Superior Court of the State of California
County of Orange

DEPT C18 TENTATIVE RULINGS

Judge Theodore R. Howard

The court will hear oral argument on all matters at the time noticed for the hearing. If you would prefer to submit the matter on your papers without oral argument, please advise the clerk by calling (657) 622-5218. If no appearance is made by either party, the tentative ruling will be the final ruling. Rulings are normally posted on the Internet by 4:00 p.m. on the day before the hearing.

COURT REPORTERS WILL NO LONGER BE PROVIDED FOR TRIAL AND OTHER HEARINGS WHERE LIVE EVIDENCE WILL BE PRESENTED. IF A PARTY DESIRES A COURT REPORTER FOR ANY HEARING INCLUDING, BUT NOT LIMITED TO, LAW AND MOTION MATTERS, EX PARTE MATTERS AND CASE MANAGEMENT CONFERENCES, IT WILL BE THE RESPONSIBILITY OF THAT PARTY TO PROVIDE ITS OWN COURT REPORTER. PARTIES MUST COMPLY WITH THE COURT'S POLICY ON THE USE OF PRO TEMPORE COURT REPORTERS WHICH CAN BE FOUND ON THE COURT'S WEBSITE AT:

http://www.occourts.org/media/pdf/7-25-2014_Privately_Retained_Court_Reporter_Policy.pdf

The Orange County Superior Court has implemented administrative orders, policies, and procedures noted on the Court's website to address the limitations and restrictions presented during the COVID-19 pandemic at Civil Covid-19. Due to the fluid nature of this crisis, you are encouraged to frequently check the Court's website at https://www.occourts.org for the most up to date information relating to Civil Operations.

Unless otherwise ordered by the Court, all Unlimited and Complex proceedings may be conducted via Zoom or in person. On the date of your hearing click the Department C18 Link to begin the remote online check in/Zoom appearance process:

https://acikiosk.azurewebsites.us/?dept=C18

Date: April 17, 2025

#		
1.	Deris v. Toyotas Motor Sales, U.S.A., Inc. 23-1335810	The Motion to Compel the Deposition of Defendant's Person Most Knowledgeable ("PMK"), filed on 12/2/24 by Plaintiff Kazem Deris ("Plaintiff") against Defendant Toyota Motor Sales, U.S.A., Inc. ("Defendant") is **DENIED**. The Motion seeks to compel Defendant to produce a PMK to testify on categories 8-37 in the Amended Notice of Deposition. However, there are two Amended Notices at issue here. The first was served on May 6, 2024 ("May 6 Notice"), noticing a deposition for June 20, 2024. Defendant served objections to that notice on June 17, 2024, but indicated "TMS will produce its witness on the categories of claims handling on this date. TMS will meet and confer with Plaintiff to reschedule the deposition as to the remaining categories on a date and time that is mutually convenient". (See Declaration of Stoliker, Exhibit 5.) Defendant provides a declaration and pages from a deposition that indicate that deposition was taken on June 17, 2024, with the transcript certified on July 2, 2024. (See Declaration of Sniderman, ¶¶ 3-5, Exhibit A and B.) The present motion was filed on December 2, 2024. To the extent this motion is seeking to address Defendant's objections served as to the May 6 Notice, it is untimely. *Code of Civ. Proc. § 2025.480(b)* provides a motion to compel when a deponent fails to answer any question or produce any document, or tangible thing must be made no later than 60 days after completion of the record of deposition. The Second Amended Notice of Deposition was served on September 23, 2024, noticing a deposition for November 8, 2024. Plaintiff admits that the September 23, 2024, Second Amended Notice of Deposition was inadvertently served to Defendant's prior counsel, not its current counsel. Though Plaintiff asserts that the failure to respond or object "constitutes a waiver of any error or irregularity in the notice" under *CCP § 2025.410*, this position is incorrect. *CCP § 2025.410(a)* provides that "Any party ***served*** with a deposition notice that does not comply with Article 2 (commencing with Section 2025.210) waives any error or irregularity unless that party promptly serves a written objection". (emphasis added) There is no evidence that Defendant was served with the deposition notice, thus it had no duty to timely object to a notice it never received. There is no logical

		way to require a party to timely object to a notice that was not served on it. As Defendant was not served with the notice of deposition, the motion is **DENIED**. No sanctions are warranted. *Counsel for Defendant is ordered to give notice.*
2.	Garduno v. P.C. & RS Chao Family Limited Partnership, LP 23-1340712	Before the court is a motion by Plaintiffs to compel Walt Disney Parks and Resorts U.S., Inc. ("WDPR") and The Walt Disney Company ("TWDC) to provide further responses to Requests for Production of Documents, Set Two ("Set Two"). The Motion is **DENIED**, as set forth herein. **Motion as to WDPR** WDPR asserts that the plaintiffs' motion is time barred. The court agrees. Pursuant to *Code of Civil Procedure section 2030.300, subdivision (c)*, a motion to compel further responses to interrogatories must be filed within 45 days of service of the verified response, or on or before any specific later date to which the demanding party and the responding party have agreed in writing, with additional time allowed for the manner of service. On 3/26/24, WDPR served verified responses to Requests for Production, Set One ("Set One"). (Exhs. C to Opp.) This meant that the last day to file a motion to compel as to Set One was May 14, 2024. No motion to compel was filed as to Set One. Instead, on 6/25/24, plaintiffs served Request for Production, Set Two, to each of the Defendants on 6/25/24. (Exh. A to Motion; Semerjian Decl. ¶4) The court has compared Request No. 10 in Set One and finds it essentially the same as the two requests in Set Two. As the Court stated in *Pro. Career Colleges, Magna Inst., Inc. v. Superior Ct.* (1989) 207 Cal.App.3d 490, "it would be an absurdity to say that a party who fails to meet the time limits of section 2030 may avoid the consequences of his delay and lack of diligence by propounding the same question again . Such a construction of the statute would obviously encourage delay and provide no incentive to attempt to resolve any dispute with the opposing party. The Legislature has explicitly stated that unless a party moves to compel further response within 45 days of the unsatisfactory response, he waives any right to compel a further response. We hold that this means what it says, plaintiff's motion was therefore untimely."

		The plaintiffs' motion is therefore untimely and the motion as to WDPR is **DENIED**. Because the motion is untimely, the court does not reach the merits of WDPR's objections. **Motion as to TWDC** Although TWDC and WDPR jointly argue that the plaintiffs' motion is time barred, it is not clear that TWDC served its responses to Requests for Production Set One on 3/26/24 as did WDPR. Instead, the proof of service shows the responses to Set One were served on 7/23/24 which is the same date as TWDC served its responses to Set Two. (See Exh. D to Hansen Decl. – ROA 123) Assuming the responses to Set One were served concurrently with the responses to Set Two, then the rationale from *Pro. Career Colleges, Magna Inst., Inc. v. Superior Ct.* (1989) 207 Cal.App.3d 490 as to the motion being untimely would not apply. Accordingly, the court will address the merits of the objections. Although TWDC asserts numerous objections in its responses, in the Opposition it only addresses the objections that the requests are overbroad and therefore unduly burdensome. (Opp. at page 8-10) Since TWDC has failed to meet its burden to justify the other objections, they are not addressed. (See *Coy v. Superior Court* (1962) 58 Cal.2d 210, 220-221) According to the FAC, the bed bug exposure occurred on June 5 and 6 in 2022. (FAC ¶32) It is during this one night stay in Room 1429 at Disney's Paradise Pier Hotel that the plaintiffs were subjected bed bug bites. Defendant asserts that the discovery request is overbroad because it seeks discovery pertaining to all 500 rooms of the 15-story hotel as well as the common area and that as a result of the overbreadth, it is unduly burdensome. Plaintiffs offer no declaration from an expert as to why such a broad request for discovery is needed. All that plaintiffs state is that their expert will need information to opine on "notice, duty, and breach" and as to the "seriousness of the bedbug infestation." (Semerjian Decl. ¶¶15-16) However, these general statements fall short of justifying the discovery and do not explain why records from 500 rooms as well as the common area are discoverable. Further, there is no indication that plaintiffs made any attempt during the meet and confer process to narrow or modify the requests to address the overbreadth of the requests and the motion does not suggest a compromise position. Instead, plaintiff argues the objections are "meritless." (Motion at 6:27) The court disagrees.

		Accordingly, the objections by TWDC based on overbreadth and burden are **SUSTAINED**. The plaintiff's motion is therefore **DENIED**. *Counsel for WDPR to give notice of this ruling.*
3.	Mashini v. FCA US LLC 24-1405227	Before the court is Plaintiffs Washib J. Mashini and Adriana Davizon Mashini ("Plaintiffs")' Motion for an Order Establishing Admissions. The motion is denied as MOOT. Plaintiff seeks to establish admissions in Request for Admissions (Set One) propounded to Defendant on September 16, 2024. Defendant served late responses on November 26, 2024 and verifications on February 12, 2025. This leaves the question of whether those responses are in substantial compliance with *Code of Civ. Proc. § 2033.220*, which provides: "(a) Each answer in a response to requests for admission shall be as complete and straightforward as the information reasonably available to the responding party permits. (b) Each answer shall: (1) Admit so much of the matter involved in the request as is true, either as expressed in the request itself or as reasonably and clearly qualified by the responding party. (2) Deny so much of the matter involved in the request as is untrue. (3) Specify so much of the matter involved in the request as to the truth of which the responding party lacks sufficient information or knowledge. (c) If a responding party gives lack of information or knowledge as a reason for a failure to admit all or part of a request for admission, that party shall state in the answer that a reasonable inquiry concerning the matter in the particular request has been made, and that the information known or readily obtainable is insufficient to enable that party to admit the matter." While nearly all of Defendant's responses include objections that were waived with the failure to timely respond, each also includes a substantive response, which admits or denies the requests or indicates Defendant lacks the ability to admit or deny after reasonable inquiry. Accordingly, the responses substantially comply with *Code of Civ. Proc. § 2033.220,* and the motion is **MOOT**.

		However, *Code of Civ. Proc. § 2033.280(c)* indicates that sanctions are mandatory on "the party or attorney, or both, whose failure to serve a timely response to request for admission necessitated this motion." Accordingly, sanctions are ordered against Defendant in the reduced amount of $1, 290, due and payable through Plaintiffs' attorney of record within 30 days of this order. *Plaintiffs' counsel to give notice.*
4.	Yakoub v. Aguilar 24-1393709	Before the Court at present is the "Motion to Quash Defendants' Subpoena for Plaintiff's Out of State Records Pursuant to *C.C.P. §§ 1987.1 et seq*., and *1985.3(g)"* filed by Plaintiff Mohab Yakoub ("Plaintiff") on 11/8/24. As reflected in the Opposition, the Motion on the merits is now **MOOT**, as the subpoena at issue was promptly withdrawn after this Motion was filed. (ROA 51, Kandarian-Stein Decl. at ¶ 11, and Ex. C.) What remains at issue is the respective requests for sanctions. Both sides' sanctions requests are **DENIED**. Plaintiff is correct that the subpoena at issue was improperly directed to another state, without complying with *C.C.P. § 2026.010*. The defense is thus not entitled to sanctions here, despite the conduct of Plaintiff's counsel in addressing the issue. However, the defense has otherwise shown good cause for seeking at least a substantial portion of the records at issue. (ROA 51, Kandarian-Stein Decl. at ¶¶ 3-5 and Exs. A, B.) Instead of cooperating with the defense to provide those records reasonably requested, Plaintiff just asserted extensive objections and demanded withdrawal of the subpoena and payment of sanctions. (ROA 42, Shirazi Decl., ¶¶ 3-11, and Exs., 1-5.) As Plaintiff failed to make a reasonable effort to resolve the dispute and to cooperate in allowing reasonable discovery, Plaintiff's sanctions request is also **DENIED**. *Counsel for Plaintiff is to give notice of this ruling.*
5.	Sorto v. Mihalis 23-1350662	*(Off calendar- matter transferred)*
6.	Ricks v. Wine Cellar Designers Group, LLC 22-1274692	The motions to compel responses to Special Interrogatories, Set One, and Request for Production of Documents, Set Two, from defendant Wine Cellar Designers Group, LLC ("Defendant") filed by Plaintiff Tyler Ricks ("Plaintiff") are **DENIED**.

		On 02/20/25, the Court granted Plaintiff's unopposed motion to strike the answer of Defendant and enter Defendant's default due to Defendant's failure to obtain counsel. (ROA 107.) Entry of a defendant's default cuts off its right to appear in the action. (See Weil & Brown, Cal. Prac. Guide, *Civ. Proc. Before Trial,* Ch.5-A ¶ 5:6, citing *Devlin v. Kearny Mesa AMC/Jeep/Renault, Inc.* (1984) 155 Cal.App.3d 381, 385-386.) As such, Defendant would be unable to participate in any discovery the Court may order pursuant to these motions. Furthermore, entry of default deprives the court of jurisdiction to consider any motion other than a motion for relief from default. (*Id*., ¶ 5:7, citing *W.A. Rose Co. v. Mun.Ct.* (*FitzSimmons*) (1959) 176 Cal.App.2d 67, 72.) Based on the foregoing, the motions are **DENIED**. *Counsel for Plaintiff is ordered to give notice.*
7.	Farkas v. Smith 23-1324888	Before the Court at present are two motions, both filed by plaintiff/cross-defendant Joel Farkas ("Farkas"), seeking orders to compel further responses from defendant/cross-complainant Jennifer Blair Smith ("Smith") as follows: (1) Motion to Compel Compliance with Plaintiff's Requests for Production of Documents, filed on 11/19/24, seeking further responses to Farkas' Requests for Production ("RFPs") Sets One and Two – specifically, for RFP Nos. 6, 7, 14 - 19, 21, 26, 28, 29, 43-45, 47 -55, 60, 64-70, and 76 ("Motion 1" below); and (2) Motion to Compel Further Responses to Plaintiff's Requests for Production of Documents, Set Three and Special Interrogatories, Set Four, filed on 1/22/25, seeking further responses to Farkas' RFPs Set Three, for RFP Nos. 103-105 and 111-112, and on Farkas' Special Interrogatories ("SROGs"), Set Four, for SROGs 458-460 and 463 ("Motion 2" below). Motion 1 is **GRANTED** on the merits and **GRANTED IN PART** on the sanctions request. <u>Motion 1</u> demonstrates that RFPs Set One were served on 3/3/24; Smith responded on 4/12/24 and produced some documents thereafter. (ROA 299, Canzoneri Decl., ¶¶ 2-4, Ex. A.) RFPs Set Two were served on 6/20/24; Smith responded on 9/16/24 but provided no additional documents. (*Id*. at ¶¶ 5-7, Ex. B.) Meet and confer letters were sent, but Smith's counsel did not respond. (*Id*. at ¶¶ 8-9, Exs. C and D.) By this Motion, Farkas seeks further responses and a further production for any

		remaining documents for RFP Nos. 6, 7, 14 - 19, 21, 26, 28, 29, 43-45, 47 -55, 60, 64-70, and 76 from those sets. The Opposition asserts that responsive documents were produced, that search efforts are ongoing, and for some of the RFPs, lists specific bates-numbers produced for some of the categories in the supporting declaration. (ROA 410, Hanley Decl., ¶¶ 2, 3.) That does not suffice. Many of the RFP responses at issue here stated that documents in Smith's "possession, custody or control will be produced," but did not list them. Others made a similar representation, carving out tax returns, or stated that additional documents would be produced, but again did not list them. Others pointed to vast bates-ranges to identify responsive materials that may be contained therein. (ROA 299, Exs. A, B.) None of that is sufficient. Nor are additional assertions made only in an opposing attorney declaration, as to some of the categories at issue, adequate to address these defects. The responses need to be specific, with documents sorted and identified to correspond with the categories in the document demand. (*C.C.P. § 2031.280(a)* ["Any documents or category of documents produced in response to a demand for inspection, copying, testing, or sampling shall be identified with the specific request number to which the documents respond."].) And for the one RFP at issue which stated that responsive documents did not exist (No. 45), Mr. Hanley's declaration seems to now suggest that some do exist. (ROA 410, Hanley Decl., ¶ 3.) Verified supplemental responses must be provided for each of the RFPs at issue (Nos. 6, 7, 14 - 19, 21, 26, 28, 29, 43-45, 47 -55, 60, 64-70, and 76). Those responses must identify the specific corresponding bates-numbers for what was produced in response and confirm that all responsive docs [except as already carved out in a specific response] have now been produced. As Smith's responses were plainly defective and her counsel appears to have also failed to adequately meet and confer, sanctions are imposed on Smith and her counsel, William B. Hanley, Esq., of the Law Office of William B. Hanley, jointly and severally, in the reduced sum of $2,500. Those sanctions are to be paid to Farkas, through his counsel of record, within 30 days after service of notice of this ruling. Motion 2 is **GRANTED IN PART**; the sanctions request is **DENIED**.

		Motion 2 demonstrates that RFPs Set Three and SROGs Set Four were served on 10/15/24 and 11/5/24; Smith responded on 12/5/24. (ROA 349, Harney Decl., ¶¶ 3-5, Exs. A - C.) Smith's counsel did not respond to a subsequent request to confer. (*Id*. at ¶ 2, Ex. D.) For the SROGs, the Motion concerns Nos. 458 – 460, 463. Smith has failed to show that any of the objections are warranted here, while the requested information appears relevant to issues in dispute in the case. Motion 2 is therefore **GRANTED** as to SROG Nos. 458-460 and 463. For the RFPs, the Motion concerns Nos. 103 -105, 111, and 112. As to RFP Nos. 103 – 105, although financial information is protected by the right to privacy, the requested documents are directly relevant here. The motion is therefore **GRANTED** as to Nos. 103-105. However, RFP Nos. 111 – 112 seek to improperly invade Smith's right to medical privacy, where the requested information does not appear to be relevant to the allegations in the pleadings, nor to damages to either party. The Motion is therefore **DENIED** as to RFP Nos. 111 – 112. The Court **DENIES** the sanctions request on Motion 2, as both sides' positions had some merit. *Counsel for Mr. Farkas is to give notice of these rulings.*
8.	Guzman v. City of Santa Ans 23-1323955	Before the court are four discovery motions in which the City of Santa Ana ("City") seeks response without objection to discovery it served on plaintiff David Guzman. The first three motions seek an order that Plaintiff provide responses to Form Interrogatories, Special Interrogatories and Requests for Production. The fourth motion seeks an order that Requests for Admissions be deemed admitted. The four motions are **MOOT** in part and **GRANTED** in part, as set forth herein. Service of Discovery Requests Plaintiff argues initially that he was not properly served with the four sets of discovery and therefore was not obligated to provide a timely response thereto. Plaintiff claims that CCP §1010.6(c)(3) states that electronic service is not authorized until the parties agree to electronic service. That section applies to "unrepresented" parties and is not applicable because plaintiff is represented by counsel. Since plaintiff was represented by counsel, service by email was proper pursuant to CCP §1010.6(a) which states, in part, "A

		document may be served electronically in an action filed with the court as provided in this section, in accordance with rules adopted pursuant to subdivision (h)." The court therefore finds that the discovery was properly served. <u>Merits</u> All four motions are based on the City's argument that Plaintiff failed to serve timely responses and has therefore waived the right to object. City establishes that on 8/2/24, it served Form Interrogatories, Set One, Special Interrogatories, Set One, Requests for Production of Documents, Set One, and Requests for Admissions, Set One, on Plaintiff. (Exh. 1 to Lee decl.) City also establishes that Plaintiff had not served responses as of the filing of the motions on 11/7/24, despite being requested to do so. (Lee Decl. ¶¶5-6) Responses to interrogatories, requests for production of documents, and requests for admission are due 30 days after service (plus appropriate time for method of service). (*CCP §§ 2030.260, 2031.260,* and *2033.250*.) *California Code of Civil Procedure §2030.290* provides in part as follows: "If a party to whom interrogatories are directed fails to serve a timely response, the following rules apply: (a) The party to whom the interrogatories are directed waives any right to exercise the option to produce writings under Section 2030.230, as well as any objection to the interrogatories, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). …(b) The party propounding the interrogatories may move for an order compelling response to the interrogatories." *Code of Civil Procedure §2031.300* provides in part as follows: "If a party to whom a demand for inspection, copying, testing, or sampling is directed fails to serve a timely response to it, the following rules shall apply: (a) The party to whom the demand for inspection, copying, testing, or sampling is directed waives any objection to the demand, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). …(b) The party making the demand may move for an order compelling response to the demand." With respect to the Requests for Admission, a propounding party may ask the court for an order that deems the matters contained in the requests for

		admission admitted if the receiving party fails to respond to the requests for admission. (*CCP § 2033.280(b)*.) The court shall grant the order unless it finds that the party to whom the requests were directed has served responses in conformance with *Code Civ. Proc. § 2033.220* before the hearing on the motion. (*CCP § 2033.280(c)*.) Here, on 3/28/25 Plaintiff served verified responses to the Form Interrogatories, Set One and Requests for Admissions, Set One. The hybrid responses included both substantive responses to some requests as well as objections to others. At the same time, plaintiff also served unverified responses to Special Interrogatories, Set One, and Requests for Production, Set One, which consisted of only objections. Although responses have now been served, City argues that "any *Pitchess* privilege has been waived" because the responses were not timely served. (Reply at 4:21-24) In most instances, the City would be correct. However, the plaintiff has asserted an objection based on "*Penal Code §§832.5-832.8* and *Evidence Code §§1043, 1045 and 1046*" which is referred to herein as the "*Pitchess* Objection" or "*Pitchess* Privilege." Where discovery of the items enumerated in *Penal Code §832.7(a)* is sought in civil litigation: "(1) the specific Evidence Code procedures relating to discovery of peace officer personnel records take precedence over the general discovery rules outlined in the Code of Civil Procedure, and (2) a party may not excuse his noncompliance with those specific provisions by 'resorting to a waiver provision in the inapplicable and more generalized procedure which he chose to use.'" (*County of Los Angeles v. Superior Ct.* (1990) 219 Cal.App.3d 1605, 1611.) In other words, the City's argument that Plaintiff has waived the *Pitchess* objection pursuant to the Discovery Act, has been disapproved. The protection under the *Pitchess* Privilege is quite broad. As the Court stated in *Hackett v. Superior Ct.* (1993) 13 Cal.App.4th 96, 101, "the legislative intent is clear—to include within the conditional privilege all information in a peace officer's personnel file, including home addresses and similar data, without regard to whether the information could also be obtained from the officer or elsewhere." As a result of plaintiff serving responses to the four sets of discovery, the Motions are **MOOT** to the extent they seek responses without objection and are therefore **DENIED**. Further, given the nature of the *Pitchess*

		Objections asserted in each of the four sets of discovery, a careful analysis of each request is needed, and the parties have not submitted argument or authority addressing each request. Also, the parties have not yet met and conferred regarding the responses to the specific requests. Although the four Motions to Compel Responses are **DENIED**, it is without prejudice to filing a Motion to Compel Further Responses and without prejudice to the City seeking discovery from plaintiff via other methods. In addition to responses to discovery, the City seeks monetary sanctions as to each motion. *Cal. Rules of Court, rule 3.1348(a)* states: "The court may award sanctions under the Discovery Act in favor of a party who files a motion to compel discovery, even though no opposition to the motion was filed, or opposition to the motion was withdrawn, or the requested discovery was provided to the moving party after the motion was filed." Monetary sanctions are mandatory when a party fails to respond to interrogatories, requests for production or requests for admission unless the court finds that the person subject to the sanctions acted with substantial justification. Plaintiff's assertion that electronic service was not allowed lacked substantial justification. Also, while plaintiff is correct that the Pitchess Objections are not waived because of a failure to timely serve responses to written discovery, there is no authority cited which holds that *Penal Code §§832.5-832.8* and *Evidence Code §§1043, 1045* and *1046* relieve the plaintiff from his obligation to at least respond to the discovery requests and timely assert the *Pitchess* Objections. Accordingly, the request for sanctions is **GRANTED** and plaintiff and his attorney, Corey Glave, are ordered to pay monetary sanctions, jointly and severally, in the amount of $1,060 for each motion, for a total of $4,240, to City, through its attorney of record, within 30 days. *Counsel for City is ordered to give notice of this ruling.*
9.	Carlton v. Ford Motor Company 24-1445099	Before the Court at present is the Demurrer filed by Defendants Ford Motor Company ("Ford") and Villa Ford of Orange ("Villa") (together the "Defendants") on 1/17/25. The Demurrer is directed to the Fifth and Sixth Causes of Action (each a "COA") in the Complaint filed by Plaintiffs Richard Carlton and Patricia Carlton ("Plaintiffs") on 12/6/24. The Demurrer is **OVERRULED**.

		The primary argument presented by Defendants is that these COAs are barred by the economic loss rule (the "ELR"), based on the recent decision in *Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1. But *Rattagan* concerned tort claims based on conduct during a contractual relationship: it specifically did not address claims of fraudulent inducement by concealment in the Song-Beverly context. (*Id*. at 41, fn. 12.) In contrast, *Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828 addresses claims in this context, and after *Rattagan* was decided, review of *Dhital* was dismissed. Under *Dhital*, fraudulent inducement by concealment claims are not barred by the ELR. (*Dhital v. Nissan North America, Inc., supra,* 84 Cal.App.5th at 843.) The Demurrer to COA 6, based on the ELR, thus fails here. The Demurrer for COA 5 on ELR grounds is based on the same reasoning, and thus fails as well. Defendants also argue that these COAs are not adequately pled. But for COA 5, the Complaint asserts at ¶ 61 that Villa "breached its duty to Plaintiffs to use ordinary care and skill by failing to properly store, prepare and repair the Subject Vehicle in accordance with industry standards," and at ¶ 7 that the vehicle value has thus been diminished. The Demurrer fails to show why those allegations do not suffice for pleading purposes. For COA 6, Plaintiffs have alleged that Ford knew vehicles with the same transmission suffered from the stated defects but concealed that from consumers, that Plaintiffs would not have purchased the vehicle if they had known thereof, and that the vehicle value has thus been diminished. (Complaint, ¶¶ 7, 24 - 35 and 64-73.) They have also alleged a factual basis for a duty to disclose known defects. (See *Dhital v. Nissan North America, Inc., supra,* 84 Cal.App.5th at 843; *Gilead Tenofovir Cases* (2024) 98 Cal.App.5th 911, 949 ["a vehicle manufacturer owes a duty to purchasers of its vehicles to disclose known defects"].) The Demurrer fails to show why those allegations do not suffice for pleading purposes. The Demurrer is therefore **OVERRULED**. *Defendants are to file their Answers within 10 days and are to give notice of this ruling.*
10.	Fischer v. Fischer 24-1377424	Before the Court are the following motions: (1) demurrer filed by Defendants Ameristar Real Estate and Investments, Inc. (Ameristar), Fastrack Escrow, Inc.

		(Fastrack), and Jasdeep Kochar aka Jazz Kochar (J. Kochar) directed to the First Amended Complaint (FAC) of Plaintiff William M. Fischer (Plaintiff); (2) motion to strike portions of the FAC filed by Ameristar, Fastrack, and J. Kochar; and (3) demurrer to the FAC filed by Defendant Jennifer L. Fischer (Defendant Fischer). **Motion No. 1: Demurrer by Ameristar, Fastrack and J. Kochar** <u>Statute of Limitations</u> In ruling on a general demurrer based on statute of limitations grounds, the running of the statute must appear "clearly and affirmatively" from the face of the complaint. It is not enough that the complaint might be time-barred. (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42; *Stueve Bros. Farms, LLC v. Berger Kahn* (2013) 222 Cal.App.4th 303, 321.) "[A] cause of action accrues at 'the time when the cause of action is complete with all of its elements' [Citation] 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. [Citation] [¶] A plaintiff has reason to discover a cause of action when he or she 'has reason at least to suspect a factual basis for its elements.'" (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 807.) "The discovery rule only delays accrual until the plaintiff has, or should have, inquiry notice of the cause of action. The discovery rule does not encourage dilatory tactics because plaintiffs are charged with presumptive knowledge of an injury if they have information of circumstances to put [them] on inquiry or if they have the opportunity to obtain knowledge from sources open to [their] investigation. [Citation.] In other words, plaintiffs are required to conduct a reasonable investigation after becoming aware of an injury, and are charged with knowledge of the information that would have been revealed by such an investigation." (*Id*. at 807-808, quotations and italics omitted; see also, *E-Fab, Inc. v. Accountants, Inc. Services* (2007) 153 Cal.App.4th 1308, 1318-1319.)

		The existence of the means to obtain information, such as through public records, is equivalent to actual knowledge of that information "only where there is a duty to inquire, as where plaintiff is aware of facts which would make a reasonably prudent person suspicious." (*Hobart v. Hobart Estate Co*. (1945) 26 Cal.2d 412, 438.) Moving Defendants contend that Plaintiff's claims, filed more than 6 years after the recording of the grant deeds for the Subject Properties, are barred by the applicable statute of limitations based on constructive and inquiry notice of said publicly recorded grant deeds. The FAC, however, sufficiently alleges facts showing application of the delayed discovery rule to Plaintiff's claims, as Plaintiff argues in the Opposition. (See FAC ¶¶ 28, 32.) The allegations appear sufficient at the pleading stage to show that Plaintiff had no reason to suspect wrongdoing related to the Subject Properties prior to 2023 due to the fraudulent financial reports provided to him, and thus there was no duty to inquire as to the ownership of the Subject Properties. The allegations in the FAC are sufficient to show the delayed discovery rule applies to Plaintiff's claims. Accordingly, the demurrer on statute of limitations grounds is **OVERRULED**. <u>Third Cause of Action</u> Moving Defendants contend the third cause of action is barred by the Statute of Frauds. It appears from the allegations of the FAC that the agreement between Plaintiff and Defendant Fischer was an oral agreement that by its terms is not to be performed within a year from the making thereof, and/or that the agreement was for the leasing of real property for a longer period than one year. (See FAC ¶ 21.) The agreement would thus violate the statute of frauds as Moving Defendants argue. (*Civ. Code, § 1624, subd. (a)(1), (3)*.) Plaintiff failed to address this argument in the Opposition. The demurrer on statute of frauds grounds is therefore **SUSTAINED WITH 20 DAYS LEAVE TO AMEND**. Moving Defendants also argue the third cause of action fails because there are no facts that they had any knowledge of the purported oral contract between Plaintiff and Defendant Fischer, and there are no facts that they engaged in any act to deceive Plaintiff from discovering the Subject Properties had been sold by Defendant

		Fischer to Defendant Rogers. Contrary to Moving Defendants' argument, the FAC adequately alleges that Moving Defendants had knowledge of the contract between Plaintiff and Defendant Fischer, and that they engaged in acts to deceive Plaintiff from discovering the Subject Properties had been sold. (See, *e.g.,* FAC ¶¶ 12a, 29-30, 46, 88-89.) The demurrer on this ground is **OVERRULED**. <u>Fifth Cause of Action</u> Moving Defendants contend the fifth cause of action fails because Plaintiff failed to allege facts showing Moving Defendants owed him a fiduciary duty. The general rule is that a party who is not personally bound by the duty violated may not be held liable for civil conspiracy even though it may have participated in the agreement underlying the injury. (See *Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal. 4th 503, 511 ["By its nature, tort liability arising from conspiracy presupposes that the coconspirator is legally capable of committing the tort, *i.e.*, that he or she owes a duty to plaintiff recognized by law and is potentially subject to liability for breach of that duty."].) However, an exception to this rule exists when the participant acts in furtherance of its own financial gain and not merely as an agent or employee of fiduciary defendants. (*Mosier v. Southern California Physicians Ins. Exchange* (1998) 63 Cal.App.4th 1022, 1048; *Skarbrevik v. Cohen, England & Whitfield* (1991) 231 Cal.App.3d 692, 709.) Here, as Plaintiff points out in the Opposition, the FAC alleges that Moving Defendants acted for their own financial gain, and they had an independent financial motive for their actions. (See FAC ¶¶ 12a, 29-31, 98-99.) Based on the foregoing, the demurrer on this ground is **OVERRULED**. <u>Sixth Cause of Action</u> Moving Defendants contend the sixth cause of action fails because there are no allegations that Plaintiff entered into any contract with Moving Defendants. "The implied covenant of good faith and fair dealing rests upon the existence of some specific contractual obligation." (*Racine & Laramie, Ltd. v. Department of*

		Parks & Recreation (1992) 11 Cal.App.4th 1026, 1031.) Here, the FAC fails to allege the existence of a contract involving Moving Defendants. Thus, there is no contract to which an implied covenant of good faith and fair dealing claim against Moving Defendants could attach. Plaintiff has not shown that the exceptions regarding civil conspiracy to commit breach of fiduciary duty apply to a claim for civil conspiracy to commit breach of the covenant of good faith and fair dealing, when the latter requires an underlying contract. Based on the foregoing, the demurrer on this ground is **SUSTAINED WITH 20 DAYS LEAVE TO AMEND**. <u>Seventh Cause of Action</u> Moving Defendants appear correct that the seventh cause of action for conversion and civil conspiracy for conversion fails because the tort of conversion does not apply to real property. "The tort of conversion applies to personal property, not real property." (*Salma v. Capon* (2008) 161 Cal.App.4th 1275, 1295.) Plaintiff failed to address this argument in the Opposition. The demurrer on this ground is **SUSTAINED WITH 20 DAYS LEAVE TO AMEND.** <u>Ninth Cause of Action</u> Moving Defendants are correct that the ninth cause of action fails to sufficiently plead a misrepresentation to Plaintiff and justifiable reliance thereon. (See FAC ¶¶ 113-114; *Philipson & Simon v. Gulsvig* (2007) 154 Cal.App.4th 347, 363 [elements of fraud].) The demurrer on this ground is **SUSTAINED WITH 20 DAYS LEAVE TO AMEND**. **Motion No. 2: Motion to Strike by Ameristar, Fastrack and J. Kochar** Moving Defendants move to strike the prayer for attorney's fees in the FAC. Plaintiff filed a non-opposition to the motion stating that Plaintiff does not oppose the motion to strike. (See ROA 107.) The motion is therefore **GRANTED**. **Motion No. 3: Demurrer by Defendant Fischer**

		As an initial matter, the Court notes Defendant Fischer's demurrer is 19 pages and thus violates *California Rules of Court, rule 3.1113(d)*, which provides that no opening or responding brief may exceed 15 pages. The Court will exercise its discretion and consider the entirety of the demurrer but admonishes Defendant Fischer to abide by the rules of court for future filings. **Motion to Dismiss or Stay** Defendant Fischer contends this action should be dismissed or stayed because the family law court has exclusive subject matter jurisdiction over the Subject Properties. Defendant Fischer presents no evidence showing that the Subject Properties are assets at issue in the family court proceeding. Defendant Fischer filed a request for judicial notice in support of this demurrer and motion to dismiss in which she only provides copies of, and seeks judicial notice of, the grant deeds related to the Subject Properties. (See ROA 97.) Defendant Fischer has not submitted copies of any family law documents in connection with the instant motion to dismiss. Thus, Defendant Fischer has not shown that the Subject Properties are in fact an asset to be addressed in the family court action and that said action involves the same claims as the instant action as Defendant Fischer argues. Based on the foregoing, the motion to dismiss or stay is **DENIED**. **Statute of Limitations** Defendant Fischer contends all of Plaintiff's claims are barred by the applicable statute of limitations based on constructive and inquiry notice of the publicly recorded grant deeds for the Subject Properties. Defendant Fischer's argument fails for the same reasons discussed above in connection with the demurrer brought by defendants Ameristar, Fastrack, and J. Kochar. Accordingly, the demurrer on statute of limitations grounds is **OVERRULED**. **Statute of Frauds** Defendant Fischer contends Plaintiff's causes of action against her are barred by the Statute of Frauds. Defendant Fischer's argument pertaining to the Statute of Frauds is well-taken for the same reasons discussed

		above in connection with the demurrer brought by defendants Ameristar, Fastrack, and J. Kochar. The demurrer on this ground is **SUSTAINED WITH 20 DAYS LEAVE TO AMEND**. <u>Second Cause of Action</u> Defendant Fischer is correct that the allegations pertaining to the contract are uncertain as Plaintiff fails to allege the material terms of the contract and does not clearly allege whether it is oral, implied in fact or written. The demurrer on this ground is **SUSTAINED WITH 20 DAYS LEAVE TO AMEND.** <u>Fifth Cause of Action</u> Defendant Fischer contends this claim fails because Plaintiff has not alleged any damage in the underlying breach of fiduciary duty claim that would or could have occurred as a result of Defendant Fischer's alleged creation of false accounting reports in 2022 or 2023. This argument fails to take into account that the FAC also alleges damages based on the sale of the Subject Properties and not merely the creation of false accounting reports. A demurrer does not lie to a portion of a cause of action. (*Elder v. Pacific Bell Telephone Co*. (2012) 205 Cal.App.4th 841, 856 fn 14.) The demurrer on this ground is **OVERRULED**. <u>Seventh Cause of Action</u> Defendant Fischer contends this claim fails because conversion cannot apply to real property. The argument is well-taken. (*Salma v. Capon* (2008) 161 Cal.App.4th 1275, 1295.) The demurrer on this ground is **SUSTAINED WITH 20 DAYS LEAVE TO AMEND.** The requests for judicial notice filed by defendants (ROA 77 and 97) are **GRANTED** as to the existence, date of recordation and clear legal effects of the records, but not the truth of any facts alleged therein. (*Evid. Code § 452(c), (h)*; *Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1117; *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 264-265.) *Counsel for Plaintiff is ordered to give notice of these rulings.*

11.	Tavik Industries, LLC v. Incipio Technologies, Inc. 19-1087170	Before the Court at present is the Motion to Quash Plaintiff Tavik Industries, LLC's Subpoena For Production Of Business Records To Incipio (Assignment For The Benefit Of Creditors), LLC, filed by Non-Party Buchalter, A Professional Corporation ("Buchalter") on 11/18/24. Defendant Monroe Capital Management Advisors, LLC ("MCMA") filed a Joinder on 4/3/25. By this Motion. Buchalter seeks an order quashing the subpoena issued by Plaintiff Tavik Industries, LLC ("Plaintiff") on 10/25/24 to an entirely separate non-party, Incipio (Assignment for The Benefit Of Creditors), LLC ("ABC"), as shown in ROA 558, Ex. A, for Request Nos. 1, 2, 4-9, and 12-16 in the Subpoena. As a preliminary matter, it is not apparent that Buchalter even has standing to bring the Motion. Buchalter does not claim to represent the subpoenaed party, ABC. Instead, it seeks relief based on its assertion that communications which are (or at least were) subject to the attorney-client privilege between Buchalter and its former clients, Incipio Technologies, Inc. ("ITI") and Incipio, LLC ("Incipio"), are within the scope of the requests at issue. However, *C.C.P. § 1987.1(b)* identifies categories of persons with standing to bring a motion to quash thereunder. Buchalter has not shown that any of those categories apply to it here. Buchalter claims that it nonetheless has standing, citing *Powers v. Ohio* (1991) 499 U.S. 400, 410 for the proposition that litigants may assert the legal rights of third parties if, among other things, the litigant would suffer a distinct and palpable injury. But Buchalter is not a litigant here. Nor has it shown that it would suffer a distinct and palpable injury without the requested relief, as the client is the holder of the attorney-client privilege. (*OXY Resources California LLC v. Superior Court* (2004) 115 Cal.App.4th 874, 901; *Ev. Code §§ 953, 954*.) Buchalter has not shown here that it is authorized to assert the attorney-client privilege on behalf of its former clients under *Ev. Code §954*. Nor has it addressed who now holds the rights to assert that privilege. If it is ABC, there is no evidence presented here to show that ABC is asserting any privilege claim as to prior communications between ITI/Incipio and Buchalter. If it is not ABC, yet ABC was provided with materials otherwise subject to an attorney-client privilege which had belonged to ITI/Incipio, potential waiver has not been adequately addressed here. In addition, even if the belated joinder by MCMA could suffice to support a claim of standing under *C.C.P. § 1987.1*, it has shown no basis for relief here, as it does

		not claim that it is the holder of any attorney-client privilege at issue here. Buchalter or Monroe have also not shown why either has standing to object based on the breadth of the requests or any burden to respond, as the subpoena at issue was not directed to either of them. Nor have either demonstrated any other basis for the requested relief. In contrast, Plaintiff has made a showing of good cause for the requests at issue, and that the materials sought are not otherwise available (Opp, pp. 15-16; Katz Decl. ¶ 5, and Ex. 3.) Neither Buchalter nor Monroe have shown contra. The Motion is therefore **DENIED**. However, as Buchalter seems to have brought the motion in good faith and with some reasonable justification, Plaintiff's request for sanctions is also **DENIED**. Plaintiff's Objection, filed as ROA 912, is **OVERRULED** as to the Joinder overall, but **SUSTAINED** as to the unsupported factual assertions presented therein. *Counsel for Plaintiff is to give notice of this ruling*.
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
21.		
22.		
23.		
24.		
25.		
26.		
27.		
28.		
29.		
30.		