TENTATIVE RULINGS

Judge Michael J. Strickroth

DEPT C15

Department C15 hears Law and Motion matters on Mondays at 1:45 pm

Court Reporters: Official court reporters (i.e. court reporters employed by the Court) are NOT typically 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**

- **For additional information, please see the court's website at Court Reporter Interpreter Services for additional information regarding the availability of court reporters.**

Tentative rulings: The court endeavors to post tentative rulings on the court's website by 10:00 am in the morning, prior to the afternoon hearing. However, ongoing proceedings such as jury trials may prevent posting by that time. Tentative rulings may not be posted in every case. <u>Please do not call the department for tentative rulings if tentative rulings have not been posted.</u> The court will not entertain a request to continue a hearing or the filing of further documents once a tentative ruling has been posted.

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 or Courtroom Attendant by calling (657) 622-5215. 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.

Non-appearances: If no one appears for the 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. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

APPEARANCES: Department C15 conducts non-evidentiary proceedings, such as law and motion, remotely, by Zoom videoconference. All counsel and self-represented parties appearing for such hearings must check-in online through the Court's civil video appearance 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. 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") also available at https://www.occourts.org/media-relations/aci.html will be strictly enforced. Parties preferring to appear in-person for law and motion hearings may do so by providing notice of in-person appearance to the court and all other parties five (5) days in advance of the hearing. (see Appearance Procedures, section 3(c)1.)

PUBLIC ACCESS: In those instances where proceedings will be conducted only by remote video and/or audio, access will be provided to interested parties by contacting the courtroom clerk, preferably 24 hours in advance. No filming, broadcasting, photography, or electronic recording is permitted of the video session pursuant to California Rules of Court, rule 1.150 and Orange County Superior Court rule 180.

TENTATIVE RULINGS

Date: April 22, 2024

#	Case Name	Tentative
1	**Jones-Jackson vs OC Patrol, Inc.** **2023-01332000**	**Demurrer to Complaint** **Defendants OC Patrol, Inc. and Jared Endresen's Demurrer to Complaint of Plaintiff Jeanette Jones-Jackson is CONTINUED to 05/13/2024 at 1:45 PM in Department C15.** Before filing a demurrer or motion to strike, the demurring party or party moving to strike shall meet and confer in person or by telephone with the party who filed the pleading being attacked to determine whether a resolution may be reached. *Code of Civil Procedure* § 430.41(a) Here, counsel for Defendants has failed to file any declaration or state any facts regarding compliance with the meet and confer obligations. In light of the insufficient meet and confer, the hearing on Defendants' Demurrer is CONTINUED to the date and time indicated above. The parties are ordered to meet and confer in person or telephone, as required. Defendants are further ordered to file a declaration no later than nine court days before the continued hearing date showing that a proper meet and confer took place and advising the Court whether any matters have been resolved. Demurring parties to give notice.

		Case Management Conference The Case Management Conference similarly is continued to 05/13/2024 at 1:45 PM in Department C15. Demurring parties to give notice.
2	**Diaz vs Immaculate Heart of Mary Church** **2022-01265128**	**Motion for Terminating Sanctions** This motion is off calendar as a result of withdrawal of the motion by moving party on 04/12/2024. **Case Management Conference** Case Management conference is moved to 04/22/2024 at 8:30 AM.
3	**Ordonez vs General Motors, LLC** **2022-01289915**	**Demurrer to Amended Complaint** **Defendant General Motors, LLC's ("Defendant") demurrer to Plaintiff Rene Ordonez's ("Plaintiff") fifth cause of action for fraudulent concealment in the first amended complaint 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 is OVERRULED.** Defendant first argues the fifth 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*. (2005) 35 Cal. 4th 797, 806. "Generally speaking, a cause of action accrues at 'the time when the cause of action is complete with all of its elements.' [Citations.] 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 alleges she entered into a warranty contract with Defendant on May 8, 2019, regarding the subject vehicle. (FAC ¶ 6.) However, Plaintiff further alleges that when she presented the vehicle for repairs on June 30, 2021, and May 19, 2022, Defendant's authorized dealership made warranty repairs during each visit and represented that the vehicle had been repaired. (FAC ¶¶ 23, 24.) Plaintiff alleges she had no way of knowing 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 ¶¶ 32.) The Court finds the allegations are sufficient to invoke the delayed discovery rule at the pleadings stage. Accepted as true, they show Plaintiff could not have discovered the defect earlier despite reasonable diligence. Thus, Defendant's assertion that Plaintiff cannot invoke the delayed discovery rule because the FAC alleges the defects manifested themselves within the applicable express warranty period lacks merit. The Demurrer on the statute of limitations ground is accordingly OVERRULED. Next, Defendant argues 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* (2014) 223 Cal. App. 4th 1105, 1130. 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* (1996) 12 Cal. 4th 631, 645. This standard, however, "is harder to apply this rule to a case of simple nondisclosure." *Alfaro v. Community Housing Improvement System & Planning Assn., Inc*. (2009) 171 Cal. App. 4th 1356, 1384. "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," [citation]; "[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." *Alfaro*, *Id.,* at 1384-1385. Plaintiff alleges Defendant was aware of the defect prior to Plaintiff purchasing the vehicle and acquired that knowledge through sources not available to consumers like Plaintiff, including but not limited pre-production and post-production testing data; early consumer complaints about the transmission defect made directly to Defendant and its network of dealers; aggregate warranty data compiled by Defendant's network of dealers; testing conducted

		by Defendant in response to complaints; as well as warranty repair and part replacements data received by Defendant GM from Defendant's network of dealers, amongst other sources of internal information. (FAC ¶¶ 66, 68, 76a-76(b).) It appears the details concerning the facts, by nature, are those of which Defendant must necessarily possess full information. Defendant complains the FAC is devoid of facts regarding the individuals to whom Plaintiff spoke before the purchase, Defendant's knowledge of the defect at the time of purchase, and, Defendant's intent to induce reliance. These facts lie more in the knowledge of Defendant. The Court also finds 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* (1997) 52 Cal. App. 4th 326, 336.) The relationship necessary to impose a duty to disclose is described as transactional: "In *transactions* which do not involve fiduciary or confidential relations, a cause of action for non-disclosure of material facts may arise in at least three instances: (1) the defendant makes representations but does not disclose facts which materially qualify the facts disclosed, or which render his disclosure likely to mislead; (2) the facts are known or accessible only to defendant, and defendant knows they are not known to or reasonably discoverable by the plaintiff; (3)

		the defendant actively conceals discovery from the plaintiff. *Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, 311 [citing *Warner Construction Corp. v. City of Los Angeles* (1970) 2 Cal.3d 285, 294]. However, "it is clear in California that an action for deceit does not require contractual privity." *Shapiro v. Sutherland* (1998) 64 Cal.App.4th 1534, 1549. As noted above, under the alleged circumstances, Defendant had superior and exclusive knowledge of the defect, through sources unavailable to Plaintiff. These allegations also support the imposition of a duty to disclose. Further, while Plaintiff does not allege she purchased the vehicle from Defendant, Plaintiff does plead she entered into a warranty contract directly with Defendant on May 8, 2019. (FAC ¶¶ 6.) As the Court of Appeal recently held, this is sufficient at the pleading stage. *Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828, 844. Thus, the Demurrer on the duty to disclose argument is also OVERRULED. Defendant to file an answer within 15 days. Plaintiff to give notice. ## Motion to Strike Complaint **Defendant General Motors, LLC's ("Defendant") motion to strike Plaintiff's prayer for punitive damages in plaintiff's first amended complaint is DENIED.** Because the FAC 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. Plaintiff to give notice. ## Motion to Compel Production

		Plaintiff Rene Ordonez's Motion to Compel Defendant General Motors LLC's Further Responses to Request for Production of Documents, Set One, is GRANTED in part and DENIED in part. This motion was continued from 03/11/2024 due to the parties' failure to meet and confer adequately. The parties were ordered as follows: 1. Engage in additional meet-and-confer efforts, including in-person, telephonic or video conference meeting of counsel, no later than March 18, 2024; 2. If Defendant agrees to serve supplemental responses, Defendant shall serve supplemental verified responses no later than March 29, 2024; 3. No later than April 5, 2024, Plaintiff's counsel shall file and serve a supplemental declaration, not to exceed five pages, including (1) a description of the parties' additional efforts to meet-and-confer; (2) attaching a copy of Defendant's supplemental responses, if any; and (3) a concise description of any remaining dispute including identification of the specific requests in question which remain in dispute. 4. Defendant counsel may file a responsive declaration, not to exceed three pages, no later than April 10, 2024. 5. Failure to comply with this order may result in sanctions against the non-compliant party and/or their counsel pursuant to Code of Civil Procedure section 177.5. As ordered, Plaintiff and Defendant filed their supplemental meet and confer declarations on 04/05/2024 (ROA 102) and 04/10/2024 (ROA 108) respectively. According to these declarations, the parties met and conferred further on 03/26/2024 via telephonic conference. The Court ordered the parties

		to meet and confer no later than 03/18/2024. Defendant only indicated it would supplement document production consisting of Defendant's Policy and procedure, and other customer complaints (referring to Defendant's supplemental production previously served 08/10/2023). Defendant refused to serve any further responses or document production. Plaintiff contends the supplemental production does not resolve any of the discovery requests at issue in the instant motion. Defendant contends it has provided all documents in its possession that are responsive to Plaintiff's requests. <u>Requests Nos. 1, 2, 3, 7, 8, 9:</u> These requests relate to the Subject Vehicle, therefore, the motion to compel is GRANTED, to the extent any additional documents exist. <u>Request Nos. 56 and 58</u> seek documents related to evaluating Song Beverly claims, and training given to employees since 2017. The motion is GRANTED as to these requests. However, the requests are overbroad. The responses shall be limited to 2019-2022 (the year the car was purchased until the year the lawsuit was filed) and apply only to those employees charged with dealing with lemon law concerns regarding the Subject Vehicle. <u>Request No. 59:</u> The motion is GRANTED. However, the request is overbroad. The response shall be limited to documents related to the Subject Vehicle for the years 2019-2022. <u>Request Nos. 12, 1, 19, 23, 25, 31, 36, 39, 42, 43, 76, 77, 78, 79, 80, 92:</u> The motion is DENIED. The Subject Vehicle is a 2019 GMC Sierra 1500. These requests are overbroad and not relevant to the claims at issue because they seek documents related to all Chevrolet Vehicles.

		Request No. 68: The motion is DENIED. The request is overbroad, provides no time limitation, and includes all of GM's employees and not just those charged with dealing with lemon law concerns regarding the Subject Vehicle. Defendant is ordered to provide further verified responses and documents, without objections, within 30 days. Plaintiff's request for sanctions is DENIED. Given the overbroad nature of many of Plaintiff's requests, Defendant was substantially justified in objecting to the requests and opposing the motion. However, counsel for both sides are to appear for an Order to Show Cause why sanctions should not issue related to disobedience of the Court's order to meet and confer on or before 03/18/2024—with said telephone conference occurred on 03/26/2024. Said Order to Show Cause is set for hearing at the time of this motion on 04/22/2024 at 1:45 PM in C15. Moving party to give notice. **Case Management Conference** Regardless whether parties through counsel submit on the tentatives above and/or the tentatives become the order of the Court, counsel are ordered to appear for the Case Management Conference, either remotely or in the courtroom.
4	**Chavos & Rau, APLC vs USA National Title Company Inc.** **2019-01085921**	**Motion to Quash Discovery Subpoena** **Plaintiff Chavos & Rau, APLC's Motion to Quash the Deposition Subpoena for Production of Business Records of Third-**

		Party Sage Software is GRANTED in part and DENIED in part. This is a dispute over payment of legal fees. Defendant retained Plaintiff on 07/25/2012 to provide Defendant with legal services in in the underlying case short-titled USA *National Title Company, Inc. v. Lawyers Title and Robert Cayton*, also known as Orange County Superior Court Case Number 30-2012- 00593016-CU-OE-CJC) ("Cayton Matter"). During the pendency of the *Cayton Matter*, but entirely unrelated to it, Plaintiff assisted the Chief Executive Officer of Defendant, Edward Clark ("Clark"), in a case involving the State Lands Commission. As a professional courtesy, any services Plaintiff provided to Clark related to Clark's case with the State Lands Commission were performed at no charge to Clark and/or Defendant. Defendant served Plaintiff and Sage with a Subpoena. Sage is a non-party business entity that is affiliated with the attorney time management system known as Timeslips. A past version of Timeslips was the time management system that Plaintiff used during the July 2012 - January 2016 timeframe that Plaintiff represented Defendant. *Code of Civil Procedure* section 1987.1 states, in part, "(a) If a subpoena requires the attendance of a witness or the production of books, documents, electronically stored information, or other things before a court, or at the trial of an issue therein, or at the taking of a deposition, the court, upon motion reasonably made by any person described in subdivision (b), or upon the court's own motion after giving counsel notice and an opportunity to be heard, may make an order quashing the subpoena entirely, modifying it, or directing compliance

		with it upon those terms or conditions as the court shall declare, including protective orders. In addition, the court may make any other order as may be appropriate to protect the person from unreasonable or oppressive demands, including unreasonable violations of the right of privacy of the person." A "party" may make a motion pursuant to subdivision (a). *Code Civ. Proc.* § 1987.1(b)(1). The party seeking discovery of confidential information must show a particularized need for the information sought. The court must be convinced that the information is directly relevant to a cause of action or defense, i.e., that it is essential to determining the truth of the matters in dispute. *Britt v. Superior Court* (1978) 20 Cal.3d 844, 859-862; Weil & Brown, Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group June 2018 update) § 8:320.) Based on the evidence presented by the parties, the Court finds billing records related to Plaintiff's representation of Defendant in the Cayton Matter are relevant to the disputes at issue. Although Plaintiff contends it produced all such documents, Defendant is entitled to seek such documentation from the source in order to verify whether all such records are accounted for. Moreover, since some billing records seem to have been lost by Plaintiff during computer crashes, Defendant is entitled to verify whether Sage has any evidence of the computer crashes and/or back up billing records. Documents related to the State Land Commission case are not relevant to the claims in the dispute. Furthermore, the requests are not relevant and overbroad to the extent, 1) they seek documents from Sage which relate to Plaintiff's billing after it terminated its representation of Defendant or 2) relate to

		Plaintiff's representation of clients other than Defendant in the Cayton Matter. Accordingly, the Court rules as follows: The Motion is GRANTED as to Request Nos. 3, 4, 5, and 6. The Motion is DENIED as to Request Nos. 1, 2, 7 and 8, except the time frame for Request Nos. 1, 2, and 7 shall be limited to July 1, 2012, to February 28, 2016 – the time frame of Plaintiff's representation of Defendant alleged in the Complaint. Plaintiff's request for sanctions is DENIED. Moving party to give notice.
5	**Kim vs Gutierrez** **2022-01258392**	**Motion to Strike or Tax Costs** **Plaintiff Dae Woong Kim's motion to tax costs is DENIED.** "Any notice of motion to strike or to tax costs must be served and filed 15 days after service of the cost memorandum." *California Rules of Court*, rule 3.1700(b). Here, the memorandum of costs was served by mail and email on February 28, 2024. The 15th day after service was Thursday, March 14, 2024. For electronic service, the time to file a motion to tax is extended by two court days. *Code of Civil Procedure*, § 1010.6, subd. (a)(3)(B). Two court days from March 14, 2024, made the due date for a motion to tax, Monday, March 18, 2024. Plaintiff did not file the motion until March 28, 2024. Plaintiff's notice of motion states he attempted to file the motion on March 11, 2024 but that it

		was "rejected for failure to have calendared a hearing date." [Motion, p. 1]. The docket shows Plaintiff's original filing was rejected on March 14, 2024 at 1:54 p.m. Plaintiff still had an opportunity to timely file the motion but he did not do so. *Douglas v. Willis* (1994) 27 Cal.App.4th 287, 289-290 [failure to timely file motion to tax costs constitutes a waiver of the right to object]. Therefore, the motion to tax costs is DENIED. Defendants to give notice.
6	**Trabuco Highlands Community Association vs Loeffler** **2022-01297235**	**Motion to Compel Production** **Defendant's Motion to Compel Responses to her Requests for Production is GRANTED** Defendant propounded the Requests on 06/23/2023. Plaintiff failed to serve timely responses and did not request an extension. Defendant filed her Motion on 08/07/2023. Plaintiff has not served responses to discovery propounded in this case as of the date of this hearing. Thus, Plaintiff is compelled to provide responses to Defendant's Requests for Production (set one) and has waived objections by failing to timely respond. *Code of Civil Procedure*, § 2031.300(a). Plaintiff argues it was not required to respond to discovery because discovery was stayed in a related case pending the resolution of its Anti-SLAPP motion filed in that case. Further, the discovery was nearly identical to discovery propounded in the related case which was then stayed. However, Plaintiff provides no authority to support its contention that a discovery stay in one case is effective in a related case. As Defendant points out, Plaintiff should have served objections to the discovery, met and

		conferred regarding the discovery, or filed a motion. Thus, this argument is not persuasive. Additionally, Plaintiff argues the Motion is moot because it served responses to similar discovery in the related action. Again, Plaintiff does not provide any authority to support its claim that responding to discovery in a related action relieves the party of its discovery obligations in a different case. Thus, this argument is not persuasive. The motion is granted. Plaintiff is to provide verified responses and responsive documents, without objection, within 30 days. Moving party to give notice.
7	**City of Costa Mesa vs Hrubovcak** **2023-01340223**	**Motion to Appoint Receiver** On the Court's own motion, the hearing on this matter is continued to 05/13/2024 at 1:45 PM in Department C15. Plaintiff to give notice.
8	**Cernicky vs Jarboe** **2022-01286810**	**Motion for Summary Judgment and/or Adjudication** This motion is off calendar as a result of moving party's withdrawal filed on 04/15/2024.
9	**Al-Ghazi vs The Regents of The University of California**	**Motion for Summary Judgment and/or Adjudication** **Defendants The Regents of the University of California, Allen M. Chen, M.D., and Charles**

	2021-01207634	**Limoli's motion for summary judgment or, in the alternative, summary adjudication in favor of Defendants as to Plaintiff Muthana Al-Ghazi's claims is DENIED.** Plaintiff's Evidentiary Objections to Defendants' Evidence are OVERRULED for failure to comply with *California Rules of Court*, Rule 3.1354, subdivision (b). Defendants' Evidentiary Objections to Plaintiff's Evidence Nos. 3, 4, 11 and 15 are OVERRULED. The court declines to rule on the remaining objections on the grounds that they are not material to the disposition of the Motion. <u>Procedural defect</u>: Defendants' separate statement is deficient as to the alternative motion for summary adjudication. On a motion for summary adjudication, the separate statement must tie each "undisputed material fact" to the particular claim, defense or issue sought to be adjudicated. *California Rules of Court*, Rule 3.1350, subd. (b).) Specifically, *California Rules of Court*, Rule 3.1350, subdivision (b) states: "If made in the alternative, a motion for summary adjudication may make reference to and depend on the same evidence submitted in support of the summary judgment motion. If summary adjudication is sought, whether separately or as an alternative to the motion for summary judgment, the specific cause of action, affirmative defense, claims for damages, or issues of duty must be stated specifically in the notice of motion and be repeated,

		verbatim, in the separate statement of undisputed material facts." Here, the notice of motion seeks in the alternative, summary adjudication as to five separate issues. However, the separate statement does not repeat, verbatim, the noticed issues and does not tie each "undisputed material fact" to each separate issue to be adjudicated. Instead, Defendants provide a list of 55 "undisputed material facts" that apply to all five issues. Therefore, the court will treat the Motion as one for summary judgment only and to prevail on the Motion, Defendants are required to demonstrate they are entitled to summary judgment on all of Plaintiff's causes of action. <u>First Cause of Action for Violation of *Labor Code* § 1102.5</u>: *Labor Code* section 1102.5, subdivision (b) provides: "An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the 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."

		"Section 1102.5 provides whistleblower protections to employees who disclose wrongdoing to authorities." *Lawson v. PPG Architectural Finishes, Inc.* (2022) 12 Cal.5th 703, 709. "As relevant here, section 1102.5 prohibits an employer from retaliating against an employee for sharing information the employee 'has reasonable cause to believe . . . discloses a violation of state or federal statute' or of 'a local, state, or federal rule or regulation' with a government agency, with a person with authority over the employee, or with another employee who has authority to investigate or correct the violation." *Id.* [quoting Cal. Labor Code § 1102.5(b]. Section 1102.5 "'reflects the broad public policy interest in encouraging workplace whistle-blowers to report unlawful acts without fearing retaliation.' [Citation.]" *Id.* "An employee injured by prohibited retaliation may file a private suit for damages." Id. "[S]ection 1102.6, and not *McDonnell Douglas*, supplies the applicable framework for litigating and adjudicating section 1102.5 whistleblower claims." *Lawson*, *Ibid,* at 712. "Section 1102.6 provides the governing framework for the presentation and evaluation of whistleblower retaliation claims brought under section 1102.5. First, it places the burden on the plaintiff to establish, by a preponderance of the evidence, that retaliation for an employee's protected activities was a contributing factor in a contested employment action." *Id.* at 718. "Once the plaintiff has made the required showing, the burden shifts to the employer to demonstrate, by clear and convincing evidence, that it would have taken the action in question for legitimate, independent reasons even had the plaintiff not engaged in protected activity." *Id.* To establish a prima facie case of retaliation under *Labor Code* section 1102.5, plaintiff must show (1) plaintiff engaged in a protected activity,

		(2) the employer subjected plaintiff to an adverse employment action, and (3) a causal link between the two. *St. Myers v. Dignity Health* (2019) 44 Cal.App.5th 301, 314. Defendants argue Plaintiff cannot establish any of the elements of retaliation. First, Defendants argue Plaintiff cannot demonstrate that he engaged in protected activity. The statute forbids retaliation against an employee for disclosing information 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." *Labor Code* § 1102.5(b). An employee engages in protected activity when he discloses "'reasonably based suspicions' of *illegal activity*." *Mokler v. County of Orange* (2007) 157 Cal.App.4th 121, 138. Plaintiff has shown there is a triable issue of material fact as to whether Plaintiff engaged in protected activity. Specifically, Plaintiff has shown that on 6-17-19, during a Radiation Oncology Executive Meeting, Plaintiff made a complaint of being physically in danger while working in the department. (Kordab Decl., ¶ 19, Ex. 17, 61:11-62-13.) Further, Plaintiff has demonstrated that on 1-27-20, Plaintiff submitted a formal grievance to University of California, Irvine. (Newell Decl., ¶ 6, Ex. 5.) The grievance states Dr. Chen harassed Plaintiff, obstructed his responsibilities and created a hostile environment for Plaintiff. (*Id.*) The grievance further states Dr. Limoli harassed Plaintiff and bullied him to retract accurate statement Plaintiff made regrading Dr. Chen's treatment of Plaintiff. (*Id.*) Second, Defendants argue Plaintiff cannot demonstrate that he was subjected to an adverse employment action. The definition of adverse employment action for FEHA retaliation lawsuits

		is applicable to retaliation lawsuits under section 1102.5(b). *Patten v. Grant Joint Union High School District* (2005) 134 Cal. App. 4th 1378, 1387, disapproved on other grounds by *Lawson v. PPG Architectural Finishes, Inc.* (2022) 12 Cal.5th 703. An adverse employment action requires that the adverse action "'materially affect[] the terms and conditions of employment." (*Id.*) "The 'materiality' test encompasses not only ultimate employment decisions, 'but also the entire spectrum of employment actions that are reasonably likely to adversely and materially affect an employee's job performance or opportunity for advancement in his or her career.'" *Id.* Plaintiff has sufficiently demonstrated there is a triable issue of material fact as to whether Plaintiff's application for promotion and merit increase which was never completed constitutes an adverse employment action. *Wysinger v. Automobile Club of Southern California* (2007) 157 Cal.App.4th 413, 420 ["Where an employer retaliates by denying prospects for advancement or promotions to employees because they filed age discrimination claims, the employer has engaged in an adverse employment action in violation of FEHA."]. Specifically, on January 1, 2020, Plaintiff requested an accelerated advancement from his position as Health Sciences Clinical Professor, Set 6 to "Above Scale," skipping Step 7, 8 and 9. (UMF No. 42.) In light of Plaintiff's grievance against Chen and Limoli, Plaintiff's request was referred to a two-person ad hoc committee. (UMF No. 43.) On March 24, 2020, the ad hoc committee rendered a non-binding recommendation not to grant Plaintiff's request for accelerated advancement but one of the reviewers recommended that Plaintiff be promoted to HS clinical professor, Step 7. (UMF No. 47.) Plaintiff states the radiation oncology department and the ad hoc committee have only an advisory role and cannot

		make the final decisions regarding advancement and merit reviews and that after reviewing the file, the radiation oncology department was required to send the file to Vice Provost for final determination. (Plaintiff's Decl., ¶ 12.) However, the radiation oncology department did not send Plaintiff's file to the Vice Provost and abandoned Plaintiff's application and the process was never completed. (*Id.*) Plaintiff has shown that on September 1, 2020, Plaintiff emailed Chen and members of the Department's promotion and tenure committee to inquire about the status of Plaintiff's review for promotion and received a reply email from Limoli, disavowing himself and Chen from any responsibility for the completion of the review. (Plaintiff's Decl., ¶ 14.) Accordingly, Plaintiff has sufficiently shown there are triable issues of material fact as to whether Plaintiff was subjected to an adverse employment action. Lastly, Defendants argue Plaintiff cannot demonstrate a causal link between his alleged protected activity and any adverse employment action. "A long period between an employer's adverse employment action and the employee's earlier protected activity may lead to the inference that the two events are not causally connected. [Citation.] But if between these events the employer engages in a pattern of conduct consistent with a retaliatory intent, there may be a causal connection." *Wysinger*, *Id.*, at 421. Here, Plaintiff engaged in protected activity on 6-17-19 when he complained of being physically in danger while working in the department and on 1-27-20 when Plaintiff submitted a formal grievance to University of California, Irvine. The need for an adverse employment action became clear to Plaintiff that his application for promotion would not be completed. Here, Plaintiff sufficiently presented evidence of intervening events which shows a pattern of

		conduct consistent with a retaliatory event. Specifically, Plaintiff has shown that in July 2019, Chen told Plaintiff in a rude and offensive manner, "Relinquish your role as Director of Medical Physics and retire, in return, I will offer you emeritus title." (Plaintiff's Decl., ¶ 4.) Plaintiff states he told Chen, "I built this Department, and I am not going to retire" to which Chen became very angry, muttered a few unclear words and left my office. (Id.) Further, Plaintiff has presented evidence to show Plaintiff's job was advertised in an attempt to force him out of his position. The evidence shows that at the request of Chen, the University posted an advertisement titled "Division Director of Medical Physics." (Chen Decl., ¶ 9.) Chen states the advertisement had an error in title and that the title should have been "Division Vice Chair of Medical Physics." (*Id.*) Plaintiff has submitted a declaration in which he states Chen never discussed hiring a vice chair for the department with him and that the advertisement was for Plaintiff's position. (Plaintiff's Decl., ¶¶ 7, 8.) Accordingly, there are triable issues of material fact as to whether Plaintiff can demonstrate a causal link. Based on the foregoing, the motion for summary judgment is DENIED. Plaintiff to give notice.
10	**Fidelity National Title Insurance Company vs Asset Development, LLC** **2020-01158044**	**Order to Show Cause re: Consolidation** **Status Conference**

11	**Asset Development LLC vs Hartwick** **2022-01283116**	**Demurrer to Amended Complaint** **The Demurrer of Defendants Larry James Hartwick and Jennifer Mae Hartwick, Co-Trustees of Hartwick Family Revocable Living Trust (Hartwick Defendants) to the First Amended Complaint (FAC) of Plaintiffs Asset Development LLC; Lunar Maria Operations, Inc.; and Thomas Tonelli is SUSTAINED without leave to amend.** The Hartwick Defendants demur to the first cause of action for quiet title in the FAC. The Court sustained the Hartwick Defendants' demurrer to the first cause of action for quiet title in the initial complaint with leave to amend on 06/16/2023. Plaintiffs filed the FAC on 06/26/2023. "A quiet title action seeks to declare the rights of the parties in realty.... The object of the action is to finally settle and determine, as between the parties, all conflicting claims to the property in controversy, and to decree to each such interest or estate therein as he may be entitled to. [Citation.]" *Chao Fu, Inc. v. Chen* (2012) 206 Cal.App.4th 48, 58-59. A quiet title cause of action must plead all of the following: "(a) A description of the property that is the subject of the action… In the case of real property, the description shall include both its legal description and its street address or common designation, if any. (b) The title of the plaintiff as to which a determination under this chapter is sought and the basis of the title… (c) The adverse claims to the title of the plaintiff against which a determination is sought. (d) The date as of which the determination is sought. If the

		determination is sought as of a date other than the date the complaint is filed, the complaint shall include a statement of the reasons why a determination as of that date is sought. (e) A prayer for the determination of the title of the plaintiff against the adverse claims." *Code of Civil Procedure,* § 761.020. The FAC alleges the Hartwick Defendants transferred title to property commonly known as 937 Arnold Street, Placentia, CA (937 Arnold) to Plaintiffs under a 2019 Grant Deed. (¶¶ 42-43.) Plaintiffs allege title to 937 Arnold was clouded due to boundary discrepancies between the Golden State Tract Parcel Map and the legal description for APN 344-141-07 in the 2019 Grant Deed. Plaintiffs allege the Hartwick Defendants are liable under *Code of Civil Procedure* section 760.010 et seq. for transferring defective and unmarketable title. (¶ 49.) The Hartwick Defendants demur on the grounds they were not responsible for the alleged discrepancy in the legal description and they no longer claim any interest in the subject property, having transferred title to Plaintiffs in 2019. Plaintiffs do not identify any new allegations in the FAC which resolve the defects which caused the Court to sustain the Hartwick Defendants to the initial complaint. Plaintiffs have failed to allege the Hartwick Defendants have an adverse claim to the subject property or are legally responsible for the alleged cloud on title created by the discrepancy between the legal description and the tract map. Therefore, Plaintiffs have not established a basis for their quiet title claim against the Hartwick Defendants. Plaintiffs have not shown further amendment could resolve the defective claim. Therefore, the

		Hartwick Defendants' demurrer is sustained without leave to amend. Hartwick to give notice. **Motion for Summary Judgment and/or Adjudication** **The Motion for Summary Judgment/Adjudication by Defendants Rajesh Patel, Falguni Patel, Prahlad Patel, Kantaben Patel, Manish Patel, and Jalpa Patel (Patel Defendants) as to the First Amended Complaint (FAC) of Plaintiffs Asset Development LLC, Lunar Maria Operations, Inc., and Thomas Tonelli is GRANTED.** The Patel Defendants' Request for Judicial Notice (ROA 90) of four grant deeds dated 1959, 1962, 2019, and 2020 regarding the subject properties is granted. Plaintiffs' request for judicial notice of various grant deeds and other official property records (ROA 149) is also granted. Legal Standard *Code of Civil Procedure* section 437c(p)(2) states, "(2) A defendant or cross-defendant has met his or her burden of showing that a cause of action has no merit if the party has shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to the cause of action. Once the defendant or cross-defendant has met that burden, the burden shifts to the plaintiff or cross-complainant to show that a

		triable issue of one or more material facts exists as to the cause of action or a defense thereto. The plaintiff or cross-complainant shall not rely upon the allegations or denials of its pleadings to show that a triable issue of material fact exists but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to the cause of action or a defense thereto." Section 437c(f)(1) provides, "(f)(1) A party may move for summary adjudication as to one or more causes of action within an action, one or more affirmative defenses, one or more claims for damages, or one or more issues of duty, if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, that there is no merit to a claim for damages, as specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs. A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." <u>Scope of Motion</u> The notice of motion seeks the following relief: "Issue One: Summary adjudication on Plaintiffs' second cause of action for Quiet Title (949 Arnold Defendants) since Plaintiffs do not have any title, estate, interest, lien, or right in the 949 Property." (Motion, p. 3.) The separate statement identifies two issues, which are essentially identical to the issue stated above in the notice of motion but seek, alternatively, summary judgment or summary adjudication.

		Factual Summary The verified First Amended Complaint alleges the second cause of action against the "949 Arnold Defendants" who are identified as the holder of the Grant Deed attached as Exhibit 18 to the FAC. Exhibit 18 identifies the Patel Defendants as grantees of real property commonly known as 949 Arnold Drive, Placentia, California (949 Arnold) pursuant to a Grant Deed executed on 3/9/20 by grantor Albert Castro, Successor Trustee of The Alvina D. Castro Revocable Trust (Castro). In the FAC, Plaintiffs allege the legal description of property commonly known as 937 Arnold Drive, Placentia, California (937 Arnold), which Plaintiffs purchased in 2019, includes the 949 Arnold property which was owned by Castro from 1962-2019 and purchased by the Patel Defendants in 2020. In this motion, the Patel Defendants contend 949 Arnold was conveyed by Philip Hartwick and Kathleen Hartwick to Castro in 1962, and the Patel Defendants purchased 949 Arnold from Castro in 2020. (Defendants' Facts 1-6.) Therefore, the Patel Defendants contend Plaintiffs have no legal interest in 949 Arnold because when Plaintiffs purchased 937 Arnold from Defendants Larry James Hartwick and Jennifer Mae Hartwick, Co-Trustees of Hartwick Family Revocable Living Trust (Hartwick Defendants), in 2019, the Hartwick family no longer had any interest in the 949 Arnold property, which the Hartwick family had sold to the Castros decades earlier. In support of this argument, the Patel Defendants rely on the series of grant deed showing chain of title from the Hartwicks to the Castros in 1962 and from the Castros to Patel

		Defendants in 2020. (Patel Defendants' Req. for Jud. Notice, Exhibits A-D.) <u>Merits</u> The Patel Defendants have met their burden as moving parties to show that, based on the recorded grant deeds, they are the owners of the property identified as 949 Arnold as set out in the grant deeds. Plaintiffs' memorandum of points and authorities in opposition does not contend the grant deeds cited by the Patel Defendants were ineffective. Plaintiffs' legal argument in the opposition, which consists of approximately two pages, generally contends that the Patel Defendants have failed to establish a rebuttable presumption of title to property and that triable issues exist, but the opposition fails to cite legal authority or clearly identify such triable issues in support of Plaintiffs' argument. Plaintiffs' separate statement also fails to clearly identify disputed material facts. For example, Fact 13 states that the Patel Defendants purchased the 949 Arnold property from the Castros. In response, Plaintiffs state the fact is disputed based on the following: "That Plaintiffs have no means to verify the alleged purchase and parties thereto. That any inference as to validity of the conveyance is improper based merely on the alleged and unverified purchase. The evidence and contentions are contradictory, or at least raise contradictory inferences, as to whether a valid conveyance was initially made and whether subsequent valid conveyances were made because six (6) contrary instruments were recorded from 1978 to 2017 by and on behalf of Kathleen R. Hartwick, the alleged grantor of the

		1962 Grant Deed, said six deeds being the basis of the Plaintiffs' 2019 and 2020 deeds." First, as for Plaintiffs' apparent contention that the Patel Defendants have not submitted admissible evidence regarding the transfer and ownership of 949 Arnold, a court may take judicial notice of the legal effect of a legally operative document such as the grant deeds cited by the Patel Defendants. *Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 755. Here, the Patel Defendants have requested judicial notice of legally operative documents, i.e. grant deeds, demonstrating their ownership of 949 Arnold. Second, to the extent Plaintiffs contend documents executed or recorded by the Hartwick family subsequent to their 1962 transfer of 949 Arnold to the Castros purport to include the 949 property or a portion thereof, the Hartwicks have not shown that such subsequent transfers have any legal effect in light of the prior transfer of 949 Arnold to the Castros. *Hodges v. Lochhead* (1963) 217 Cal. App. 2d 199, 204; *Stanley v. Shierry* (1958) 158 Cal. App. 2d 373, 376 (subsequent transfer ineffective when grantor has already parted with title). Because Plaintiffs have not shown the 1962 transfer of title to 949 Arnold from the Hartwicks to the Castros was ineffective, any documents reflecting the Hartwicks' attempt to transfer title 949 Arnold are irrelevant. The Patel Defendants have met their burden of demonstrating there is no triable issue of material fact as to their ownership of 949 Arnold as set out in the 2020 grant deed. (Motion, Exhibit D.) Plaintiffs have not met their burden to demonstrate any triable issue as to ownership of the subject property. Therefore, the Patel Defendants' motion is granted.

		Patel to give notice and file a Proposed Order consistent with the Court's ruling within ten days. **Status Conference** Regardless whether parties through counsel submit on the tentatives above and/or the tentatives become the order of the Court, counsel are ordered to appear for the Case Management Conference, either remotely or in the courtroom.