroy Chevrolet Cadillac." Neither GM's advertising materials nor its authorized sales representatives disclosed the vehicle defects known to GM. (*Id.* at ¶¶ 8-9, 69.)

Currently before the court is a demurrer to and motion to strike portions of the FAC, filed by GM on February 27, 2024. Escovar filed oppositions on May 16, 2024.

II. DEMURRER TO THE FAC

A. General Standards

The court, in ruling on a demurrer, treats it "as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law." (*Piccinini v. Cal. Emergency Management Agency* (2014) 226 Cal.App.4th 685, 688, citing *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) "A demurrer tests only the legal sufficiency of the pleading. It admits the truth of all material factual allegations in the complaint; the question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court." (*Committee on Children's Television, Inc. v. General Foods Corp*. (1983) 35 Cal.3d 197, 213-214 (*Committee*).) A plaintiff is not ordinarily required to allege "'each evidentiary fact that might eventually form part of the plaintiff's proof . . . .'" (*Ferrick v. Santa Clara University* (2014) 231 Cal.App.4th 1337, 1341.) In ruling on a demurrer, the allegations of the complaint must be liberally construed, with a view to substantial justice between the parties. (*Glennen v. Allergan, Inc*. (2016) 247 Cal.App.4th 1, 6.)

The court considers only the pleading under attack, any attached exhibits, and any facts or documents for which judicial notice is properly requested and may be granted. The court cannot consider extrinsic evidence on a demurrer or motion to strike.

Arguments made for the first time in reply briefs are not considered. (See *Tellez v. Rich Voss Trucking Inc*. (2015) 240 Cal.App.4th 1052, 1066 [courts do not consider points raised for the first time in a reply brief]; see also *Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764 [points raised for the first time in a reply brief will ordinarily be disregarded because the other party is deprived of the opportunity to counter the argument].) Accordingly, the court has not considered the arguments made for the first time in GM's reply briefs.

Code of Civil Procedure section 430.60 states: "A demurrer shall distinctly specify the grounds upon which any of the objections to the complaint, cross-complaint, or answer are taken. Unless it does so, it may be disregarded." The rules of court similarly require that the notice of demurrer itself (distinct from a supporting memorandum) specify the target of any objection to the pleading and the grounds. (See Cal. Rules of Court, rules 3.1103(c), 3.1112(a), and 3.1320(a) ["Each ground of demurrer must be in a separate paragraph and must state whether it applies to the entire complaint, cross-complaint, or answer, or to specified causes of action or defenses."]; see also 5 Witkin, *Cal. Procedure* (5th ed., 2019) Pleading, § 953 ["Each ground of demurrer must be in a separate paragraph and must state whether the demurrer applies to the entire complaint, cross-complaint, or answer, or to specified causes of action or defenses."].)

B. Discussion

GM demurs to the FAC's fifth cause of action (fraudulent concealment), asserting that it "fails to state facts relevant to the elements of the claim" and "fails to allege a transactional relationship giving rise to a duty to disclose." (Notice of Demurrer and Demurrer, p. 2:5-9.)

"The elements of fraudulent concealment are: (1) the defendant concealed or suppressed a material fact; (2) the defendant was under a duty to disclose the fact to the plaintiff; (3) the defendant intentionally concealed or suppressed the fact with the intent to defraud the plaintiff; (4) the plaintiff was unaware of the fact and would not have acted as he or she did if the plaintiff had known of the concealed or suppressed fact; and (5) as a result of the concealment or suppression of the fact, the plaintiff sustained damage." (*Burch v. CertainTeed Corp*. (2019) 34 Cal.App.5th 341, 348 (*Burch*) [citing *Bigler-Engler v. Breg, Inc*. (2017) 7 Cal.App.5th 276, 310-311 (*Bigler-Engler*)].) "With respect to concealment, there are four circumstances in which nondisclosure or concealment may constitute actionable fraud: (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. The latter three circumstances presuppose the existence of some other relationship between the plaintiff and defendant in which a duty to disclose can arise. This relationship has been described as a transaction, such as that between seller and buyer, employer and prospective employee, doctor and patient, or parties entering into any kind of contractual arrangement." (*Burch* at pp. 349-350 [internal quotations and citations omitted].)

The court OVERRULES the demurrer to the fifth cause of action, as follows.

GM's supporting memorandum reveals that the assertion in its notice of demurrer that the fifth cause of action "fails to state facts *relevant to* the elements of the claim," is actually an argument that the fifth cause of action is not plead with the required degree of specificity. This argument is unpersuasive.

While it is generally true that each element in a fraud cause of action must be pleaded with specificity (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645; *Cadlo v. Owens-Illinois, Inc.* (2004) 125 Cal.App.4th 513, 519), this pleading requirement is significantly relaxed in the case of fraud by concealment or omission. As one Court of Appeal has explained: "How does one show 'how' and 'by what means' something didn't happen, or 'when' it never happened, or 'where' it never happened?" (*Alfaro v. Community Housing Imp. System & Planning Ass'n., Inc*. (2009) 171 Cal.App.4th 1356, 1384.) Additionally, one of the purposes of the specificity requirement is to provide "notice to the defendant, to furnish the defendant with certain definite charges which can be intelligently met," but that notice purpose may be less critical when the defendant already possesses more information than the plaintiff. (*Committee, supra,* 35 Cal.3d at pp. 216-217 [internal quotations omitted].) When "it appears from the nature of the allegations that the defendant must necessarily possess full information concerning the facts of the controversy, even under strict rules of common law pleading, one of the canons was that less particularity is required when the facts lie more in the knowledge of the opposite party . . . ." (*Id*., at p. 217; see also *Bushell v. JPMorgan Chase Bank, N.A.* (2013) 220 Cal.App.4th 915, 931 ["plaintiffs did not have to specify the . . . personnel who prepared these documents because that information is uniquely within . . . [defendant's] knowledge."].)

In this case, it is not necessary for Escovar to plead the identity of individuals at GM who allegedly concealed facts about a "transmission defect," as this information would be uniquely within GM's knowledge. The FAC alleges a direct transactional relationship between the parties—the warranty agreement—that gave rise to a duty to disclose, as well as a buyer-warrantor relationship in which GM had exclusive knowledge of alleged defects that it purportedly concealed while making representations about the quality of the Chevrolet Silverado. The FAC also alleges that Escovar interacted with GM's authorized sales representatives and considered GM's advertising before purchasing the vehicle, and that she would not have purchased the vehicle if GM had disclosed the alleged defects. (See FAC, ¶¶ 49, 53, 58-60.) This is sufficient particularity to overcome a demurrer.

GM's related argument that the fifth cause of action fails to allege a sufficient transactional relationship is unpersuasive and incorrect. (See Memorandum, pp. 9:19-11:3.) The FAC alleges a direct contractual relationship between the parties via the warranty agreement. GM's argument largely relies upon a misreading of *Bigler-Engler, supra*, which did not even involve a pleading challenge, but rather an appeal of a jury verdict. *Bigler-Engler* does not say anything about pleading requirements: again, the FAC's allegations of a contractual relationship, and Escovar's reliance on written statements by GM, *must be accepted as true* on a demurrer. Moreover, the facts of *Bigler-Engler* are highly distinguishable from the facts of this case. In *Bigler-Engler*, the Court of Appeal held that a defendant manufacturer of a medical device did not owe a duty to disclose to the plaintiff because it:

> . . . did not transact with [plaintiff] or her parents in any way. Plaintiff obtained her Polar Care device from Oasis, based on a prescription written by [her doctor], all without [defendant's] involvement. The evidence does not show that

> [defendant] knew—prior to this lawsuit—that [plaintiff] was a potential user of the Polar Care device, that she was prescribed the Polar Care device, or that she used the Polar Care device. The evidence also does not show that [defendant] directly advertised its products to consumers such as [plaintiff] or that it derived any monetary benefit directly from [plaintiff's] individual rental of the Polar Care device.

(*Bigler-Engler*, *supra*, 7 Cal.App.5th at p. 314.) In contrast to the facts of *Bigler-Engler*, GM is a manufacturer and distributor of automobiles who does direct advertising of its products to consumers such as Escovar. In addition, Escovar has alleged that she did in fact rely, at least in part, on advertising by GM in deciding to purchase the subject vehicle. As a result, while *Bigler-Engler* may potentially be applicable to companies who do not directly advertise to consumers, who do not issue warranties to consumers, or who do not derive monetary benefits directly from sales to those consumers, it does not apply to companies that *do* such things, such as GM.

III. MOTION TO STRIKE PORTIONS OF THE FAC

A. General Standards

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

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

B. Discussion

GM moves to strike the request "[f]or punitive damages" in paragraph "g" of the FAC's prayer. (See Notice of Motion and Motion, p. 2:3-6.) This request is not tied to any particular cause of action in the FAC. GM argues that there is no basis for awarding punitive damages on

Song-Beverly Consumer Warranty Act claims (the first four causes of action) and that the fifth cause of action for fraudulent concealment cannot support the request because it is inadequately pled.

Escovar disputes the notion that punitive damages are not available under the Song-Beverly Consumer Warranty Act (relying on federal case law), and she argues that the fifth cause of action sufficiently alleges fraud, in any event. As the court has overruled GM's demurrer, finding that the fifth cause of action adequately alleges fraudulent concealment, the court DENIES the motion to strike. An adequately pleaded fraud claim is sufficient to support a request for punitive damages. (See *Stevens v. Superior Court* (1986) 180 Cal.App.3d 605, 610 [pleading of fraud is sufficient for punitive damages].) It is therefore unnecessary for the court to consider whether punitive damages are also available under the Song-Beverly Consumer Warranty Act.

IV. CONCLUSION

The court OVERRULES the demurrer and DENIES the motion to strike. GM shall file a responsive pleading within 10 days of notice of entry of this order.

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Calendar Line 5
Case Name: *Barjinderpal Gill v. Amy Lui et al.*
Case No.: 22CV397491

Plaintiff Barjinderpal Gill moves to compel further responses to special interrogatories, Form Interrogatory No. 17.1, and requests for production of documents from defendants Amy Lui and Michael Gong (collectively, "Defendants"). The court grants the motion in part and denies it in part, as follows:

Special Interrogatory No. 8 (Gong): Gong's answer is vague and insufficient. The statement that the "loss exceeds $25,000" is completely inadequate. Gong must supplement his answer to provide specific amounts for the various losses (interest amounts, taxes, insurance, repairs, and maintenance). The court overrules Gong's objections as both untimely and meritless. Gong must supplement the answer within 15 days of notice of entry of this order. GRANTED.

Special Interrogatory No. 8 (Lui): Gill includes Interrogatory No. 8 as part of his motion to compel further responses from Lui, but he fails to include Interrogatory No. 8 (as to Lui) in his separate statement in support of the motion. DENIED.

Special Interrogatory No. 9 (Gong): Gong does not identify the third-party "privacy concerns" that he cites as a basis for failing to answer this interrogatory. Why are the identities of these third parties confidential? No valid reason has been offered. The court overrules Gong's objections as both untimely and without merit. Gong must supplement the answer within 15 days of notice of entry of this order. GRANTED.

Special Interrogatory No. 9 (Lui): Lui's response suffers from the same infirmities as Gong's. Lui must supplement her answer within 15 days of notice of entry of this order. GRANTED.

Special Interrogatory No. 14 (Gong): At the time this motion was filed, Gong had not provided a timely response to this interrogatory. According to the opposition and reply briefs, however, Gong finally served objections and a verified answer on May 16, 2024, which was approximately four and a half months after the deadline. The court has no information about the sufficiency of this response, because neither side has attached it to their papers. Although Gill requests that the court find that all objections have been waived because of the lateness of the response, the court will not decide this matter in the abstract, without even seeing what the response says. It may well be that the objections are moot in any event. DENIED WITHOUT PREJUDICE.

Form Interrogatory No. 17.1 (Gong's Response to Request for Admission No. 1): The court finds that Gong's answer to the interrogatory, while somewhat lacking in detail, meets the bare minimum of sufficiency. DENIED.

Form Interrogatory No. 17.1 (Lui's Response to Request for Admission No. 1): Similarly, Lui's answer is also minimally sufficient. DENIED.

Requests for Production of Documents Nos. 15-25 (Gong): Gong claims that he "served verified, supplemental discovery responses on April 3, 2024," and so the motion as to the requests for production of documents is now moot. Gill responds that Gong produced

additional documents in response to the document requests on April 3, but he never served written responses to the document requests. Gong has not attached a copy of his alleged written responses from April 3, and so the court has no way of determining that the motion as to these requests is in fact moot. To the extent that Gong has not yet served verified written responses to the document requests, he must do so within 15 days of notice of entry of this order. While it may well be that he has waived any objections by failing to serve timely responses, it may also be that any further dispute turns out to be moot, depending on what the written responses say and depending on what is contained in the document production(s). The court declines to rule on the issue of waiver until it has the specific requests and responses in hand. GRANTED IN PART.

Requests for Production of Documents Nos. 11-14 (Lui): For the same reasons, Lui must provide verified written responses to the document requests within 15 days of notice of entry of this order, to the extent that she has not done so. GRANTED IN PART.

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Calendar Line 6
Case Name: *Chang Long Realty Development LLC v. Xi Hua Sun et al.*
Case No.: 19CV342114

Defendants Xi Hua Sun and Shan Zhu ("Defendants") move for leave to amend their answer to the complaint. They seek to add allegations to their statute of limitations defense—specifically, citations to Code of Civil Procedure sections 338 and 343—that were not contained in the original answer. Plaintiff Chang Long Realty Development LLC and cross-defendant Xi Jun Sun (collectively, "Chang Long") oppose the motion, arguing that this proposed amendment is being brought far too late into the case. This case is currently set for trial on June 24, 2024 (*i.e.*, in three and a half weeks).

Despite the proximity to trial, the court will grant the motion, given that Chang Long has not identified any prejudice that would result from allowing the amendment at this time.

Chang Long is certainly correct that Defendants waited an inexplicably long time to make this proposal. Although Defendants claim that the proposed amendment was prompted by the person-most-qualified ("PMQ") deposition of Chang Long (Yan Chen) on March 29, 2024, the court finds this claim to be implausible, given that a statute of limitations defense has always been in this case, ever since the Defendants filed their answer in 2019. Indeed, Defendants brought a summary judgment motion based on the statute of limitations last year, which the court ultimately denied because Defendants failed to plead the correct statutes—*i.e.*, sections 338 and 343 of the Code of Civil Procedure, *the very code provisions that they now wish to add* to their answer. The court signed its order on September 12, 2023, nearly eight months before this motion was filed, and so the delay here is the very textbook definition of "dilatory" conduct.

Nevertheless, the fact that the statute of limitations defense is no surprise to anyone in this case is exactly the same reason why there is no cognizable prejudice that would arise from allowing the amendment. The parties have already engaged in extensive discovery on the statute of limitations issue—including, apparently, the PMQ deposition of Chang Long—and Chang Long identifies no further discovery or investigation that would be required as a result of adding code sections 338 and 343 to the code section (section 339) that is already in the original answer. The court cannot envision any, either. Because the parties have fully anticipated, investigated, and litigated the statute of limitations issue for years, the court finds no basis for denying the motion.

The motion is GRANTED, and Defendants' shall file their amended answer within five days of notice of entry of this order.

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Calendar Line 7
Case Name: *N.R. Waterloo, LLC v. Dennis Treadaway et al.*
Case No.: 20CV366393

This is a motion for leave to file a second amended complaint by N.R. Waterloo, LLC ("Plaintiff"), where Plaintiff seeks to add a cause of action for negligence. Defendants FPI Management, Inc. and Dennis Treadaway ("Defendants") oppose the motion, even though this case is not set for trial until March 10, 2025—*i.e.*, more than nine months from now. Because Defendants have failed to demonstrate that the proposed amendment would be prejudicial, the court grants the motion.

On the one hand, the court agrees with Defendants that there have been numerous delays in this case, mostly attributable to Plaintiff, and Plaintiff's counsel's assertion that they "just recently realized that the amended complaint [filed by predecessor counsel] does not contain a cause of action for negligence" (Memorandum, p. 2:8-10) is indicative of a lack of diligence over the last year and a half. The court has previously remarked at case management conferences that this case has been proceeding extremely slowly. On the other hand, there does not appear to be any basis for Defendants' insinuation that Plaintiff's counsel deliberately waited until after the deposition of Plaintiff's PMQ witness, Betty Sha, before raising the possibility of a second amended complaint. (Opposition, p. 6:21-25.)

Most critically, Defendants do not make any actual showing of prejudice arising from the timing of the amendment. Indeed, even though they mention the PMQ deposition, Defendants have not argued that they actually need any further testimony from Sha regarding a negligence cause of action. (If they did, such prejudice would easily be curable with a supplemental deposition.) Moreover, Plaintiff points out that the "operative pleading's factual allegations remain identical and the new theory of recovery based on negligence is already pled therein with respect to the cause of action for breach of fiduciary duty." (Reply, p. 4:6-8.)

In sum, Defendants' opposition is not well taken, and the motion is GRANTED. Plaintiff shall file the second amended complaint within 10 days of this order.

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