TENTATIVE RULINGS

DEPT C11

Judge Andre De La Cruz

Court Reporters: Official court reporters (*i.e.*, court reporters employed by the Court) are not provided for law and motion matters in this Department. If a party desires a record of a law and motion proceeding, it will be the party's responsibility to provide a court reporter. Parties must comply with the Court's policy on the use of privately retained court reporters, which can be found at:

- Civil Court Reporter Pooling; and
- Court Reporter Interpreter Services.

Tentative rulings: The Court endeavors to post tentative rulings on the Court's website no later than Friday afternoon immediately preceding Monday's hearing. However, ongoing proceedings such as jury trials may prevent posting by that time. Moreover, tentative rulings may not be posted in every case.

Please do not call the department for tentative rulings if tentative rulings have not been posted.

The Court *will not* entertain a request to continue a hearing or the filing of further documents once a tentative ruling has been posted. Further, a motion may not be taken off calendar once a tentative ruling has been posted unless the entire action has been dismissed.

Submitting on tentative rulings: If all counsel intend to submit on the tentative ruling and do not desire oral argument, please advise the Courtroom Clerk by sending an email to: ctownsend@occourts.org and copied to eveloz@occourts.org. Please do not call the Department unless all parties submit on the tentative ruling. If all sides submit on the tentative ruling and so advise the Court, the tentative ruling shall become the Court's final ruling and the prevailing party shall give notice of the ruling and prepare an order for the Court's signature if appropriate under Cal. R. Ct. 3.1312.

When a proposed order is required, even if motion is unopposed, the parties are ordered to submit it in two formats: (1) one draft in MS Word (*.doc or *.docx); and (2) one draft in PDF format with all attachments/exhibits attached thereto in accordance with Cal. R. Ct. 3.1312(c)(1) and (2).

Non-appearances: If nobody appears for a hearing and the Court has not been notified that all parties submit on the tentative ruling, the Court shall determine whether the matter is taken off calendar or the tentative ruling becomes the final ruling. The Court also might make a different order at the hearing. *See Lewis v. Fletcher Jones Motor Cars, Inc.*, 205 Cal. App. 4th 436, 442 (2012), fn. 1.

Appearances: Department C11 conducts non-evidentiary proceedings, such as law and motion, remotely, by Zoom videoconference pursuant to Code of Civil Procedure § 367.75 and Orange County Local Rule (OCLR) 375. All counsel and self-represented parties appearing for such hearings must check-in online through the Court's website at https://www.occourts.org/media-relations/civil.html prior to the commencement of their hearing. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Participants will initially be directed to a virtual waiting room pending the start of their specific video hearing.

Check-in instructions and instructional video are available at https://www.occourts.org/media-relations/aci.html. The Court's "Appearance Procedures and Information—Civil Unlimited and Complex" ("Appearance Procedures") and "Guidelines for Remote Appearances" ("Guidelines") will be strictly enforced. It is your responsibility to ensure that your *audio **and** video* are functioning properly prior to your hearing.

Parties preferring to appear in-person for law and motion hearings may do so pursuant to Code of Civil Procedure § 367.75 and OCLR 375.

Public Access: The courtroom remains open for all evidentiary and non-evidentiary proceedings.

No filming, broadcasting, photography, or electronic recording is permitted of the video session pursuant to California Rules of Court, rule 1.150 and OCLR 180.

TENTATIVE RULINGS
April 22, 2024

#	Case Name	Tentative
1	Alvarez vs. General Motors LLC 2022-01257503	Motion for Summary Judgment and/or Adjudication filed by General Motors LLC on 11/22/23 **Notice of Settlement filed – Off Calendar**
2	Cerillo vs. County of Orange 2023-01358744	1. Motion for an Order Nunc Pro Tunc filed by Carla Cerillo on 11/22/23 2. Orange to Show Cause re: Dismissal 3. Case Management Conference Plaintiff, CARLA CERILLO ("Plaintiff"), will move the Court for an Order Nunc Pro Tunc to have the initial Complaint filed in this manner be deemed FILED on October 10, 2023. Motion is **GRANTED** pursuant to *Rojas v. Cutsforth*, 67 Cal. App. 4th 774 (1998). The Court finds the defects in naming the parties on the Summons, Complaint, and Civil Case Cover Sheet were insubstantial. Clerk ORDERED to change nunc pro tunc date of Complaint's filing to October 10,2023. OSC re: Dismissal is ordered DISCHARGED. Case Management Conference to be continued to date agreeable by the parties at hearing.
3	Davidson vs. Nexus RVs LLC 2023-01333054	Motion to Stay Action filed by Nexus RVS LLC on 12/14/23 Defendant, Nexus RVS LLC seek an order staying this action pursuant to Code of Civil Procedure § 410.30.

Said section states:
(a) When a court upon motion of a party or its own motion finds that in the *interest of substantial justice* an action should be heard in a forum outside this state, the court shall stay or dismiss the action in whole or in part on any conditions that may be just.
(b) The provisions of Section 418.10 do not apply to a motion to stay or dismiss the action by a defendant who has made a general appearance.

Code Civ. Proc., § 410.30 (emphasis added).

Defendant argues that on April 29, 2021 Plaintiffs signed a contract for the purchase of a new 2021 Nexus RV Rebel motorhome. Plaintiffs acknowledged receiving, reviewing, and agreeing to the terms of RV's Limited Warranty by signing it. It included a jurisdiction and applicable law provision, stating, "THE EXSLUSIVE JURISDICTION FOR *ANY CLAIMS WHATSOEVER SHALL BE IN THE COURTS OF ELKHART, INDIANA…*"

See Nexus RV's Limited Warranty, Ex. C to the Decl. of Donati (emphasis added).

By this Motion, Defendant seeks to enforce the jurisdiction provision and stay this action while it proceeds in Indiana.

The parties' knowing and voluntary agreement to litigate their dispute in a particular state or country (with which they have *reasonable* contacts) is *normally* given effect. *See Berg v. MTC Electronics Technologies Co., Ltd.,* 61 Cal. App. 4th 349, 358-359 (1998).

That is, if a valid forum-selection contract requires the dispute to be litigated *in a different state or country, and the choice is reasonable*, a California court normally will stay or dismiss a local action without analyzing the

		"convenience" factors. *Furda v. Sup.Ct. (Serological Biopsy),* 161 Cal. App. 3d 418, 426 (1984) (holding that it is an abuse of discretion to deny stay). If other parties are joined in the action (persons who were not parties to the forum-selection contract), the action may be severed or the stay lifted as to them. *Cal-State Business Products & Systems, Inc. v. Ricoh,* 12 Cal. App. 4th 1666, 1674 (1993). However**,** even a voluntary forum-selection agreement may be unenforceable if it would violate a strong California public policy or result in evasion of statutes enacted for the protection of California citizens. The rationale being, only California courts can be relied upon to interpret and enforce California public policy. *Hall v. Sup.Ct. (Imperial Petroleum, Inc.),* 150 Cal. App. 3d 411, 416-418 (1983); *Drulias v. 1st Century Bancshares, Inc.,* 30 Cal. App. 5th 696, 703 (2018). In an action under the Consumers Legal Remedies Act (Civ. Code § 1750 *et seq*.), the party relying on a forum-selection clause must prove that enforcement of the clause would not diminish substantive rights of California consumers under the Act. *America Online, Inc. v. Sup.Ct. (Mendoza),* 90 Cal. App. 4th 1, 9-10 (2001) (holding that forum-selection clause unenforceable because designated forum did not allow class actions in consumer protection cases). In this instance, while Defendant acknowledges this is a CLRA case, it suggests that Plaintiff has the burden of demonstrating that enforcement of the forum selection clause would be unreasonable. *See* Motion at 5. However, pursuant to above, Defendant has the burden to prove that enforcement of the clause would not diminish substantive rights of California consumers under the Act. Indeed, pursuant to the case cited by Defendant itself:

"[A] defendant seeking to enforce a mandatory forum selection clause bears the burden to show enforcement will not in any way diminish the plaintiff's unwaivable statutory rights. By definition, this showing requires the defendant to compare the plaintiff's rights if the clause is not enforced and the plaintiff's rights if the clause is enforced. Indeed, a defendant can meet its burden only by showing the foreign forum provides the same or greater rights than California, or the foreign forum will apply California law on the claims at issue." *Verdugo v. Alliantgroup, L.P.,* 237 Cal. App.4th 141, 157 (2015).

To that end, Defendant argues that Plaintiff's unwaivable statutory rights under CLRA will be preserved by entering into a stipulation that California law applies to those claims in the Indiana Court.

Defendant cites to *Verdugo* for this proposition, which mentioned, "Alliantgroup could have eliminated any uncertainty on which law a Texas court would apply by stipulating to have a Texas court apply California law in deciding Verdugo's claims, but Alliantgroup did not do so." *Verdugo v. Alliantgroup, L.P.,* 237 Cal. App. 4th 141, 158 (2015).

However, *Verdugo* did not involve the CLRA.

A case that did involve the CLRA is *America Online, Inc. v. Superior Court,* 90 Cal. App.4th 1, 15 (2001). In that action, the Court of Appeal denied AOL's Writ of the trial Court's denial of the motion to stay, holding:

"Therefore, by parity of reasoning, enforcement of AOL's forum selection clause, which is also accompanied by a choice of law provision favoring Virginia, would necessitate a waiver of the statutory remedies of the CLRA, in violation of that law's

		antiwaiver provision (Civ. Code, § 1751) and California public policy. For this reason alone, we affirm the trial court's ruling." *America Online, Inc. v. Superior Court*, 90 Cal. App. 4th 1, 15 (2001). Here, too, enforcement of Defendant Nexus RVS LLC's forum selection clause, which is also accompanied by a choice of law provision for Indiana, would necessitate a waiver of the statutory remedies of the CLRA, in violation of that law's antiwaiver provision. Civ. Code § 1751. Any waiver by a consumer of the provisions of this title is contrary to public policy and shall be unenforceable and void. Furthermore, Defendant's suggestion that a stipulation will preserve Plaintiff's rights seems speculative. It does not know whether an Indiana Court will enforce the stipulation, especially when there is an Indiana choice of law provision in the contract. Moreover, it seems a stipulation here would work against remedying a public wrong. Plaintiffs purchased the vehicle in Orange County, and Plaintiffs are from Orange County. The authorized agent of moving party, Dennis Dillon RV, sold the vehicle and apparently serviced it in Orange County. Forcing a California resident to litigate an action in Indiana when the Plaintiff and at least one defendant resides in California; where the transaction occurred, and the service may be contrary to Code of Civil Procedure § 430.10. Further yet, a contract which makes it more difficult for a consumer to sue a manufacturer goes against the purpose of the CLRA. For these reasons, the Court DENIES the motion to stay action.

		Plaintiffs to give notice.
4	O'Kane vs. Radovich 2022-01276312	Motion to Appear Pro Hac Vice filed by Kevin O'Kane on 12/22/23 The unopposed Application of attorney Brad A. Funari to appear *pro hac vice* for Plaintiff Kevin Kane is **CONTINUED** TO May 20, 2024 at 9:00 a.m. The verified application fails to state: (1) the contact information of the associated attorney; and (2) whether counsel seeking to appear *pro hac vice* is regularly engaged in substantial business, professional, or other activities in the State of California. *See* Cal. Rules of Court, rule 9.40(a)(3) and (d)(6). Counsel shall file and serve a supplemental declaration no later than 16 court days prior to the continued hearing. As stated in rule 9.40, the supplemental declaration shall be served by mail to the State Bar in the San Francisco office. Cal. Rules of Court, rule 9.40(c). Moving attorney to give notice.
5	Panusis vs. Ruby Jack Enterprise, LLC 2020-01165780	1. Motion for Summary Judgment and/or Adjudication filed by Southern California Edison Company on 2/7/24 2. Motion to Compel Further Responses to Special Interrogatories filed by Ladybeth Panusis on 1/29/24 **Off Calendar**
6	Ramakrishnan vs. Chen 2023-01338944	1. Demurrer to First Amended Complaint 2. Motion to Strike Portions of Complaint filed by Regents of University of California on 12/14/23 3. Demurrer to Amended Complaint 4. Motion to Strike Portions of Complaint filed by Allen Chen, Jeremy Harris, Jeffrey Kuo, Munjal

Acharya, Vipan K. Parihar, Linda Chan, Deena Mcrae, Jonathan Moayyad, Fairsal Ahmed, Michael Stamos on 12/14/23

Defendant The Regents of the University of California's ("The Regents") demurrer is **OVERRULED** as to the first and second causes of action and **SUSTAINED** with 15 days leave to amend as to the third through fifth causes of action.

The Regents demur to all five causes of action alleged in Plaintiff's First Amended Complaint ("FAC").

I. First Cause of Action for Violation of California Whistleblower Protection Act (Govt. Code §§ 8547, *et seq*.)

As described in *Levi v. Regents of University of California:*

The [California Whistleblower Protection Act ("CWPA")] "prohibits retaliation against state employees who 'report waste, fraud, abuse of authority, violation of law, or threat to public health [citation]." *Miklosy v. Regents of University of California* (2008) 44 Cal. 4th 876, 882. A protected disclosure under the CWPA is "a good faith communication, including a communication based on, or when carrying out, job duties, that discloses or demonstrates an intention to disclose information that may evidence: (1) an improper governmental activity; or (2) a condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition." Gov. Code, § 8547.2(e).

Under Government Code section 8547.2(c), "'[i]mproper governmental activity' means an activity by a state agency or by an employee that is undertaken

		in the performance of the employee's duties, undertaken inside a state office, or, if undertaken outside a state office by the employee, directly relates to state government, whether or not that activity is within the scope of his or her employment, and that: (1) is in violation of any state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty; (2) is in violation of an Executive order of the Governor, a California Rule of Court, or any policy or procedure mandated by the State Administrative Manual or State Contracting Manual; or (3) is economically wasteful, involves gross misconduct, incompetency, or inefficiency." *Levi v. Regents of Univ. of California* (2017) 15 Cal. App. 5th 892, 902. The *Levi* court further explained: The University of California "'is a statewide administrative agency with constitutionally derived powers. Its employees are public employees. The University is administered by the Regents. Regents have rulemaking and policymaking power in regard to the University; their policies and procedures have the force and effect of statute.'" *Lachtman, supra,* 158 Cal. App. 4th at 198 (internal citations omitted); *see also Kim, supra,* 80 Cal. App. 4th at 164; *City of Santa Monica, supra,* 77 Cal. App. 3d at 135 ("[T]he power of the Regents to operate, control, and administer the University is virtually exclusive"' and "policies established by the Regents as matters of internal regulation may enjoy a status equivalent to that of state statutes."). *Id.* at 903.

		The *Levi* court concluded that the plaintiff's disclosures were sufficient to support her CWPA claims "to the extent she complained about or participated in complaints that serve the public's interest and went beyond mere administrative or personnel matters." *Id*. Here, Plaintiff was a physician resident in the UCI Radiation Oncology Residency Program ("Program"). Plaintiff alleges that he made a protected disclosure when the Accreditation Council for Graduate Medical Education ("ACGME") conducted a site visit to assess the Program's progress on various deficiencies that the Program had been cited for. FAC ¶¶ 46, 51, 53. During the ACGME site visit, Plaintiff "gave honest critical feedback about the Program, specifically the lack of residents' inclusion in treatment planning." FAC ¶ 53. Prior to the site visit, Plaintiff had emailed the department with the same concern, and had also regularly voiced concern at meetings with Program leadership. *Id.* Plaintiff also alleges he filed a complaint on August 26, 2019 with the ACGME in which he stated that the Program failed to perform mid-year and end of year performance evaluations and did not give him regular access to evaluations. FAC ¶ 105. Plaintiff alleges that the complaint also addressed the lack of faculty supervision. *Id.* Finally, Plaintiff alleges that on January 24, 2020, he filed an Incident Report regarding issues with his supervisor, Dr. Harris, providing Plaintiff with ambiguous instructions regarding medication and radiation prescriptions, resulting, at least one time, in significant delay in the care for a patient. FAC ¶¶ 133-136. The Regents contend the above communications were nothing more than internal personnel or

administrative disclosures that are not actionable under *Levi.* In *Levi*, the court found the plaintiff's complaints that the chair of her program "created a stressful work environment by yelling, undermining employees' confidence through statements that they were performing poorly, and saying hurtful things" were not protected disclosures under the CWPA because they were akin to internal personnel or administrative disclosures. *Levi* at 904.

Here, Plaintiff's alleged disclosures (aside from the complaint about untimely performance evaluations) go beyond internal personnel or administrative disclosures and significantly implicate the health or safety of the public. As pled, concerns about compliance with ACGME requirements designed to effectively train residents who are treating members of the public, as well as concerns about ambiguous instructions that affect patient care may be actionable disclosures.

The Regents additionally contend that Plaintiff failed to plead that he exhausted his administrative remedies as required by the CWPA because he did not allege that he filed a complaint *under penalty of perjury.* However, the FAC alleges that Plaintiff filed a whistleblower retaliation complaint with the UCI Whistleblower Office and that, "[a]s part of this complaint, he signed a sworn statement that the contents of the complaint are true satisfying the requirement of Gov Code sec. 8547.10." This allegation is sufficient.

Accordingly, the demurrer is **OVERRULED** as to the first cause of action.

II. Second Cause of Action for Violation of Health and Safety Code § 1278.5

		Health and Safety Code § 1278.5 prohibits retaliation against any employee of a health facility who complains to an employer or government agency about unsafe patient care. *Scheer v. Regents of the University of California* (2022) 76 Cal. App. 5th 904, 916. Section 1278.5(a) provides: The Legislature finds and declares that it is the public policy of the State of California to encourage patients, nurses, members of the medical staff, and other health care workers to notify government entities of suspected unsafe patient care and conditions. The Legislature encourages this reporting in order to protect patients and in order to assist those accreditation and government entities charged with ensuring that health care is safe. The Legislature finds and declares that whistleblower protections apply primarily to issues relating to the care, services, and conditions of a facility and are not intended to conflict with existing provisions in state and federal law relating to employee and employer relations. To support his cause of action under § 1287.5, Plaintiff relies upon the same complaints alleged in support of his CWPA claim. The Court finds that, at least at this stage, Plaintiff's allegation that he complained about the ambiguous instructions given by Dr. Harris which resulted, at least one time, in significant delay in the care for a patient, is sufficient to withstand demurrer. These allegations involve "suspected unsafe patient care and conditions" within the meaning of the statute. *See, generally*, *Armin v. Riverside Cmty. Hosp.* (2016) 5 Cal. App. 5th 810, 819, as modified (Dec. 15, 2016) (allegation that brain surgeons would sometimes delay treatment or transfer patients for their own convenience sufficient to support a claim under H&S Code § 1287.5).

The demurrer is **OVERRULED** as to the second cause of action.

III. Third Cause of Action for Violation of Labor Code § 1102.5

Labor Code § 1102.5 forbids retaliation if an employee disclosed, or the employer believes he/she disclosed or may disclose, information to certain government agencies, to those with authority over the employee or authority to investigate, discover, or correct the employer's "violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties." Lab. Code § 1102.5(b).

The Regents contend that Plaintiff does not allege that he had reasonable cause to believe that the information he disclosed in his complaints constituted a violation of or noncompliance with a law or regulation. In opposition, Plaintiff contends he had reasonable cause to believe the Program was misrepresenting its compliance to ACGME requirements in order to acquire federal and state funds reserved for the training of medical residents. In support of this contention, Plaintiff cites to Paragraphs 25, 27, 46, 47, 105, 114, 115 and 153 of the FAC. None of the cited paragraphs supports Plaintiff's argument. The FAC alleges that during the ACGME site visit, Plaintiff "gave honest critical feedback about the Program, specifically the lack of residents' inclusion in treatment planning." FAC ¶ 53. There is nothing alleged in the FAC to indicate that Plaintiff had reasonable cause to

believe that this was a violation of any federal or state law or regulation.

The demurrer is **SUSTAINED** with 15 days leave to amend as to the third cause of action.

IV. Fourth Cause of Action for Violation of California False Claims Act (Govt. Code § 12653)

California's False Claims Act (Gov. Code §§ 12650 *et seq*.) establishes a cause of action for damages and penalties against persons who submit false claims for money, property or services to the State of California or political subdivisions of the state. An action may be brought by the Attorney General, the prosecuting authority of a political subdivision or, in specified cases, an individual. Gov. Code §§ 12651, 12652. Government Code § 12653 broadly prohibits retaliation against any employee, contractor or agent based on "lawful acts" done by that individual in furtherance of an action under the CFCA or efforts to stop conduct that violates the CFCA. Gov. Code § 12653(a).

Here, the FAC does not allege that Plaintiff engaged in any conduct in furtherance of an effort to stop any of the acts enumerated in Government Code § 12651. Plaintiff's argument in his opposition that he was attempting to stop the Program from receiving funds when it was not adhering to the accreditation guidelines is unavailing. As alleged elsewhere in the FAC, the ACGME had already cited the Program and was actively working with it to cure the cited deficiencies. Since the accreditation agency was apparently fully aware of the situation, it would therefore appear that the Regents could not have made a "false claim" for funds.

The demurrer is **SUSTAINED** with 15 days leave to amend as to the fourth cause of action.

V. Fifth Cause of Action for Violation of Tom Bane Civil Rights Act (Civ. Code § 52.1)

To allege a violation of Civil Code § 52.1, "[t]he plaintiff must show 'the defendant interfered with or attempted to interfere with the plaintiff's legal right by threatening or committing violent acts.'" *Julian v. Mission Community Hospital* (2017) 11 Cal. App.5th 360, 395. Further, "[s]peech alone is not sufficient to support an action brought pursuant to subdivision (b) or (c), except upon a showing that the speech itself threatens violence against a specific person or group of persons; and the person or group of persons against whom the threat is directed reasonably fears that, because of the speech, violence will be committed against them or their property and that the person threatening violence had the apparent ability to carry out the threat." Civ. Code § 52.1(k).

Here, Plaintiff fails to allege that anyone threatened or committed violent acts against him. Plaintiff contends that a Letter of Probation was issued due to a false claim that Plaintiff was exhibiting erratic behavior was used to alert UCI Campus Police about Plaintiff. FAC ¶ 120-124. However, merely alerting Campus Police does not constitute violence or a threat of violence.

Since Plaintiff has not sufficiently pled a claim under the Tom Bane Act, the Court does not consider whether the Regents would be immune to a hypothetical claim if properly pled.

The demurrer is **SUSTAINED** with 15 days leave to amend as to the fifth cause of action.

		The Court declines to rule on The Regents' request for judicial notice as it is immaterial to the disposition of this motion. Moving party to give notice. Further, Defendant The Regents of the University of California's ("The Regents") motion to strike is **GRANTED** with 15 days *leave to amend* as to the subject allegations pled in connection with the first cause of action and *without leave to amend* as to the subject allegations pled in connection with the fourth and fifth causes of action. The Regents move to strike punitive damages allegations that were pled in connection with Plaintiff's first, fourth and fifth causes of action for Violations of the CWPA, False Claims Act and Tom Bane Civil Rights Act. As The Regents correctly contend, Plaintiff has not pled *any* facts supporting the conclusory allegation that the Regents engaged in conduct that constitutes malice in connection with his claim for Violation of the CWPA. As to punitive damages asserted pursuant to Civil Code § 3294 in connection with Plaintiff's causes of action for violations of the False Claims Act and Tom Bane Civil Rights Act, the Regents are immune pursuant to Govt Code §§ 811.2 and 818. Moving Party to give notice. Further, Defendants Allen Chen, Jeremy Harris, Faisal Ahmed, Jeffrey Kuo, Deena McRae, Vipan Kumar Parihar, Munjal Acharya, Jonathan Moayyad, Michael Stamos and Linda Chan's (collectively, "Individual Defendants") demurrer is **SUSTAINED** with 15 days

leave to amend as to the first and fifth causes of action and **SUSTAINED** ***without leave to amend*** as to the second through fourth causes of action.

The Individual Defendants demur to all five causes of action alleged in Plaintiff's First Amended Complaint ("FAC").

I. First Cause of Action for Violation of California Whistleblower Protection Act (Govt. Code §§ 8547, *et seq*.)

As discussed in connection with the Regents' demurrer, above, Plaintiff has sufficiently pled a protected disclosures under Govt Code § 8547. Specifically, he pled that during a December 2018 ACGME site visit, he "gave honest critical feedback about the Program, specifically the lack of residents' inclusion in treatment planning." FAC ¶ 53. Prior to the site visit, Plaintiff had emailed the department with the same concern, and had also regularly voiced concern at meetings with Program leadership. *Id*. Additionally, on January 24, 2020, Plaintiff filed an Incident Report regarding issues with his supervisor, Dr. Harris, providing Plaintiff with ambiguous instructions regarding medication and radiation prescriptions, resulting, at least one time, in significant delay in the care for a patient. FAC ¶¶ 133-136.

However, Plaintiff *has not* sufficiently pled that any of the Individual Defendants engaged in retaliatory conduct in response to these disclosures. In his opposition, Plaintiff only addresses the allegations of retaliation against Dr. Harris. However, while the FAC alleges Dr. Harris "commenced a campaign of harassment and retaliation against Plaintiff," upon starting his rotation at UCI on November 1, 2019, it does not describe what Harris was allegedly retaliating against. FAC ¶ 110. Plaintiff did not file the Incident

Report regarding Dr. Harris until January 2020, and the FAC alleges that "Dr. Harris never supervised medical residents prior to supervising Plaintiff as this is his first faculty position after finishing his residency." FAC ¶ 108. There is no allegation that Dr. Harris was aware of Plaintiff's December 2018 and prior complaints to the ACGME.

Accordingly, the demurrer is **SUSTAINED** with 15 days leave to amend as to the first cause of action.

II. Second Cause of Action for Violation of Health and Safety Code § 1278.5

A Health & Safety Code § 1278.5 claim cannot be asserted against individual defendants. *See Armin v. Riverside Cmty. Hosp.* (2016) 5 Cal. App. 5th 810, 814, 832; *Brenner v. Universal Health Servs. Of Rancho Springs, Inc.* (2017) 12 Cal. App. 5th 589, 602. This is because the statutory language of § 1278.5 focuses on the "facility" as the target defendant.

Accordingly, the demurrer is **SUSTAINED without leave to amend** as to the second cause of action.

III. Third Cause of Action for Violation of Labor Code § 1102.5

As discussed in connection with the Regents' demurrer, Plaintiff *has not* pled facts sufficient to constitute a cause of action for Violation of Labor Code § 1102.5.

Further, the Court finds the reasoning of *Tillery v. Lollis* persuasive and therefore concludes that a Labor Code § 1102.5 cannot be maintained against individual defendants. *Tillery v. Lollis*, 2015 WL 4873111 at 8-10 (E.D. Cal. Aug. 13, 2015).

Accordingly, the demurrer is **SUSTAINED without leave to amend** as to the third cause of action.

IV. Fourth Cause of Action for Violation of California False Claims Act (Govt. Code § 12653)

As discussed in connection with the Regents' demurrer, Plaintiff *has not* pled facts sufficient to constitute a cause of action for Violation of Govt. Code § 12653.

In addition, such a claim cannot be asserted against individuals, as the statute only imposes liability on the employer. *See, e.g., Levine v. Weis* (2001) 90 Cal. App. 4th 201, 212; *Cordero-Sacks v. Housing Auth. of City of L.A.* (2011) 200 Cal. App. 4th 1267, 1274 (both interpreting former language of Govt. Code § 12653(b). While cases setting forth this proposition relied on the language of the former Govt. Code § 12653(b), there is no indication that the legislature intended to deviate from this limitation. Indeed, subsection (a) indicates that the relief afforded is afforded where the plaintiff is "discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against *in the terms and conditions of that employee's, contractor's, or agent's employment*." Govt. Code § 12653(a). This indicates that the provisions of § 12653 are to be asserted against an *employer*, rather than individual defendants.

Accordingly, the demurrer is **SUSTAINED without leave to amend** as to the fourth cause of action.

V. Fifth Cause of Action for Violation of Tom Bane Civil Rights Act (Civ. Code § 52.1)

As discussed in connection with the Regents' demurrer, Plaintiff *has not* pled facts sufficient to

		constitute a cause of action for Violation of the Tom Bane Civil Rights Act (Civ. Code § 52.1). Since Plaintiff has not sufficiently pled a claim under the Tom Bane Act, the Court does not consider whether the Individual Defendants, or any of them, would be immune to a hypothetical claim if properly pled. Accordingly, the demurrer is **SUSTAINED** with 15 days leave to amend as to the fifth cause of action. The Court declines to rule on The Regents' request for judicial notice as it is immaterial to the disposition of this motion. Moving party to give notice. Lastly, Defendants Allen Chen, Jeremy Harris, Faisal Ahmed, Jeffrey Kuo, Deena McRae, Vipan Kumar Parihar, Munjal Acharya, Jonathan Moayyad, Michael Stamos and Linda Chan (collectively, "Individual Defendants") move to strike portions of the First Amended Complaint. In light of the ruling on the Individual Defendants' demurrer, the motion is **DENIED as MOOT**. Moving Party to give notice.
7	Renesan Software vs. Satellite Healthcare, Inc. 2023-01366799	Motion to Strike filed by Satellite Healthcare, Inc. on 1/29/24 Defendant Satellite Healthcare, Inc. ("Defendant") moves to strike certain allegations from the Complaint of Plaintiff Renesan Software ("Plaintiff"). As with a demurrer, the grounds for a motion to strike must appear on the face of the pleading under attack, or from matter which the court may judicially notice.

		Code. Civ. Proc. § 437. Allegations are assumed to be true. *Blakemore v. Superior Court*, 129 Cal. App. 4th 36, 53 (2005). "If facts appearing in the exhibits contradict those alleged, the facts in the exhibits take precedence." *Holland v. Morse Diesel Intern., Inc*., 86 Cal. App. 4th 1443, 1447 (2001). Defendant argues that the challenged allegations must be stricken because they are inconsistent and/or contradictory to the terms of the Agreement attached to the Complaint, which do not evidence any obligation to install or exclusively use the software for a minimum number of patients over a period of five years. Defendant argues that any allegation that it was required to install the software at all its locations contradicts the Agreement, which states that Defendant's desire was "to acquire one or more licenses" for use at "one or more Approved Sites." However, Defendant ignores the provisions set forth in Sections 1.4 and 2.2, where "Approved Sites" are defined as including those designated by Defendant on Schedule 1 and Plaintiff was charged with delivering all Licensed Programs to "all Approved Sites" by December 31, 2023. Read together, these provisions are not contradictory. They state that Defendant wanted to acquire at least one license for Plaintiff's software for use at at least one site and Defendant designated numerous sites in Schedule 1 where delivery and installation of the software was to be made. Notably, the Agreement provides that Defendant may supplement the list of Approved Sites by adding additional sites, but it is silent as to Defendant's ability to remove sites. Regardless, Plaintiff was obligated to deliver the software to those Approved Sites identified

		in Schedule 1 at the time of contracting and, to the extent Defendant refused to allow Plaintiff to do so, Defendant breached the contract by preventing performance. Defendant points to the fact that the Statement of Work, incorporated into the Agreement, does not have any stated installation obligation or mandated use of the software by Defendant. Again, Defendant seems to ignore other provisions that state that delivery of the software to all Approved Sites was to be made by the end of 2023. Defendant also argues that certain provisions would be rendered meaningless if Plaintiff's interpretation is adopted. For example, the subscription fees are determined by the number of "Active Patient[s]" and "Active Patient" is defined as a patient who receives at least one treatment during the billing calendar month at an Approved Site that utilizes a Licensed Program. If Defendant were obligated to install and use the software at every site, there would be no need to define "Active Patient" with reference to "Approved Site[s]" because every patient would automatically be an "Active Patient." There is nothing inherently contradictory about these provisions and defining "Active Patient" with reference to "Approved Site[s]" does not render the definition unnecessary or superfluous. Again, Defendant designated certain sites as "Approved Site[s]" in Schedule 1 of the Agreement. Active Patients, for purposes of the subscription fees, relates to patients who receive treatment at those Approved Sites that utilize a Licensed Program. That means that, should Defendant open a new clinic that it does not designate as an Approved Site, patients who receive treatment at that new clinic would not be counted for subscription fee purposes. While there may be some redundancy, as only Approved Sites would have access to the software and, therefore, only

		patients at Approved Sites could be counted in calculating the subscription fee, the terms are not necessarily contradictory or superfluous. Defendant argues that the provision that its "Use" of the software is defined as "non-exclusive, non-transferable and non-assignable" shows that it obtained a permissive right, not a mandatory right, to use the software. This phrase defines and limits the license granted by Plaintiff to Defendant. The limitations of the license being non-transferable and non-assignable relate to Defendant's ability to transfer the license to other entities for use, *i.e.*, Plaintiff is *not* granting Defendant the right to transfer or assign the license. The limitation of the license being non-exclusive could be interpreted in the same manner. Plaintiff is *not* granting Defendant the ability to use the license in an exclusive manner, *i.e.*, Plaintiff may license the software to other entities pursuant to other agreements or contracts. Defendant's assertion that this "non-exclusive" distinction must mean that *Defendant* had the right to use other software and had no obligation to use Plaintiff's software exclusively, is only one reasonable interpretation. Defendant further argues that Plaintiff's allegations that Defendant was required to pay subscription fees over a period of five years ignores the language of the Agreement that demonstrates "use" of the software is permissive, not mandatory. As discussed above, Defendant's argument that its "use" of the software was permissive and not mandatory based on the "non-exclusive" language is unpersuasive. Moreover, Defendant's argument ignores the plain language of Section 1.3, which provides that the initial term of the Agreement shall begin on the date of Delivery and expire at the end of five years.

		As to whether Defendant was obligated to use the software for a limited number of patients per month, the Agreement expressly states that for the Licensed Programs "Dialysis Manager" and "Managed Application Hosting," there are certain monthly fees per Active Patient per month and the quantity for each of these programs is listed as "Approximately 8500 (# of patients)." This could support an interpretation that the parties had an agreement as to the monthly fees that were to be paid, based on the number of Active Patients. Thus, Defendant's argument that no extrinsic evidence may be admitted lacks merit. *See Wolf v. Walt Disney Pictures & Television*, 162 Cal. App. 4th 1107, 1126 ("Extrinsic evidence is admissible, however, to interpret an agreement when a material term is ambiguous."). In light of the above, the Court finds that Defendant has failed to demonstrate that the challenged allegations are irrelevant, false, improper, or not filed in conformity with the laws of this state. Thus, the Motion to Strike is **DENIED**. Defendant to file a responsive pleading to the Complaint within fifteen (15) calendar days. Defendant to give notice.
8	Roth vs. Best Buy Co., Inc. 2023-01348836	1. Motion to Compel Arbitration filed by Magnolia Hi-Fi LLC, and Best Buy Stores LP on 1/29/24 2. Case Management Conference **Continued to May 6, 2024**
9	Ruiz-Cabrera vs. General Motors LLC 2023-01324474	1. Demurrer to Amended Complaint 2. Motion to Strike filed by General Motors LLC on 12/6/23 3. Case Management Conference

		Defendant General Motors, LLC ("Defendant") demurs to Plaintiff Daniel Ruiz-Cabrera's ("Plaintiff") fourth cause of action for fraudulent concealment on the grounds that the claim is barred by the statute of limitations, is insufficiently pled, and fails to allege a duty to disclose by Defendant. Defendant also moves to strike Plaintiff's prayer for punitive damages. Defendant first argues that the fourth cause of action is barred by the applicable statute of limitations and Plaintiff is not entitled to the delayed discovery rule. Code of Civil Procedure section 338(d) provides that an action for fraud must be brought within three years. "A plaintiff must bring a claim within the limitations period after accrual of the cause of action." *Fox v. Ethicon Endo-Surgery, Inc*., 35 Cal. 4th 797, 806 (2005). "Generally speaking, a cause of action accrues at 'the time when the cause of action is complete with all of its elements.' An important exception to the general rule of accrual is the 'discovery rule,' which postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action." *Id*. at 806-807. Here, Plaintiff purchased the vehicle on December 19, 2017. FAC ¶ 4. However, he further alleges that he first presented the vehicle for repairs in August 2018, after repairs were made Defendant's authorized dealership represented that the vehicle was operating properly, and Plaintiff relied on statements from the repair facility that the vehicle was performing normally and had no defects. FAC ¶¶ 70-75. Plaintiff alleges that he could not have discovered that Defendant was concealing the defect until after the defect manifested itself and Defendant was unable to repair it after a reasonable number of opportunities. FAC ¶¶ 77-79.

		The Court finds that the allegations are sufficient to invoke the delayed discovery rule at this pleadings stage. Accepted as true, they show that Plaintiff could not have discovered the defect earlier despite reasonable diligence. Thus, Defendant's assertion that the defect must have been discovered on December 29, 2017 because that is the date Plaintiff took possession of the vehicle lacks merit. The Demurrer on the statute of limitations ground is accordingly **OVERRULED**. Next, Defendant argues that the elements of the fraud cause of action are not pled with sufficient specificity and there was no duty to disclose because there was no transaction between Plaintiff and Defendant. "The elements of a claim for fraudulent concealment require a plaintiff to show that: '(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 did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage.'" *Prakashpalan v. Engstrom, Lipscomb & Lack*, 223 Cal. App. 4th 1105, 1130 (2014). The "'particularity requirement necessitates pleading *facts* which show how, when, where, to whom, and by what means the representations were tendered.'" *Lazar v. Superior Court*, 12 Cal. 4th 631, 645 (1996). This standard, however, "is harder to apply this rule to a case of simple nondisclosure." *Alfaro v. Community Housing Improvement System & Planning Assn., Inc*., 171 Cal. App. 4th 1356, 1384 (2009). "One of the purposes of the specificity requirement is 'notice to the defendant, to furnish the defendant with certain

		definite charges which can be intelligently met.'" *Id*. "Less specificity should be required of fraud claims 'when "it appears from the nature of the allegations that the defendant must necessarily possess full information concerning the facts of the controversy,"; "[e]ven under the 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*. Notably, the court in *Alfaro* specifically found the pleading standard required for fraudulent concealment did not require the plaintiffs therein "to allege each occasion on which an agent of either defendant could have disclosed the restrictive deed" as "[s]urely defendants have records of their dealings with the plaintiffs." *Alfara*, 171 Cal. App. 4th at 1384-1385. Plaintiff alleges that Defendant was aware of the transmission defect as early as 2014 through sources not available to Plaintiff, including failure mode and analysis data and consumer complaints, and actively concealed and failed to disclose the defect at the time of purchase. FAC ¶¶ 8, 33, 43. It appears that the details concerning the facts are, by nature, those of which Defendant must necessarily possess full information. Defendant complains that the FAC is devoid of facts regarding the individuals to whom Plaintiff spoke before the purchase, Defendant's intent to induce reliance, and Defendant's knowledge of the defect. All of these facts lie more in the knowledge of Defendant. The Court also finds that the allegations are sufficient to apprise Defendant of the charges being made against it. Thus, the Demurrer on the ground that the fraud cause of action lacks sufficient specificity is **OVERRULED**.

As to the duty to disclose: "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." *LiMandri v. Judkins*, 52 Cal. App. 4th 326, 336 (1997).

As discussed above, under the alleged circumstances Defendant had superior and exclusive knowledge of the defect, through sources unavailable to Plaintiff. These allegations support the imposition of a duty to disclose.

Similar to the allegations in *Dhital v. Nissan N. Am. Inc*., 84 Cal. App. 5th 828, 844 (2022), Plaintiff alleges that he obtained a warranty from Defendant for the vehicle, the authorized dealer acted as an agent/representative of Defendant, and the dealership represented that the vehicle had no defects or nonconformities. FAC ¶¶ 4-5, 9. This language also supports the imposition of a duty to disclose pursuant to *Dhital*.

Thus, the Demurrer on the duty to disclose argument is also **OVERRULED**.

Because the Complaint sufficiently states a cause of action for fraud, the Motion to Strike the claim for punitive damages is **DENIED**, as a fraud cause of action may support the imposition of punitive damages.

Defendant to file an Answer to the FAC within fifteen (15) calendar days.

		Defendant to give notice.