"Civility allows for zealous representation, reduces clients' costs, better advances clients' interests, reduces stress, increases professional satisfaction, and promotes effective conflict resolution. These guidelines foster the civility and professionalism that are hallmarks of the best traditions of the legal profession."
OCBA Civility Guidelines

"The American legal profession exists to help people resolve disputes cheaply, swiftly, fairly, and justly. Incivility between counsel is sand in the gears."
(*Karton v. Ari Design & Construction, Inc.* (2021) 61 Cal.App.5th 734, 747.)

TENTATIVE RULINGS
Judge Kimberly Knill, Dept. C31

- **The court encourages remote appearances to save time, reduce costs, and increase public safety.** Go to www.occourts.org/media-relations/civil.html and click on the blue box that says, "Click here to appear/check-in for Civil Small Claims/Limited/Unlimited/Complex remote proceedings." Navigate to Department C31 Judge Kimberly Knill.

- All hearings are open to the public.

- If you desire a transcript of the proceedings, you **must** provide your court reporter (unless you have a fee waiver and request a court reporter in advance).

- Call the other side. If **everyone** submits to the tentative ruling, call the clerk at **657-622-5231**. Otherwise, the court may rule differently at the hearing. (See *Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

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

HEARING DATE: Friday, 4/18/2025 10:00 AM

#	Case Name	Tentative
1	**Robinson vs. La Veta Healthcare, Inc. 30-2023-01352849-CU-PO-CJC**	**Motion to be Relieved as Counsel for Plaintiff** The motion of attorney Dawn Smith of Smith Clinesmith LLP to withdraw as attorney of record for Plaintiff Gladys Lanier, as Power of Attorney to Darryl Robinson is DENIED. Moving attorney did not file a proof of service on the client. (Code Civ. Proc., § 284, Cal. Rules of Court, rule 3.1362.) Clerk to give notice.
2	**Tooker vs. Charsoo Corp. 30-2024-01407093-CU-BC-CJC**	**Defendant's Motion for Leave to File Cross-Complaint** Defendant Charsoo Corp. dba Hardwood Flooring Depot's unopposed Motion for Leave to File Cross-Complaint is GRANTED. Defendant to file clean copy of cross-complaint within 5 days.

		Clerk to give notice.
3	**Quinteros vs. Green Power Pros 30-2024-01370553-CU-BC-CJC**	**Plaintiff's Motion to Correct Clerical Error in Judgment** Plaintiff Marta Quintero's Motion to Correct Clerical Judgment is GRANTED. Plaintiff to submit an amended judgment adding Defendant Jamie Garcia Mora within 5 days. Plaintiff to give notice.
4	**Asmar vs. Alphamotive Motors, LLC 30-2024-01395887-CU-BC-CJC**	**Defendant's Motion to Quash Service of Summons for Lack of Personal Jurisdiction and Request for Attorney Fees** Continued to 7/18/2025 at plaintiff's request
5	**Lacy vs. OneOc 30-2024-01417351-CU-OE-CJC**	**Defendant OneOC's Motion to Compel Binding Arbitration and for Stay of Action** **Defendants Revhuboc Social Innovation Fund I LLC, The Orange County Center for Innovation & Social Enterprises SPC, Stephan Erkelens and Tim Shaw's Joinder to Motion to Compel Arbitration and Stay of Action and Petition to Compel Arbitration** The motion to compel arbitration by Defendant OneOC, and joined by Defendants RevHubOC Social Innovation Fund I LLC; The Orange County Center For Innovation & Social Enterprises SPC; Stephan Erkelens; and Tim Shaw (collectively, "RevHub Defendants"), is GRANTED. The petition to compel arbitration by the RevHub Defendants is GRANTED. The court declines to consider Plaintiff's untimely opposition, which was due on 4/7/2025 but not filed until 4/10/2025. (See Code Civ. Proc., ¶ 1005, subd. (b); *Jack v. Ring LLC* (2023) 91 Cal.App.5th 1186, 1210 [court properly refused to consider late-filed papers].) Defendants seek to compel arbitration pursuant to pursuant to the Federal Arbitration Act (9 U.S.C. § 1, et seq.) and Code of Civil Procedure Sections 1281 et seq. The Federal Arbitration Act ("FAA") "applies where there is 'a contract evidencing a transaction involving commerce.'" (*Allied-Bruce Terminix Companies, Inc. v. Dobson* (1995) 513 U.S. 265, 277, quoting 9 USC § 2].) A court's role in considering a petition to compel arbitration under the FAA is limited to "determining (1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement

		encompasses the dispute at issue. If the response is affirmative on both counts, then the Act requires the court to enforce the arbitration agreement in accordance with its terms." (*Chiron Corp. v. Ortho Diagnostic Sys. Inc.* (9th Cir. 2000) 207 F.3d 1126, 1130.) "In determining the rights of parties to enforce an arbitration agreement within the FAA's scope, courts apply state contract law while giving due regard to the federal policy favoring arbitration." (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 236.) Under Code of Civil Procedure section 1281.2, a party to an arbitration agreement may move to compel arbitration if another party to the agreement refuses to arbitrate. The moving party bears the initial burden of proving the existence of an arbitration agreement by a preponderance of the evidence. (*Villacreses v. Molinari* (2005) 132 Cal.App.4th 1223, 1230.) If the moving party meets that burden, the burden shifts to the opposing party to prove by a preponderance of evidence a defense to enforcement of the agreement. (*Ibid*.) <u>Existence of Agreement</u> To meet its initial burden, the moving party need only submit a copy of the arbitration agreement or recite its terms in the petition or motion. (Cal. Rules of Court, rule 371; *Condee v. Longwood Management Corp.* (2001) 88 Cal.App.4th 215, 218-219.) To meet their burden, Defendants submitted a copy of OneOC's California Dispute Resolution Agreement ("Agreement"). (Brooks-Hawkins Decl., ¶ 5, Ex. 1.) Plaintiff signed the Agreement containing this arbitration provision on May 1, 2023, which was her first day of work. (Brooks-Hawkins Decl. ¶¶ 4-5, Ex. 1.) Plaintiff alleges causes of action for Discrimination in Violation of FEHA based on race and gender, Harassment in Violation of FEHA based on race and/or gender, hostile work environment, Retaliation, Whistleblower retaliation, Failure to Prevent Discrimination, Harassment and Retaliation, Failure to Investigate, Negligence, Negligent Hiring, Defamation, Trade Libel, Violation of the Confidentiality of Medical Information Act (CMIA), Intentional Misrepresentation, Wrongful Termination, Intentional Infliction of Emotional Distress; and Violation of Business and Professions Code Section 17021. (See, generally, FAC.) All of Plaintiff's claims relate to and arise from Plaintiff's employment with Defendants and are subject to binding and contractual arbitration.

		Standing of RevHub Defendants An obligation to arbitrate does not attach only to those who have actually signed the agreement to arbitrate. (See, e.g., *Dryer v. Los Angeles Rams* (1985) 40 Cal.3d 406, 414 [nonsignatory agents of signatory are entitled to enforce an arbitration agreement]; *Mance v. Mercedes-Benz USA* (N.D. Cal. 2012) 901 F.Supp.2d 1147, 1155.) In certain circumstances, a non-signatory can compel a signatory to arbitrate. (*Ibid.*) For instance, a non-signatory can enforce an arbitration agreement as a third-party beneficiary. (*Ibid*; see *Marenco v. DirecTV LLC* (2015) 233 Cal.App.4th 1409, 1417 [a non-signatory can enforce an arbitration agreement as a third party beneficiary]; *Valley Casework, Inc. v. Comfort Constr., Inc.* (1999) 76 Cal.App.4th 1013, 1021 [explaining that "in many cases, nonparties to arbitration agreements are allowed to enforce those agreements where there is sufficient identity of parties"]; *Ronay Family Limited Partnership v. Tweed* (2013) 216 Cal.App.4th 830, 838.) "Whether the third party is an intended beneficiary or merely an incidental beneficiary involves construction of the intention of the parties, gathered from reading the contract as a whole in light of the circumstances under which it was entered." (*Cione v. Foresters Equity Services, Inc.* (1997) 58 Cal.App.4th 625, 636.) "It is not necessary that the beneficiary be named or identified as an individual." (*Ronay Family*, 216 Cal.App.4th at p. 839.) Germane is whether the third party "shows that he is a member of a class of persons for whose benefit it was made." (*Ibid.*, citing *Garratt v. Baker* (1936) 5 Cal.2d 745, 748; accord, *Cargill, Inc. v. Souza* (2011) 201 Cal.App.4th 962, 967.) Here, the RevHub Defendants have established they are intended third-party beneficiaries of the Agreement. The RevHub Defendants' evidence establishes the Agreement refers to third-party beneficiaries and the RevHub Defendants fall within the class of persons or entities for whom the Agreement was intended. The language regarding OneOC's "affiliated or client entities" was specifically meant to protect organizations such as RevHub. The language regarding "owners, directors, officers, manager, employees, agents" was likewise meant to protect those individuals who could be named as defendants because of their affiliation with RevHub, such as Erkelens and Shaw. (Erkelens Decl., ¶ 15; Muffie Decl., ¶ 10; Brooks-Hawkins Decl., ¶ 5.) The evidence also establishes Plaintiff was hired at the specific request of RevHub. She would not have become an OneOC employee if not for the hiring request and authorization provided by RevHub. She had no real duties at OneOC other than to serve fiscal projects. In this context, RevHub was the "client entity" and

		"affiliated entity" of OneOC in the hiring of Plaintiff and in her agreement to resolve disputes by binding arbitration. (Muffie Decl., ¶ 11.) Further, Plaintiff alleges there was a unity of interest and ownership between Defendants OneOC, OCCISE, RevHub Fund, Erkelens and Shaw. (FAC, ¶¶ 5-7.) Accordingly, all Defendants have met their initial burden. Plaintiff has failed to meet her burden of establishing a defense to enforcement of the Agreement. "The failure to serve and file a written opposition may be construed by the court as an admission that the motion is meritorious, and the court may grant the motion without a hearing on the merits." (Rules of Court, Rule 3.1342(b); see also *DuPont Merck Pharmaceutical Co. v. Sup. Ct.* (2000) 78 Cal.App.4th 562, 566 ["By failing to argue the contrary, plaintiffs concede this issue"].) This action is STAYED pending completion of arbitration. OSC re Dismissal scheduled for 4/24/2025 is VACATED. Arbitration Status Hearing set for 4/23/2026 at 1:30 PM. The parties are ORDERED to file a status report 5 days prior. Clerk to give notice.
6	**Shaw vs. Ford Motor Company 30-2023-01340982-CU-BC-CJC**	**Defendants Motion to Compel Deposition and Request Monetary Sanctions** Off calendar at request of moving party.
7	**Edmonson vs. Monarch 30-2023-01346667-CU-PN-CJC**	**Defendant's Motion to Compel Further Reponses to Requests for Production of Documents, Set Two** Defendant Michael J. Monarch's Motion to Compel Plaintiff Michelle Edmonson to Further Respond to Defendant Michael J. Monarch's Requests for Production of Documents, Set Two is GRANTED. (Code Civ. Proc., § 2031.310, subd. (a).) Defendant seeks to compel further responses and document production to Request Nos. 26, 27 and 30. Plaintiff has not opposed the motion. Within 30 days, Plaintiff is to provide the following: Request Nos. 26 and 27: Plaintiff is to provide a verified, supplemental response and produce any responsive documents. If any documents have been withheld on the basis of the attorney-client privilege, Plaintiff must produce a privilege log.

		Request No. 30: Plaintiff is to provide a verified, supplement response and produce any responsive documents subject to the redaction of any unrelated transactions on the bank statements. Defendant to give notice.
8	**CSU Fullerton Auxiliary Services Corporation vs. Cappuccio 30-2022-01288782-CU-OR-NJC**	**Plaintiff's Motion to Tax Costs** Plaintiff CSU Fullerton Auxiliary Services Corporation's motion to strike costs from is GRANTED. <u>*Item 10: Attorney Fees*</u>: Plaintiff moves to strike Defendant's request for $1,050 in attorney fees on the grounds the Judgment issued by the Court on 12-19-24 did not award fees. Pursuant to Code of Civil Procedure section 1033.5, subdivision (a)(10), attorney fees are allowable as costs under section 1032 when authorized by contract, stature, or law. (Code Civ. Proc., § 1033.5, subd. (a)(10).) Attorney fees allowable as costs pursuant to contract "shall be fixed either upon a noticed motion or upon entry of a default judgment, unless otherwise provided by stipulation of the parties." (*Id.,* subd. (c)(5)(A).) Plaintiff has shown the University Gables Ground Lease ("Lease") provides for the recovery of attorneys' fees by the prevailing party. The Lease provides: "In the event that either Landowner or Homeowner brings suit against the other to enforce its rights under this Ground Lease, the prevailing party shall be entitled to recover from the other reasonable attorney's fees to be fixed by the court." (Opp., Ex. A, ¶ 19.4.) Since the contractual fees are not fixed, a noticed motion is required to recover fees. Defendant has not filed a noticed motion for attorney fees. <u>*Item 16: Other*</u>: The Other costs Defendant seeks to recover are: (a) trial transcript costs of $505; and (2) monetary sanctions of $1,522.50 paid by Defendant to Plaintiff. "[S]ection 1033.5, subdivision (a)(9) provides that transcripts of court proceedings ordered by the court are allowable. Nevertheless, the Legislature expressly prohibited the recovery of costs for transcripts of court proceedings not ordered by the court under subdivision (b)(5)." (*Segal v. ASICS Am. Corp.* (2022) 12 Cal.5th 651, 666.) Trial transcripts were not ordered by the Court. As to monetary sanctions, Defendant seek to recover $1,522.50 which she paid to Plaintiff in connection with a Motion to Compel

		Further Responses to Form Interrogatories. (Price Decl., ¶ 5, Ex. 1.) Previously paid monetary sanctions are not allowable costs. Plaintiff to give notice.
9	**DI Overnite Investments, LLC vs. Nabal 30-2024-01393386-CU-BT-CJC**	**Cross-Defendants' Demurrer to First Amended Cross-Complaint** Cross-Defendants DI Overnite Investments, LLC (DIO), Joseph Varraveto (Varraveto), Renaissance Ventures LLC (Renaissance), and Douglas M. Garamoni (Garamoni) (collectively Cross-Defendants) Demurrer to the First Amended Cross-Complaint is STAYED pending the resolution of DIO's bankruptcy. The allegations against DIO are inextricably intertwined with those against Varraveto, Renaissance, Garamoni. Nabal alleges they participated in a scheme to terminate him, extorted him, and were involved in racketeering. Nabal alleges DIO and the other Cross-Defendants were acting in concert, thus, there is a substantial risk for inconsistent judgment should there be two trials. **Plaintiffs' Motion to Post Bond and Further Stay the First Amended Cross-Complaint Until Such Time as the Bond is Furnished** Plaintiff/Cross-Defendant DI Overnite Investments, LLC's Motion for Defendant/Cross-Complainant Philip Nabal to Post a Bond is STAYED pending the resolution of DIO's bankruptcy. Motion to Strike (anti-SLAPP) scheduled for 5/16/2025 is STAYED. CMC scheduled for 6/5/2025 is VACATED. Status Conference re Bankruptcy scheduled for 4/23/2026 at 1:30 pm. All parties are ORDERED to file a Status Report 5 days prior. Clerk to give notice.
10	**National Funding, Inc. vs. BTMB Consulting Services LLC 30-2024-01412142-CU-BC-CJC**	**Plaintiff's Motion for Summary Judgment, or in the Alternative, Summary Adjudication** Plaintiff National Funding, Inc.'s unopposed motion for summary judgment against defendants BTMB Consulting Services LLC dba Royalty Auto Spa and Ty Maggard is GRANTED. First Cause of Action for Breach of Contract against BTMB Consulting Services LLC dba Royalty Auto Spa ("Borrower"): "To prevail on a cause of action for breach of contract, the plaintiff must prove (1) the contract, (2) plaintiff's performance of the contract or excuse for nonperformance, (3) defendant's

		breach, and (4) resulting damage to the plaintiff." (*Richman v. Hartley* (2014) 224 Cal.App.4th 1182, 1186.) Borrower and Plaintiff executed a Business Loan Agreement, agreement number FWC702488-ML1 ("Loan Agreement No. 1"), whereby Borrower received an original loan from Plaintiff in the principal amount of $18,643.00. (Plaintiff's Undisputed Material Facts ("UMF") No. 1.) Plaintiff deposited all monies required under the terms of Loan Agreement No. 1 into the bank account for Borrower and has fully performed its obligations under Loan Agreement No. 1. (UMF Nos. 10-11.) On 5-13-24, Borrower failed to timely make its monthly payment, as required under the terms of Loan Agreement No. 1. (UMF No. 5.) Upon Borrower's breach, Plaintiff elected to exercise its rights and remedies under Loan Agreement No. 1 and declare a breach, making the entire outstanding balance of $18,392.15 due and payable. (UMF No. 6.) Plaintiff has demanded payment from Borrower for the amount due under Loan Agreement No. 1, but Borrower has failed to pay the amounts due under the Loan Agreement No. 1. (UMF Nos 7-8.) As a result, Plaintiff has been damaged in both the amount still due and outstanding as well as the attorneys' fees and costs incurred in collecting under Loan Agreement No. 1. Plaintiff has met its initial burden to produce admissible evidence on each element of the breach of contract cause of action. The burden shifts to the Borrower to show that a triable issue of material fact exists. Borrower has not opposed the Motion. <u>Second Cause of Action for Breach of Guaranty against Ty Maggard ("Guarantor")</u>: The elements to a claim for breach of guaranty are: (1) a guarantor guaranteed payment of indebtedness of a primary obligor, (2) the primary obligor defaulted, (3) notification was given to the guarantor as to the primary obligor's default, (4) there was nonpayment of the debt by the guarantor, and (5) damages. (*Torrey Pines Bank v. Superior Court* (1989) 216 Cal.App.3d 813, 819.) Guarantor guaranteed the indebtedness of Borrower under Loan Agreement No. 1 ("Guaranty No. 1"). (UMF Nos. 4, 9.) Borrower defaulted on 5-13-24 by failing to timely make its monthly payment, as required under the terms of Loan Agreement No. 1. (UMF No. 5.) Despite Plaintiff's demand, Guarantor has failed to pay the amounts due under Loan Agreement No. 1 and Guaranty No. 1. (UMF No. 8.) As a result, Plaintiff has been damaged in both the amount still due and outstanding as well as the attorneys' fees and costs incurred in collecting under Loan Agreement No. 1.

		Plaintiff has met its initial burden to produce admissible evidence on each element of the breach of guaranty cause of action. The burden shifts to Guarantor to show that a triable issue of material fact exists. Guarantor has not opposed the Motion. <u>Third Cause of Action for Breach of Contract against Borrower</u>: Borrower and Quick Bridge Funding LLC ("Quick Bridge") executed a second Business Loan Agreement, agreement number 484-668385-9, ("Loan Agreement No. 2"), whereby Borrower received an original loan from Quick Bridge in the principal amount of $65,300.00. (UMF No. 12.) On 11-19-23, Quick Bridge transferred all its rights, title, and interest in Loan Agreement No. 2 to Plaintiff. (UMF No. 16.) On 2-12-24, Borrower failed to timely make its weekly payment, as required under the terms of Loan Agreement No. 2. (UMF No. 17.) Upon Borrower's breach, Plaintiff elected to exercise its rights and remedies under Loan Agreement No. 2 and declare a breach, making the entire outstanding balance of $74,180.80 due and payable. (UMF No. 18.) Plaintiff has demanded payment from Borrower for the amount due under Loan Agreement No. 2, but Borrower has failed to pay the amount due under Loan Agreement No. 2. (UMF Nos. 19-20.) As a result, Plaintiff has been damaged in both the amount still due and outstanding as well as the attorneys' fees and costs incurred in collecting under Loan Agreement No. 2. Plaintiff has met its initial burden to produce admissible evidence on each element of the breach of contract cause of action. The burden shifts to the Borrower to show that a triable issue of material fact exists. Borrower has not opposed the Motion. <u>Fourth Cause of Action for Breach of Guaranty against Guarantor</u>: Guarantor executed and delivered to Quick Bridge a second written personal guaranty, under which he guaranteed the indebtedness of the Borrower due to Quick Bridge under Loan Agreement No. 2 ("Guaranty No. 2"). (UMF Nos. 15, 21.) On 11-19-23, Quick Bridge transferred all its rights, title, and interest in Guaranty No. 2 to Plaintiff. (UMF No. 16.) Borrower defaulted. (UMF No. 17.) Despite Plaintiff's demand, Guarantor defaulted on his guaranty by failing to pay the amounts due under Loan Agreement No. 2 and Guaranty No. 2. (UMF No. 20.) As a result, Plaintiff has been damaged in both the amount still due and outstanding as well as the attorneys' fees and costs incurred in collecting under Loan Agreement No. 2. Plaintiff has met its initial burden to produce admissible evidence on each element of the breach of guaranty cause of action.

		The burden shifts to Guarantor to show that a triable issue of material fact exists. Guarantor has not opposed the Motion. Plaintiff to give notice and to submit a proposed judgment within 5 days.
11	**V. Lynn Hodge, as Trustee of the Plaza Del Sol Real Estate Trust Under Declaration of Trust Dated February 9, 1996, as Amended, a California Revocable Trust vs. OC Media Tower, L.P.** **30-2021-01227550-CU-FR-CJC**	**Defendants Alliant Strategic Investments II, LLC's and Shawn Horwitz's Motion for Sanctions** The motion for sanctions pursuant to Code of Civil Procedure section 128.7 of defendants Alliant Strategic Investments II, LLC and Shawn Horwitz is GRANTED. Defendants request the court dismiss plaintiff's claims against them with prejudice and order plaintiff and his counsel to pay their attorney fees and costs, subject to the court's determination of those amounts upon submission of proof. Plaintiff filed his complaint on 10/22/2021 while represented by G10 Galuppo Law, APLC. Plaintiff filed the operative first amended complaint (FAC) on 6/7/2022 while represented by G10 Galuppo Law APLC's successor, G10 Law, APLC. Both pleadings named Doe defendants. The gist of the action surrounds various loans Plaza Del Sol Real Estate Trust made to defendants Michael Harrah and his affiliated companies. The loans were secured by real property located at 625 N. Grand Avenue in Santa Ana, California. A portion of the property was sold to Amazon.com Service, LLC, and a portion of the property was retained by the Harrah Defendants. Plaintiff agreed to a lower payoff of outstanding debt and a release of the Trust's security interests, believing a letter of intent (LOI) given by Alliant was the best offer received on the property. In reality, Amazon paid more than Alliant offered on the entire parcel for only a portion of the property, and plaintiff contends he never knew Amazon was a potential buyer, and had he known, the Trust would not have agreed to a lesser payoff. On 9/5/2024, almost three years following the initiation of the action, and approximately one month before the expiration of the three-year deadline to serve all remaining defendants (Code Civ. Proc., § 583.210, subd. (a)), plaintiff filed amendments to the FAC, naming Alliant as Doe 1 and Horwitz as Doe 2. The FAC alleges causes of action against "all defendants" (which presumably includes Does even though the causes of action are not expressly alleged against any particular Doe defendant) as follows: first for intentional misrepresentation / concealment; second for negligent misrepresentation / concealment; and eleventh for recission (Civil Code § 1689) / cancellation (Civil Code § 3412) / reformation (Civil Code § 3399). The FAC also alleges a third cause of action against Does 1-50 for quiet title.

		All remaining causes of action in the FAC are against other parties only. The FAC contains no allegations of wrongdoing by defendants. Notably, the third and eleventh causes of action could never apply to defendants, as they did not purchase the property and have no interest in it. On 12/6/2024, defendants filed a demurrer to the FAC, along with a motion to strike punitive damages. Defendants demur to the first and second causes of action. On 2/21/2025, defendants served a copy of the instant motion on plaintiff requesting plaintiff dismiss his claims and pay attorney fees and costs. Plaintiff failed to do so within 21 days, and the motion was filed. (See Code Civ. Proc., § 128.7, subd. (c)(1).) Fourteen days before today's hearing, on 4/4/2025, plaintiff filed a motion for leave to file second amended complaint (SAC), which is currently set for hearing on 8/1/2025. The SAC seeks to, *inter alia,* add additional allegations of wrongdoing against Alliant and Horwitz on the theory they were never the intended buyer of the property and they acted to conceal the true buyer from the Trust. (See ROA 1326.) They also contend they named Alliant and Horwitz as defendants for "their conspiracy with Harrah to commit fraud and their role in aiding and abetting Harrah in deceiving plaintiff and inducing plaintiff to reduce its payoff demand." (Schneider Dec. (ROA 1344) ¶ 19.) Defendants assert plaintiff's Doe amendments and claims against them in the FAC violate Code of Civil Procedure section 128.7, which provides in part: "(b) By presenting to the court, whether by signing, filing, submitting, or later advocating, a pleading, petition, written notice of motion, or other similar paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, all of the following conditions are met: (1) It is not being presented primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. (2) The claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. (3) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have

		evidentiary support after a reasonable opportunity for further investigation or discovery. (4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. (c) If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation. In determining what sanctions, if any, should be ordered, the court shall consider whether a party seeking sanctions has exercised due diligence." Defendants argue plaintiff's sworn testimony confirms defendants did not commit fraud; all the pertinent facts relevant to a potential claim of fraud or concealment against defendants were readily known to plaintiff and his counsel for several years before the Doe amendments were filed; and plaintiff's claims are presented primarily to harass and extort a settlement. In their demurrer, defendants further argue the first and second causes of action are barred by the three-year statute of limitations in Code of Civil Procedure section 338, subdivision (d), an argument the court will consider when determining whether plaintiff and his counsel knew of potential fraud before filing the Doe amendments. <u>Deposition Testimony</u> Defendants are correct plaintiff's sworn deposition testimony confirms they did not commit fraud. Deeply concerning, plaintiff testified he was not aware he had sued Alliant until two days before his deposition and he never made the decision to sue Alliant or Horwitz. Plaintiff also testified he was unaware of any fraud or other wrongdoing by anyone affiliated with Alliant and that he was not sure if he ever met Horwitz personally. (See Petrossian Dec. (ROA 1270) Ex. D.) The court has made a finding plaintiff appeared competent to testify at his deposition. (ROA 1085.) <u>Pertinent Facts Were Known But Do Not Establish Fraud or Aiding and Abetting</u> The evidence also shows pertinent facts were known to plaintiff and his counsel long before the Doe amendments were filed in September 2024. Plaintiff's counsel, G10 Galuppo Law represented plaintiff in 2019 during the transaction which forms the basis for this lawsuit. (Galuppo Dec. (ROA 610) ¶ 4.) Louis A. Galuppo declared Harrah told him in 2020 and his client in 2019 he intended to sell the property to Alliant to pay off the

		loans. (Id. ¶ 6.) He also declared Harrah told him and his clients Alliant was the only available buyer for the property and provided an LOI showing Alliant was the intended buyer. (Id. ¶ 8.) Plaintiff sent a subpoena to Alliant in 2021, resulting in Alliant's production of approximately 8500 pages of responsive documents in April 2022. (Petrossian Dec. (ROA 1270) Exs. B, C.) Hence, plaintiff and his counsel were aware of Alliant and Horwitz long before this case was initiated, and voluminous documents were produced to plaintiff by Alliant during the pendency of this case. Code of Civil Procedure section 474 provides in part, "[w]hen the plaintiff is ignorant of the name of a defendant, he must state that fact in the complaint, or the affidavit if the action is commenced by affidavit, and such defendant may be designated in any pleading or proceeding by any name, and when his true name is discovered, the pleading or proceeding must be amended accordingly . . . ." Plaintiff was never ignorant of Alliant or Horwitz; both were known to plaintiff and his counsel. If plaintiff had a theory of liability against them, they should have been included in the original complaint. Because they were not, the three-year statute of limitations bars any action against them. (Code Civ. Proc., § 338, subd. (d).) Plaintiff contends they knew the identity of Alliant and Horwitz, but they did not know of the alleged fraud of these Doe defendants until June 2024 when plaintiff's counsel met with Marshal Vogt of Lee & Associates, Harrah's real estate broker. (Galuppo Dec. (ROA 1342) ¶¶ 2-3.) They argue the LOI was a sham to convince plaintiff to accept less on the outstanding debt. The court is not persuaded. Even if Vogt was never told Alliant was a potential buyer of the property and Amazon was not a potential "backup" buyer, there is no evidence Alliant or Horwitz committed fraud. And even though Vogt testified he never considered Alliant to be a potential buyer, this testimony does not evidence Alliant or Horwitz committed fraud. Vogt testified Harrah had the right to negotiate with Alliant and Horwitz directly and Vogt had no personal knowledge of those negotiations or involvement with the property. He also testified pursuant to the November 2018 listing agreement between his firm and defendant, Caribou Industries, Inc. (Harrah's company), Harrah and Caribou expressly retained the right to continue soliciting potential buyers on their own and it was proper for them to do so. In other words, Lee & Associates did not have an exclusive listing, and Harrah or Caribou had the right to bring a different buyer to the table. Vogt testified this type of arrangement is common in large real estate transactions.

		(Petrossian Dec. (ROA 1361) Exs. A, B.) Thus, Vogt's lack of knowledge of Alliant and Horwitz is irrelevant. Plaintiff also contends six documents revealed during discovery support plaintiff's theory against defendants. (See Schneider Dec. (ROA 1344) Exs A-F.) Again, the court disagrees. Exhibit A is a June 2019 email informing Horwitz Amazon was a potential buyer. This letter was produced in April 2022 pursuant to plaintiff's subpoena. (Schneider Dec. (ROA 1344) ¶¶ 7, 16.) The mere fact Horwitz was informed Amazon was a potential buyer does not establish fraud or aiding and abetting. Exhibit B is a July 2019 email where Horwitz replies "very impressive" to an Amazon Prime proposal that is not attached to the email. At best, this email indicates Horwitz knew of Amazon's interest in the property. It is not evidence defendants committed fraud or aiding and abetting. Exhibit C is a July 2019 letter from Harrah to Eric Amsworth at Amazon Prime providing an overview summary of the 625 Grand project. There is no mention of Alliant or Horwitz, and they are strangers to the communication. It is not evidence of anything concerning Alliant or Horwitz. Exhibit D is a July 2019 letter from Harrah to Horwitz reporting the Amazon meeting was incredible and providing information about a contract for the parking lot from Amazon. It also mentions Alliant potentially entering into a contract to build out a project with Amazon as the anchor tenant. Considering Alliant ended up purchasing another property from Harrah (888 Main Street [uncontested by plaintiff]), the letter appears to relate to the Main Street property. The court cannot objectively read this document as proof of fraud or aiding and abetting. Exhibit E is a July 2019 email to Horwitz from third party Strategic Realty Holdings LLC concerning an unattached "to do list" relating to an unknown deal in the making. This email was produced in April 2022 pursuant to plaintiff's subpoena. (Schneider Dec. (ROA 1344) ¶¶ 7, 16.) It is unclear to which property this email relates, so it cannot evidence fraud or aiding and abetting regarding the property at issue. Moreover, it appears to show Alliant is a potential buyer, which was already known to plaintiff before filing this action. Exhibit E is not evidence of fraud or aiding and abetting. Exhibit F is an October 2019 email to Horwitz from Harrah indicating he was working on the purchase and sale agreement for the property. This email was produced in April 2022 pursuant to plaintiff's subpoena. (Schneider Dec. (ROA 1344) ¶¶ 7, 16.) The referenced escrow appears to relate to the Main Street property, because it references "working on the PSA for 625

		Grand as well." There is no evidence of fraud or aiding and abetting shown through Exhibit F. <u>Claims Presented Primarily to Harass and Extort a Settlement</u> There is a lot at stake in this litigation. The FAC seeks cancellation of $66 million in debt, damages, including punitive damages, disgorgement, restitution, rescission, reformation, quiet title, attorney fees, costs, interest, imposition of a constructive trust and receiver, an equitable lien, and a permanent injunction. Plaintiff has been required to post an $11 million bond to maintain his lis pendens. (ROA 1244.) The court has already imposed sanctions against plaintiff and/or his counsel over $300,000 (ROAs 838, 1246), and various parties have repeatedly represented to the court attorney fees are exorbitant, in some cases in the six figures. The stakes are high and expensive. The court is unsurprised plaintiff might seek another deep pocket in pursuing his claims, even though moving defendants do not, and have never, owned, operated, or loaned money concerning the property. If anything, Hortwitz is a peripheral witness with knowledge of certain background, not necessarily legally significant, facts. As to Alliant and Horwitz, the court finds the claims of fraud and aiding and abetting against them were initiated to harass and/or to extort a settlement. There is no factual basis, and no evidence from which the court can infer, either defendant committed the torts plaintiff pursues against them. No reasonable attorney would conclude otherwise. (See *Kumar v. Ramsey* (2021) 71 Cal.App.5th 1110, 1126 (*Kumar*).) The court concludes plaintiff and his counsel of record, G10 Law APLC, filed the FAC in violation of Code of Civil Procedure section 128.7, subdivisions (b)(1) [not being presented primarily for an improper purpose] and (b)(3) [factual contentions have or likely to have evidentiary support]. The claims against defendants are totally and completely without merit as factually frivolous. (See *Kumar, supra,* 71 Cal.App.5th at p. 1126.) The proposed amendments pursuant to the motion for leave to file SAC do not cure the defects discussed herein. The action is DISMISSED WITH PREJUDICE as to Doe 1, Alliant Strategic Investments II, LLC and Doe 2, Shawn Horwitz. The court ORDERS plaintiff and his former counsel of record, G10 Law, to pay moving defendants' attorney fees and costs, jointly and severally, subject to the court's determination of those amounts upon submission of proof pursuant to noticed motion. **Defendants Alliant Strategic Investments II, LLC's and Shawn Horwitz's Demurrer to First Amended Complaint**

		Defendants Alliant Strategic Investments II, LLC's and Shawn Horwitz's Motion to Strike Punitive Damages from First Amended Complaint In light of the court's ruling on the motion for sanctions, the demurrer and motion to strike are MOOT. Moving defendants to give notice.
12	**Soodmand vs. Riley 30-2024-01380951-CU-PA-CJC**	**Defendant's Motion for Imposing Terminating Sanctions Against** Off calendar. The court appreciates the parties' meet and confer efforts to avoid further court intervention.