PROPOSED TENTATIVE

On August 19, 2024, plaintiff Oscar Tapia Cervantes and Edith Manzo (plaintiffs) filed a complaint against defendant General Motors, LLC (defendant), alleging two causes of action: 1) the first for a violation of the Song Beverly Consumer Warranty Act (Song Beverly Act); and 2) the second for a violation of the federal Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Magnuson-Moss Act). Briefly, plaintiffs allege that they purchased "a 2021 Chevrolet Silverado 1500" vehicle, with VIN 3GCPWCET9MG258794 (the date of purchase and from whom is not identified). Plaintiffs contend that the vehicle contained "serious defects and nonconformities," and based on the vehicle's express warranty issued by defendant, they are entitled to relief/rescission/compensation under the Song Beverly Act and the Magnusson-Moss Act. Defendant answered on September 30, 2024.

On May 22, 2025, plaintiffs filed the present motion for leave to file a first amended complaint Plaintiffs wish to delete the first cause of action under the Song Beverly Act, making the Magnuson-Moss Act claim the first cause of action, and to add a new second cause of action under Commercial Code section 2313 for breach of the express warranty agreement. This motion comes in the wake of *Rodriguez v. FCA US, LLC* (2024) 17 Cal.5th 189, filed on October 31, 2024, which concluded that a used motor vehicle purchased with an unexpired manufacturer's new car warranty does not qualify as a "motor vehicle sold with a manufacturer's new car warranty" under the Song Beverly Act's definition of "new motor vehicle" unless the new car warranty was issued with the sale. (*Id*. at p. 195.) The remittitur in *Rodriguez* has been filed. Because *Rodriguez* precludes the Song Beverly Act cause of action as alleged in the initial complaint, plaintiffs seek to substitute the Song Beverly Act claim with a Commercial Code section 2313 claim. Plaintiffs explain that "in light of recent legal developments that limit the scope of Song-Beverly Consumer Warranty Act, Plaintiffs seek to amend the Complaint to align with the updated legal framework."

Defendant opposes the request, advancing three arguments. First, it claims the delay in seeking this amendment was unreasonable because plaintiffs could have but did not raise the statutory Commercial Code violation at the time the initial complaint was filed. Defendant claims that plaintiffs offer no explanation, let alone a justification, for waiting until now to ask for leave to file the new claim. Second, defendant insists that it would be "unfairly prejudiced" by allowing the new cause of action. According to defendant, the addition of this claim opens an entirely new avenue of relief and would require defendant to expend additional resources, including a refocus on a new "measure of damages," a new notice requirement, and a new reliance requirement not presented in the Song Beverly Act cause of action. According to defendant, "such areas of inquiry are necessary," "[it] has not yet explored them," and to require that now would be prejudicial. Finally, defendant claims any amendment would be "futile,"

because the new cause of action is not legally viable, because plaintiffs' proposed pleading fails to state a cause of action under the Commercial Code.

The court will discuss the relevant legal standards that frame the issues presented. The court will then address the merits of the request, analyzing both parties' arguments. The court will conclude with a summary of its conclusions.

A) Legal Background

Generally, a plaintiff may amend his complaint "once without leave of the court at any time before the answer, demurrer, or motion to strike is filed, or after a demurrer or motion to strike is filed but before the demurrer or motion to strike is heard ...." (Code Civ. Proc., § 472, subd. (a) (all future statutory references are to this Code.) Thereafter, the trial court may allow further amendment "in its discretion, . . . upon any terms as may be just." (*Id.*, § 473, subd. (a)(1).) Such amendments generally may occur " 'at any time before or after commencement of trial, in the furtherance of justice' ([*id.*,] § 576) so long as the amendments do not raise new issues against which the opposing party has had no opportunity to defend." (*North Coast Village Condominium Assn. v. Phillips* (2023) 94 Cal.App.5th 866, 881; see also *Doe v. Second Street Corp*. (2024) 105 Cal.App.5th 552, 577–578 [same].) Amendments, however, are to be liberally allowed, for case law reflects a preference for the resolution of litigation and the underlying conflicts on the merits. (*Kabran v. Sharp Memorial Hospital* (2017) 2 Cal.5th 330, 342-343; see also *Magpali v. Farmers Group, Inc*. (1996) 48 Cal.App.4th 471, 487 [courts should apply a policy of great liberality in permitting amendments to the complaint at any stage of the proceedings, up to and including trial].)

That being said, leave to amend should not be granted where, in all probability, the amendments made are futile (*Forudi v. The Aerospace Corp*. (2020) 57 Cal.App.5th 992, 1000), meaning amendments are not viable as a matter of law based on the facial allegations of the proposed pleading (*Royalty Carpet Mills, Inc. v. City of Irvine* (2005) 125 Cal.App.4th 1110, 1125) or the proposed pleading omits harmful allegations present in the initial pleading. (*Falcon v. Long Beach Genetics, Inc.* (2014) 224 Cal.App.4th 1263, 1289; *Oakland Raiders v. National Football League* (2005) 131 Cal.App.4th 621, 652 [court not required to grant leave to amend where additional claims were without merit as a matter of law].) Additionally, the liberal policy does not prevail when there is inexcusable delay and probable prejudice to the adverse party. (*Magpoli, supra*, 48 Cal.App.4th at p. 487.) Case authority does indicate that the court has the discretion to deny leave to amend based on unreasonable delay ***alone*** under the appropriate circumstances. (See, e.g., *Doe v. Los Angeles County Dept. of Children & Family Services* (2019) 37 Cal.App.5th 675, 689; *Huff v. Wilkins* (2006) 138 Cal.App.4th 732, 765 ["even if a good amendment is proposed in proper form, unwarranted delay in presenting it may—of itself—be a valid reason for denial"].) Prejudice is shown when the amendment opens up an entirely new field of inquiry without an adequate explanation as to why such a major change in

point of attack had not been made long before trial. Other factors in the prejudice inquiry include the timing of the request (e.g., was it on the eve of trial?), the need for delay of trial (resulting in loss of critical evidence or the added costs of preparation), the impact on the adverse party in preparing for trial through adequate discovery, and whether there is a substantial change in the tenor and complexity of the lawsuit. (*Solit v. Tokai Bank* (1999) 68 Cal.App.4th 1435; 1448; *Magpoli, supra*, at pp. 487-488; see also *Thompson Pacific Construction, Inc. v. City of Sunnyvale* (2007) 155 Cal.App.4th 525, 544-545 [when there is no prejudice to the adverse party, it may be an abuse of discretion to deny leave to amend]; *Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, 530 [if the motion to amend is not made with unwarranted delay, and there is no prejudice, it is error to refuse permission to amend where the refusal also results in a party being deprived of the right to assert a meritorious cause of action]; see *Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 564-565 [even if there has been a delay in seeking leave to amend, it is an abuse of discretion to deny leave if the opposing party has not been prejudiced].)

B) Merits

Initially, the court finds that while plaintiffs delayed in submitting the newly alleged Commercial Code violation, the court is unwilling to find that there was an ***unreasonable*** delay in so doing. More specifically, the court is not willing to say that it was manifestly inappropriate for plaintiffs to wait for the California Supreme Court's decision in *Rodriguez* before deciding to advance a claim under the Commercial Code.

More significantly, the cases cited by defendant to support its claim of unreasonable delay as the exclusive basis to deny leave to amend seem inapposite. (See, e.g., *Champlin/GEI Wind Holdings, LLC v. Avery* (2023) 92 Cal.App.5th 218, 294 [at the hearing on the motion for summary judgment, plaintiff orally moved to amend the cross-complaint to conform to a new theory; the trial court did not abuse its discretion because no written motion was filed, the delay was unexplained, and was in any event futile,]; *Melican v. Regents of University of California* (2007) 151 Cal.App.4th 168, 175 [at the summary judgment hearing, plaintiff orally moved to amend their complaint to add a new cause of action; it would be "patently unfair to allow plaintiff to defeat [defendant's] summary judgment motion by allowing them to present a 'moving target' unbounded by the pleadings"]; *Falcon, supra*, 224 Cal.App.4th 1263, 1280 [Falcon made oral motion to amend at summary judgment hearing; when plaintiff seeks leave to amend his complaint only after defendant has mounted a summary judgment motion directed at the allegations of the unamended complaint, even though plaintiff has been aware of facts upon which the amendment is based, it would be patently unfair to allow plaintiff to amend]; *Green v. Rancho Santa Margarita Mortg. Co*. (1994) 28 Cal.App.4th 686, 692-693 [defendant waited until after the first trial to advance a new explanation as to why it did not offer the Greens a loan; defendant offered no excuse for its delay in seeking to amend, and in fact, it appeared to be a conscious strategic decision but there was no excuse in reality]; *Fisher v. Larsen* (1982) 138 Cal.App.3d 627, 649 [where plaintiff knew of the motions for summary judgment as early as January 6, 1981, took no action to amend for five months, and offered no explanation for the

unreasonable delay, trial court did not abuse discretion in denying leave to amend].) In each one of these cases plaintiff either waited until summary judgment to make an oral amendment or waited too long to amend without any explanation.

Neither situation is present here. Notably, defendant has not filed a summary judgment motion. Further, unlike *Green* and *Fisher*, it was not per se unreasonable for plaintiffs to wait to add the new cause of action until after the fate of the Song Beverly Act cause of action had been determined by our high court. This court is therefore not inclined to deny the request for leave to amend based exclusively on unreasonable delay under the unique circumstances. The court will therefore look to other factors, such as prejudice (as suffered by defendant), and whether any amendment is actually "futile" to determine the propriety of granting leave to amend. (See, e.g., *Thompson Pacific Construction, Inc., supra,* 155 Cal.App.4th at pp. 544-545 [when there is no prejudice to the adverse party, it may be an abuse of discretion to deny leave to amend].) This seems particularly appropriate as courts have always considered it "fair" to allow plaintiff to litigate all related causes of actions when seemingly permissible. (See, e.g., *Morgan v. Superior Court* (1959) 172 Cal.App.2d 527, 530 [if no prejudice, it is error to refuse permission to amend where there the refusal also results in party being deprived of the right to assert a meritorious cause of action].)

As noted above, prejudice to the opposing party exists where the amendment would require the trial court to delay trial, resulting in the loss of critical evidence or the added costs of preparation. (*Magpali, supra,* 48 Cal.App.4th at pp. 486-488; see also *Solit, supra,* 68 Cal.App.4th at p. 1448.) That does not seem to be the case here. No trial date has been set or scheduled, and we are far removed from the 5 years plaintiffs have to prosecute this matter. Additionally, the parties in their respective Case Management Statements have recently indicated there was substantial discovery to be had. Defendant, for example, in its most recent Case Management Statement, indicated that discovery will be completed by November 2025. This time frame can reasonably accommodate the new Commercial Code claim.

Further, the court is not persuaded by defendant's arguments that the addition of the Commercial Code violation cause of action would fundamentally change the tenor and complexity of the lawsuit, necessitating additional resources, and ultimately delaying trial and final resolution of the case. (See, e.g., *Magpoli, supra.*) Defendant spends much ink comparing the elements of the Song Beverly Act violation to the elements of a Commercial Code violation, arguing their disparate and distinct nature, in an attempt to frame the prejudice they may suffer. But the real focus of the prejudice analysis seems a comparison of the Magnuson-Moss Act cause of action, which has been pleaded from the beginning of the lawsuit, and its relationship with the Commercial Code violation cause of action, now pleaded for the first time in the proposed FAC. Their relationship appears symbiotic. As observed in *Orichian v. BMW of North America, LLC* (2014) 226 Cal.App.4th 1322, Magnuson-Moss "governs warranties for consumer products distributed in interstate commerce," and calls for the "application of state written and

implied warranty law, not the creation of additional federal law (except in situations not relevant here). (*Id*. at p. 1330-1331.) More to the point, Magnuson-Moss does not supplant California, but "supplements California law of warranty . . . ." (*Ibid.*) More forcefully, plaintiff must be able to state a warranty claim under state law to necessarily state a claim under Magnusson-Moss, *which can include a claim based on the California Commercial Code*. (*Dagher v. Ford Motor Co*. (2015) 238 Cal.App.4th 905, 928 [the parties agree that some express warranty claims are viable in this action whether under the Commercial Code or Magnuson-Moss]; see also "Directions for Use" in CACI 1230 ["if breach of warranty under the Magnuson-Moss Warranty Act [] is alleged, give the first option for element 1" discussing the Commercial Code violation]; *Daughtery v. American Honda Motor Co., Inc*. (2006) 144 Cal.App.4th 824, 833; *Birdsong v. Apple, Inc.* (9th Cir. 2009) 590 F.3d 955, 958, fn. 2 [because plaintiff must claim a violation of state warranty law to advance Magnuson-Moss violation, and because plaintiff have failed to state a claim for breach of express warranty, the claims were properly dismissed]; *Clemens v. DaimlerChyrsler Corp*. (9th Cir. 2008) 534 F.3d 1017, 1022, fn. 3 ["Clemens alleges a violation of the Act only insofar as DaimlerChrysler may have breached its warranties under state law; there is no allegation that DaimlerChrysler otherwise failed to comply with the Magnusson–Moss Act. Therefore, the federal claims hinge on the state law warranty claims."]; *Kargar v. BMW of North America, LLC* (C.D. Cal., Aug. 6, 2024, No. 2:22-CV-03047-SPG-KS) 2024 WL 3915218, at *3 [plaintiff's Magnuson-Moss Act claim is properly dismissed for failure to allege a state warranty claim]; *Ng v. Nissan North America, Inc.* (N.D. Cal., Dec. 27, 2023, No. 23-CV-00875-AMO) 2023 WL 9150275, at *3 ["As Plaintiffs have failed to state a claim under the SBA, their MMWA claim cannot proceed on that basis"]; *Lawson v. BMW of North America LLC* (N.D. Cal., Aug. 9, 2023, No. 21-CV-02063-BLF) 2023 WL 5111990, at *2 ["The parties thus agree that Plaintiff cannot bring a standalone [Magnuson-Moss Act] claim against CarMax without also bringing a state law warranty claim"].) Defendant cannot be prejudiced to the extent the Magnuson-Moss Act claim itself is predicated on a Commercial Code violation (based on a state warranty claim). The tone and the tenor of the lawsuit simply has not changed when examined from this perspective.[1]

Defendant's last contention – that the addition of the Commercial Code violation cause of action is "futile" – requires a more detailed analysis. Undoubtedly the court has discretion to deny leave to amend when the amendment would be futile, i.e., where the amendment cannot state a cause of action as a matter of law. (See, e.g., *Singh v. Lipworth* (2014) 227 Cal.App.4th 813, 828 [defendant amendment was predicated on relitigating the final judgment and post-judgment orders based on intrinsic, rather than extrinsic fraud, making the claim legally untenable]; *Foxborough v. Van Atta* (1994) 26 Cal.App.4th 217, 230 [because the cause of action

[1] The following facts bolster this determination. The lawsuit is 10 months old; no trial date has been set; and the case is not close to abutting against 5-year deadline to prosecute. Defendant will have sufficient time – and opportunity – to explore the nature of the elements required for the Commercial Code violations in conjunction with the already-stated Magnuson-Moss Act claim.

in the amended pleading did not relate back to the filing of the original complaint, as it was based on a different incident, it was barred by one-year statute of limitations per Code Civ. Proc. § 340.6 as a matter of law]; see also *Heckendorn v. City of San Marino* (1986) 42 Cal.3d 481, 489 [leave to amend denied where there is no reasonable possibility that an amendment could cure the complaint's defect].) Short of these types of errors, however, a trial court should not consider the validity of the proposed amended pleading in deciding whether to grant leave to amend. Grounds for demurrer or motions to strike would be premature; after leave to amend is granted, the opposing party will have the opportunity to attack the validity of the amended pleading. (*Atkinson v. Elk Corp*. (2003) 109 Cal.App.4th 739, 760 ["we believe that the better course of action would have been to allow plaintiff to amend the complaint and then let the parties test its legal sufficiency in other appropriate proceedings"].) That is, where the defect in any proposed amendment can potentially be cured by a future amendment, the preferrable practice is to permit the amendment and allow the parties to test its legal sufficiency by demurrer or other appropriate motion. (*California Casualty Gen, Ins. Co. v. Superior Court* (1985) 173 Cal.App.3d 274, 281, disapproved on other grounds in *Kransco v. American Empire Surplus Lines Ins. Co*. (2000) 23 Cal.4th 390, 407, fn. 11 [such a proceeding may develop the factual content of the cause of action or defense and to refine the language in which it is pleaded].)

Defendant claims that plaintiff cannot state a viable claim under the Commercial Code, and thus it would be "futile" to allow the amendment. The court is not persuaded, largely for the same reasons it articulated in rejecting defendant's prejudice claim. As noted above, "Magnuson-Moss 'calls for the application of state written and implied warranty law, not the creation of additional federal law,' except in specific instances which it expressly prescribes a regulating rule [Citation.]" Further, as noted above, plaintiff cannot advance a Magnuson-Moss Act claim without alleging a "warranty claim under state law . . . ." (*Daughtery, supra,* 144 Cal.App.4th at p. 833.) And the *Dagher* court allowed a Magnuson-Moss Act claim to survive based on the viability of a Commercial Code violation (without the need to plead a Song Beverly Act violation). (*Id.* at p. 928.) Plaintiffs should therefore be afforded an opportunity to state viable Magnuson-Moss *and* Commercial Code violations, given their relatedness, even if a Song Beverly Act violation cannot be stated (as appears the case post-*Rodriguez*). Accordingly, the court will not sanction the use of a motion for leave to file a first amended complaint as the vehicle to challenge the viability of either or both causes of action, for their existence is not legally "futile" but only potentially insufficient under California's factual pleading requirements, which arguably can be cured with leave to amend. The appropriate way to challenge these causes of action is therefore through a demurrer and/or a motion to strike (*after* the first amended complaint is filed).

Summary:

For these reasons, the court grants plaintiff's motion for leave to file a first amended complaint. Plaintiff's proposed first amended pleading, attached to its motion for leave to file the first amended pleading, is deemed filed as of today. Defendant has 30 days from today's hearing date to submit a responsive pleading.

The parties are directed to appear at the hearing either in person of via Zoom.