SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 07/01/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0002256

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK:

PLAINTIFF: ROBERT CHIN vs. DEFENDANT: EWA ERICKSON, ET AL	

NATURE OF PROCEEDINGS: MOTION – INTERROGATORIES-DISCOVERY FACILITATOR PROGRAM

RULING

On April 1, 2025, plaintiff Robert V. Chin ("Plaintiff") filed a Motion to Compel Responses to Request for Production of Documents, Form Interrogatories, and Special Interrogatories (Set One) and Request for Sanctions against defendants Ewa Erickson and Adam Erickson ("Defendants") for their failure to respond to the written discovery served upon them. A discovery facilitator was appointed to review the motion on May 14, 2025 in order to assist the parties with resolution of the matter.

On June 20, 2025, Victoria Shaw, attorney for Plaintiff and moving party, filed a declaration of non-resolution indicating that while Defendants finally provided responses to the discovery at issue in this motion to compel, sanctions for the time and expense of preparing and filing the motion remain to be determined. (Shaw Decl. of Non-Resolution, ¶ 3.)

Because responses were provided by Defendants on April 10, 2025 to the satisfaction of Plaintiff, the motion to compel the same is moot. (See Reply, p. 2:1-4 ["… responses were delivered on 4/10/2025; to which plaintiff is appreciative"].)

With respect to sanctions, the Court is satisfied with the parties' attempt at resolving the discovery issue and recognizes the number of extensions to respond granted by Plaintiff. (See Shaw Decl. filed 4/1/25, ¶¶ 4-6.) However, the responses provided by Defendants appear to have occurred only after the filing of the motion to compel. Plaintiff was justified in seeking responses to the above noted discovery. And after the filing of the motion, it was then that Defendants provided responses.

The Court also recognizes the time and effort that it took to get to this point. Thus, the Court grants sanctions for the motion to compel in the amount sought of **$2,244.66** against Defendants and their counsel. (Code Civ. Proc., §§ 2023.030, subd. (a), 2030.290, subd. (c) & 2031.300,

subd. (c); see also Cal. Rules of Court, rule 3.1348, subd. (a) ["The court may award sanctions under the Discovery Act in favor of a party who files a motion to compel discovery, even though . . . the requested discovery was provided to the moving party after the motion was filed"].)

The sanctions requested by Defendants are denied.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 07/01/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0003493

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:	CLERK:
PLAINTIFF: FRANCISCO VILELA vs. DEFENDANT: GENERAL MOTORS, LLC	

NATURE OF PROCEEDINGS: MOTION – LEAVE

RULING

Plaintiff's Motion for Leave to Amend Plaintiff's Complaint is **GRANTED**.

Discussion

"… The court may…, in its discretion…, allow, upon any terms as may be just, an amendment to any pleading or proceeding…" (Code Civ. Proc., § 473, subd. (a)(1).) "… Statutes like section 473 are 'construed liberally so that cases may be tried upon their merits in one trial where no prejudice to the opposing party…is demonstrated.' Further, this liberal policy applies to amendments '"at any stage of the proceedings, up to and including trial,"' absent prejudice to the adverse party." (*Tung* v. *Chicago Title Company* (2021) 63 Cal.App.5th 734, 747, citations omitted.) "… 'Leave to amend may be denied if there is prejudice to the opposing party, such as delay in trial, loss of critical evidence, or added costs of preparation.' 'There is also a platoon of authority to the effect that a long unexcused delay is sufficient to uphold a trial judge's decision to deny the opportunity to amend pleadings.' …" (*Bidari* v. *Kelk* (2023) 90 Cal.App.5th 1152, 1173, citations and brackets omitted.)

Defendant opposes leave contending that Plaintiff unduly delayed in bringing this motion. With respect to Plaintiff's (apparent) position that facts supporting the new cause of action were obtained during discovery, Defendant argues that "these TSBs were publicly available via NHTSA, making the information discoverable earlier" and "Plaintiff's ignorance of readily discoverable information cannot justify late amendment." Defendant cites *Emerald Bay Community Assn.* v. *Golden Eagle Ins. Corp.* (2005) 130 Cal.App.4th 1078 in support of this argument. This case, however, is distinguishable. TSBs at issue here, that Plaintiff might have been able to obtain from the NHTSA website, are not comparable to the assignment at issue in *Emerald Bay Community Assn.,* which was contained in a post-settlement agreement to which the plaintiff was a party. This contention is not sufficient to deny leave to amend.

In any event, even if Plaintiff did delay, "[a]bsent a showing of prejudice to the adverse party, the rule of great liberality in allowing amendment of pleadings will prevail.'" (*Hong Sang Market, Inc.* v. *Peng* (2018) 20 Cal.App.5th 474, 488, citation omitted.) Defendant argues that "[a]llowing amendment here would significantly expand the scope of litigation, require discovery, and require additional motion practice (including demurrer or summary judgment)." With respect to the scope of the litigation, Plaintiff's original complaint alleges that his vehicle had a defective transmission system. (¶12.) He alleges in the first cause of action that "Defendant and its representatives in this state have been unable to service or repair the Vehicle to conform to the applicable express warranties after a reasonable number of opportunities." (¶21.) This inability to service or repair Plaintiff's vehicle would certainly appear to encompass a Transmission Defect as the reason Defendant and its representatives were unable to service or repair the vehicle. As for discovery, Defendant should certainly know whether there was a defect and whether it knew of that defect at the time Plaintiff purchased his vehicle. The only additional discovery that likely may be required is on the issue of what was disclosed to Plaintiff. Defendant's attorney states that it propounded written discovery requests to Plaintiff on September 9, 2024 and Plaintiff responded on October 8, 2024. (Gruszecki decl. ¶3.) He does not state that Plaintiff has been deposed. Any additional discovery would not appear to be substantial. Finally, if Defendant believes a demurrer or summary judgment motion is appropriate as to the new cause of action, it would have been required to bring such motion even if Plaintiff had included the cause of action in his original complaint. Accordingly, the Court finds no prejudice to Defendant in permitting the amendment.

Defendant also contends that Plaintiff's proposed fraud claim is "futile." It first asserts that the cause of action lacks sufficient specificity. But even if this is correct, Plaintiff could easily amend. Thus, this is different from a case like *Foxborough* v. *Van Atta* (1994) 26 Cal.App.4th 217, cited by Defendant, where amendment was futile based on the running of the statute of limitations. (*Id.* at 230-231.)

Defendant next argues that it had no duty to disclose because it "had no fiduciary relationship with Plaintiff; the alleged defect information was publicly accessible; no active concealment occurred; and no partial misleading representations were alleged. And a duty to disclose typically exists only for serious safety-related defects, not mere performance inconveniences or economic harm."

Defendant is raising issues that cannot be resolved at this point. "A failure to disclose a fact can constitute actionable fraud or deceit in four circumstances: (1) when the defendant is the plaintiff's fiduciary (2) when the defendant has exclusive knowledge of material facts not known or reasonably accessible to the plaintiff; (3) when the defendant actively conceals a material fact from the plaintiff; and (4) when the defendant makes partial representations that are misleading because some other material fact has not been disclosed." (*Collins* v. *eMachines, Inc.* (2011) 202 Cal.App.4th 249, 255-256, citations omitted.) Plaintiff alleges that Defendant has known about the defect through sources not available to consumers, and TSBs are not on the list of those sources. (¶25.) He further alleges that the TSBs "often do not reveal the root cause of a problem, only describe a complaint and a remedy, frequently in terms that a lay person would understand, and do not disclose the severity or scope of the problem across all the vehicles to which the TSB relates." (¶27.) Thus, from these allegations it appears that Plaintiff has (or at least can amend to allege) that Defendant had exclusive knowledge of facts not known or

reasonably accessible to the plaintiff. In other words, it does not appear that the TSBs would have shown Plaintiff, had he obtained them before purchasing the vehicle (assuming he had some obligation to do so), that the vehicle had a Transmission Defect. With respect to the Transmission Defect being "safety related," Plaintiff alleges that the symptoms which manifest as a result of the Transmission Defect "are hazardous because they severely affect the driver's ability to control Corvette Vehicles during normal driving conditions and can occur while Corvette Vehicles are in operation at any time and under any driving conditions or speed, thereby exposing Corvette Vehicle drivers, their passengers, and others who share the road with them to an increased risk of accident, injury, or death." (¶22.)

Defendant has not shown that the new cause of action is "futile" as a matter of law. Its arguments are best addressed after Plaintiff amends his complaint.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 07/01/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0004855

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK:

PLAINTIFF: NATHAN CAVENEY vs. DEFENDANT: ALLBIRDS, INC.	

NATURE OF PROCEEDINGS: MOTION – COMPEL

RULING

This matter was **continued to August 5, 2025 at 1:30 pm in Courtroom A.**

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 07/01/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0005128

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER: CLERK:

PLAINTIFF: WELLS FARGO BANK, NA vs. DEFENDANT: ALIYAH A. ROSARIO	

NATURE OF PROCEEDINGS: MOTION –ENTRY OF JUDGMENT

RULING

The unopposed motion of Plaintiff Wells Fargo Bank, NA for judgment on the pleadings is **GRANTED**. (Code Civ. Proc., § 438.) The complaint states sufficient facts to constitute a cause of action against the defendant and the answer does not state facts sufficient to constitute a defense to the complaint.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 07/01/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0005395

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:	CLERK:
PLAINTIFF: NATHAN MISKIV vs. DEFENDANT: DEPARTMENT OF MOTOR VEHICLES	

NATURE OF PROCEEDINGS: WRIT OF MANDATE HEARING

RULING

Petitioner, Nathan Miskiv's ("Petitioner") Petition for Writ of Mandate or in the alternative Petition for Writ of Prohibition under Vehicle Code section 13559, Vehicle Code section 14401, and Code of Civil Procedure section 1094.5 is **DENIED**.

Background

Petitioner outlines the facts as follows:

On August 22, 2024 at about 11:30 p.m., police officers observed Petitioner's vehicle driving around 20th and Lexington Streets in San Francisco. (Administrative Record [hereinafter "AR"], p. 9.) The vehicle traveled over the broken yellow line dividing the eastbound and westbound lanes. (*Ibid.*) Officers Martinez and Acosta of the California Highway Patrol initiated a traffic stop for "unsafe lane change and lane straddling" pursuant to Vehicle Code section 21658. (AR, p. 16.) Officer Martinez contacted Petitioner and noted an odor of an alcoholic beverage. (*Ibid.*)

Petitioner performed a series of field sobriety tests at the direction of Officer Martinez. (AR, pp. 15-16.) He took a preliminary alcohol screening test which yielded two results of 0.110 and 0.111 percent. (AR, p. 15.) Officer Martinez then arrested Petitioner for driving under the influence of alcohol. (AR, p. 17.) After his arrest, Petitioner took a breath test, which yielded results of 0.10 percent. (*Ibid.*) A hearing was held before respondent over two sessions on January 10 and 22, 2025. (AR, pp. 24, 42.)

At the hearing, the following exhibits were admitted into evidence: the DS-367 form prepared by Officer Martinez (Exhibit 1); checklist and breath test strip (Exhibit 2); arrest report (Exhibit 3); footage from the police Mobile Video-Audio Recording System ("MVARS") (Exhibit 4); and petitioner's driving record (Exhibit 5). (AR, p. 49.)

Petitioner argued that Vehicle Code section 21658 prohibits "lane straddling" where there are two or more lanes marked for traffic in one direction and that traveling over a broken line separating lanes of opposite direction of travel is not a violation of section 21658. (AR, p. 55.)

Respondent issued factual findings and a decision on February 3, 2025. (AR, pp. 3-5.) Respondent found that it was irrelevant that the officer stated the detention was based on Vehicle Code section 21658, as he observed petitioner "driving over the broken dividing line on a two-way street." (AR, p. 3.) It was therefore "reasonable" for the officer to initiate a detention based on "such potentially dangerous driving." (*Ibid.*)

(Pet. Supp. Memo of P & A, pp. 1-3.)

Legal Standard

An administrative decision by the DMV revoking or suspending a person's privilege to operate a motor vehicle is subject to judicial review by petition for writ of administrative mandate. (Code Civ. Proc., § 1094.5; Veh. Code, §§ 13559, 14400; see *Vitkievicz v. Valverde* (2012) 202 Cal.App.4th 1306, 1311, *Campbell v. Zolin* (1995) 33 Cal.App.4th 489, 493.)

The superior court uses its independent judgment to review DMV hearing decisions which suspend driver's licenses. (*Dyer v. Dep't of Motor Vehicles* (2008) 163 Cal.App.4th 161, 167–68. Internal citation omitted.) Under this standard of review, the court must independently weigh the evidence and may make its own findings. (*Ibid.*) In making that determination, the court acts as a trier of fact; it has the power and responsibility to weigh the evidence and make its own determination about the credibility of witnesses. (*Barber v. Long Beach Civil Service Com.*, (1996) 45 Cal.App.4th 652, 658.) The administrative findings, however, are entitled to "a strong presumption of correctness," and "the party challenging the administrative decision bears the burden of convincing the court that the administrative findings are contrary to the weight of the evidence." (*Fukuda v. City of Angels.* (1999) 20 Cal.4th 805, 817.)

Discussion

Petitioner makes two claims in his petition, 1) that he was not lawfully detained, and therefore the license suspension must be set aside; and 2) the administrative per se hearing violated his constitutional right to due process. The Court will address each argument in turn.

Lawfulness of Detention

Vehicle stops by police are per se temporary detention and require probable cause of a traffic violation or reasonable suspicion of criminal activity to effect. (*Whren v. United States* (1996) 517 U.S. 806, 809-810.) Under the administrative per se statutes, for the DMV to validly suspend a person's driver's license, "the underlying arrest must have been lawful." (*Dyer v. Dep't of Motor Vehicles, supra,* 163 Cal.App.4th at p. 168. Internal citations omitted.) "A law enforcement officer may legally stop a motorist if the facts and circumstances known to the officer support a reasonable suspicion that the driver has violated the Vehicle Code or some other law." (*Ibid.*)

Here the initial stop was made based on an "unsafe lane change and lane straddling" in violation of Vehicle Code section 21658. (AR, p. 16.) Petitioner argues, and Respondent appears to concede, that Vehicle Code section 21658 applies when there are "two or more clearly marked lanes for traffic in one direction." Here, there was only one lane in each direction. (AR, p. 53.)

Suspicion founded on a mistake of law is not a reasonable basis required for a traffic stop because an officer is expected to know the California Vehicle Code. (See *People v. Reyes* (2011) 196 Cal.App.4th 856, 864.) However, an officer's reliance on the wrong statute does not render his actions unlawful if there is a right statute that applies to the defendant's conduct. (*People v. White* (2003) 107 Cal.App.4th 636, 641.)

In this case, the hearing officer determined:

> "Although the officer may have cited the incorrect statute of the vehicle code, it is not relevant, as it does not negate the fact that Officer Martinez observed Respondent driving over the broken dividing line on a two-way street. Based on the facts in evidence, the MVARs video footage does show the vehicle to be driven while straddling both lanes. As it is reasonable for a law enforcement officer to initiate an enforcement stop to investigate a driver after observing such potentially dangerous driving, the contact was valid."

(AR, p. 3.)

Thus, the question is whether this administrative finding is supported by the weight of the evidence. The Court finds that it was, based on case law that weaving from one lane to another justifies an investigatory stop. (*People v. Perez* (1985) 175 Cal.App.3d Supp. 8, 10–11. Internal citations omitted.) In opposition, Petitioner cites to *U.S. v. Colin* (2002) 314 F.3d 439, but this federal decision is not binding on this Court. (See e.g. *Calvo v. HSBC Bank USA, N.A.* (2011) 199 Cal.App.4th 118, 123 fn.2. ["Holdings of the federal courts are not binding or conclusive on California courts, though they may be entitled to respect and careful consideration."]) In the event, the decision is also distinguishable. In *Colin*, the court found that a car that touched - but did not cross – a solid-yellow painted line, did not justify a traffic stop. However, courts rightly differentiate between weaving within one's own lane and crossing into another. (*People v. Perez, supra,* at pp. 10-11.) Here the evidence (including the video) established that Petitioner's vehicle crossed, albeit briefly, the broken yellow line moving into the oncoming traffic lane. Accordingly, the Court finds that the weight of the evidence supports the Hearing Officer's finding that the Officer had reasonable suspicion to support the traffic enforcement stop.

Due Process

At his administrative hearing, Petitioner did not raise any arguments related to due process violations or violations based on *California DUI Lawyers Association v. Department of Motor Vehicles* (2022) 77 Cal.App.5th 517. "An issue not raised at an administrative hearing ... may not be raised in later judicial proceedings." (*Ramirez v. Superior Ct.* (2023) 88 Cal.App.5th 1313, 1335–36. Internal citations omitted. [Declining to address due process issue not raised at administrative hearing because "[t]he hearing officer's dual role as advocate and adjudicator was

known at the time of the administrative hearing, if not before.... Moreover, ... this issue and similar issues have been the subject of prior case law.]) The Court therefore declines to address Petitioner's argument that the administrative hearing process was unconstitutional.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 07/01/25 TIME: 1:30 P.M. DEPT: A CASE NO: CV0005951

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:	CLERK:
PLAINTIFF: NICK GALLERY, ET AL vs. DEFENDANT: A LAND OF DESIGN, A CALIFORNIA GENERAL CORPORATION, ET AL	

NATURE OF PROCEEDINGS: MOTION – SET ASIDE/VACATE DEFAULT

RULING

The motion to set aside default pursuant to Code of Civil Procedure section 473, subdivision (b) by defendant Petra MJ Longley ("Defendant") is **GRANTED**.

"The court may, upon any terms as may be just, relieve a party . . . from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. Application for this relief shall be accompanied by a copy of the answer or other pleading proposed to be filed therein, otherwise the application shall not be granted, and shall be made within a reasonable time, in no case exceeding six months, after the judgment, dismissal, order or proceeding was taken." (Code Civ. Proc., § 473, subd. (b).)

"Section 473 is often applied liberally where the party in default moves promptly to seek relief, and the party opposing the motion will not suffer prejudice if relief is granted. In such situations 'very slight evidence will be required to justify a court in setting aside the default.' Moreover, because the law strongly favors trial and disposition on the merits, any doubts in applying section 473 must be resolved in favor of the party seeking relief from default." (*Elston* v. *City of Turlock* (1985) 38 Cal.3d 227, 233 [superseded by statute on other grounds].) Additionally, the burden is on the opposing party to show prejudice. (*Aldrich v. San Fernando Valley Lumber Co., Inc.* (1985) 170 Cal.App.3d 725, 740.)

Defendant's declaration setting forth her attempts at timely filing a responsive pleading with the court, including the rejection of the same based upon an inaccurate filing fee with her prompt attention to correct the fee, establishes the mistake, inadvertence and/or excusable neglect in her inability to file a timely response to the complaint of plaintiffs Nick Gallery and Taryn Gallery ("Plaintiffs"), subject to the relief requested. (See *Murray & Murray v. Raissi Real Estate Development, LLC* (2015) 233 Cal.App.4th 379, 385 ["where the party in default moves

promptly to seek relief. . . very slight evidence will be required to justify a court in setting aside the default," internal citations omitted].)

Additionally, no prejudice has been asserted by Plaintiffs. "If granting the relief will not prejudice the opposing party (other than losing the advantage of the default), 'the original negligence in allowing the default to be taken *will* be excused *on a weak showing.*' " (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2024) ¶5:362 citing to *Aldrich, supra,* 170 Cal.App.3d 725, 740, emphasis added.)

The Court grants the motion to set aside the default entered against Defendant. The proposed answer attached to Defendant's declaration shall be filed by Defendant within two days of this Court's final order.

All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.

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