TENTATIVE RULINGS
DEPARTMENT C13 - LAW AND MOTION CALENDAR

Judge Jonathan Fish

May 20, 2024

LAW AND MOTION IS HEARD ON MONDAYS AT 1:30 P.M.

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 must 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;
- 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 5 p.m. on the preceding Friday. Do NOT call the Department for a tentative ruling if none is posted. Tentative rulings may not be posted on every case – or may be posted the morning of the hearing – due to the Court's other commitments or the nature of a particular motion. **The Court will NOT entertain a request for continuance 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) 622-5213. 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: Remote and In-Person Proceedings. Parties are referred to the Court's "Appearance Procedures and Information – Civil Unlimited and Complex" and "Guidelines for Remote Appearances" available on the Public Website.

#	Case Name	

1	22-01287755 **Cuomo v. Pence Wealth Management Incorporated**	

22-01287755

Cuomo v. Pence Wealth Management Incorporated

1) **DISCLUSORE: With re. to Ramy Fahim, this court officiated in two felony hearings where the court declined to release Fahim on bail and continued the arraignment (9-6-24 and 12-1-24 on case 22NF1025).**
2) **Motion to Compel Production Demurrer to Amended Complaint**

The Court denied Plaintiff Wendy Cuomo's motion to compel compliance with her subpoena served on third party Orange County Seriff-Coroner Department ("OCSD") without prejudice.

Plaintiff served a subpoena on the OCSD requesting "[a]ll documents relating to case number 22-02462-KI, decedent Griffin Cuomo, including, but not limited to, the death certificate, autopsy photographs, notes, and any audio/video recordings." (Gorelik Decl., ¶ 3, Ex. 2.)

OCSD has refused to produce responsive documents, due to its ongoing investigation of Ramy Fahim who has been charged with Decedent's murder. OCSD cites Evid. Code § 1040, which provides a public entity with the privilege to refuse to disclose information "because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice."

In *County of Orange v. Superior Court* (2000) 79 Cal.App.4th 759 held that the criminal investigation file in a murder case (subpoenaed in a related civil case) was confidential and subject to the official information privilege in Evid. Code, § 1040. The Court explained:

> Evidence gathered by police as part of an ongoing criminal investigation is by its nature confidential. This notion finds expression in both case and statutory law. For example, in *People v. Otte* (1989) 214 Cal.App.3d 1522 [263 Cal.Rptr. 393], the court made the following observation concerning the confidentiality of criminal investigative files in the course of interpreting the section 1041 privilege as to confidential informants: " 'Communications are made to an officer in official confidence when the investigation is of such a type that disclosure of the investigation would cause the public interest to suffer. An apt illustration of this situation is the investigation of a crime by police officers. [Citations.] It is not only where a witness requests that his statement be kept in confidence, but in all cases of crime investigation that the

		record and reports are privileged.' (*Jessup v. Superior Court* (1957) 151 Cal.App.2d 102, 108 [311 P.2d 177].)" (*People v. Otte*, *supra*, 214 Cal.App.3d at p. 1532; see also *Rivero v. Superior Court* (1997) 54 Cal.App.4th 1048, 1058-1059 [63 Cal.Rptr.2d 213] [confidentiality of criminal investigations must be maintained so that potential witnesses come forward]; *People v. Wilkins* (1955) 135 Cal.App.2d 371, 377 [287 P.2d 555]; *People v. Pearson* (1952) 111 Cal.App.2d 9, 18, 24 [244 P.2d 35].) (*Id.* at 764.) The Court stated that the "appropriate remedy in this case is for the trial court to stay discovery of investigative information in the civil action in order to allow the sheriff's department the necessary time to investigate." (*Id.* at 768.) OCSD submitted a declaration from Deputy District Attorney Jeff Moore, stating that the information sought by the subpoena would jeopardize the pending criminal prosecution of Defendant Fahim and place the criminal trial at risk. (Moore Decl., ¶ 8.) He states that the records could contaminate the jury pool as to the issue of Defendant's sanity and may result in inconsistent testimony. (Moore Decl., ¶¶ 11-17.) While Plaintiff has shown that the documents sought are relevant to her claims and damages, the OCSD submits evidence suggesting that the information is confidential and could adversely impact the pending criminal proceedings. The Court therefore denies the motion and orders the discovery of third-party information related to the criminal case stayed pending resolution of the criminal prosecution. **3) Motion to Strike** Defendants Advanced Group 18-116 dba Stadium House Apartments' and Advanced Real Estate Services, Inc. dba Advance Management Company's motion to strike the punitive damages allegations from Plaintiff Robert Cuomo's Second Amended Complaint ("2AC") in the consolidated case (No. 2023-01304193) is denied.

		A court may strike out any irrelevant, false, or improper matter inserted in any pleading or strike out all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule or an order of the court. Code Civ. Proc. § 436. "Irrelevant" matters include: allegations not essential to the claim, allegations neither pertinent to nor supported by an otherwise sufficient claim or a demand for judgment requesting relief not supported by the allegations of the complaint. (Code Civ. Proc. § 431.10(b).) A motion to strike can also strike legal conclusions. (*Weil & Brown*, Cal. Prac. Guide, *Civil Proc. before Trial*, ¶ 7:179 (2010).) Conclusory allegations are permitted, however, if they are supported by other factual allegations in the complaint. (*Perkins v. Superior Court* (1981) 117 Cal.App. 3d 1, 6.) Civil Code § 3294 provides that punitive damages may be awarded in an action for breach of an obligation not arising from contract, if the plaintiff proves by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice. "Malice" means conduct that is intended to cause injury or despicable conduct that is carried on with a willful and conscious disregard of the right and safety of others. (Civ. Code § 3294(c)(1).) As stated above, in connection with the ruling on the demurrer, Plaintiff alleges in the 2AC, that moving defendants, including a security guard they employed, allowed Fahim to enter the apartment complex, and despite not being authorized to be on the premises was allowed to move around the common areas for several hours while he waited for Decedent Griffin to leave. (2AC, ¶¶ 13, 23, 33.) Plaintiff also alleges that Defendants failed to maintain the apartment complex in a safe condition, and take reasonable measures to secure the building and prevent unauthorized access. (2AC, ¶ 70.) Further, Plaintiff alleges that Defendants were aware that the premises lacked proper security and that there were multiple prior issues of break-ins, criminal activities, trespass, and/or assault within the premises. (2AC, ¶ 61.) Plaintiff alleges that despite knowing that Fahim was a trespasser on the premises and was behaving dangerously and suspiciously on the premises prior to the Incident, Defendants "decided to risk the safety of their residents, including Decedent, and did nothing," knowing that "Fahim could potentially attack or harm one of their residents." (*Id.*) Plaintiff claims in ¶ 86, that these wrongful acts and omissions "were done maliciously, oppressively, fraudulently, and/or with a willful and knowing disregard of the probable dangerous consequences for the health and safety of [decedent]."

		The Court finds that these allegations are sufficient at the pleadings stage to support conduct constituting a willful and conscious disregard of the right and safety of others. **3 Demurrer** Defendants Advanced Group 18-116 dba Stadium House Apartments' and Advanced Real Estate Services, Inc. dba Advance Management Company's demurrer to Plaintiff Robert Cuomo's Second Amended Complaint ("2AC") in the consolidated case (No. 2023-01304193) is overruled. A demurrer presents an issue of law regarding the sufficiency of the allegations set forth in the complaint. (*Lambert v. Carneghi* (2008) 158 Cal.App.4th 1120, 1126.) The challenge is limited to the "four corners" of the pleading (which includes exhibits attached and incorporated therein) or from matters outside the pleading which are judicially noticeable under Evidence Code §§ 451 or 452. Although California courts take a liberal view of inartfully drawn complaints, it remains essential that a complaint set forth the actionable facts relied upon with sufficient precision to inform the defendant of what plaintiff is complaining, and what remedies are being sought. (*Leek v. Cooper* (2011) 194 Cal.App.4th 399, 413.) On demurrer, a complaint must be liberally construed. (CCP § 452; *Stevens v. Superior Court* (1999) 75 Cal.App.4th 594, 601.) All material facts properly pleaded, and reasonable inferences, must be accepted as true. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-67.) Defendants demur to Plaintiff's 3rd cause of action for wrongful death – negligent hiring, training and supervision, Plaintiff's 4th cause of action for wrongful death – negligence premises liability, and Plaintiff's 5th cause of action alleging survival damages. In the 2AC, Plaintiff alleges that moving defendants, including a security guard they employed, allowed Fahim to enter the apartment complex, and despite not being authorized to be on the premises was allowed to move around the common areas for several hours while he waited for Decedent Griffin to leave. (2AC, ¶¶ 13, 23, 33.) Plaintiff alleges that Defendants are vicariously liable for the security guard's actions, that they were responsible for providing proper security for

		the premises, and that they did nothing despite knowing that Fahim was a trespasser behaving suspiciously on the premises prior to the incident. (2AC, ¶ 61.) Plaintiff also claims that Defendants failed to maintain the apartment complex in a safe condition, and take reasonable measures to secure the building and prevent unauthorized access. (2AC, ¶ 70.) Defendants cite to a number of cases demonstrating that in holding parties liable for the intentional torts of others, courts focus on duty and foreseeability. However, it is worth noting that none of the legal authority relied on by Defendants with similar fact patterns were decided at the pleading stage. As Plaintiff states in opposition, *Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666 and *Davis v. Gomez* (1989) 207 Cal.App.3d 1401 both regarded summary judgment motions, and *Sturgeon v. Curnutt* (1994) 29 Cal.App.4th 301, and *Alvarez v. Jacmar Pacific Pizza Corp*. (2002) 100 Cal.App.4th 1190 were based on nonsuit motions presented after Plaintiff's presentation of a case-in-chief during trial. Plaintiff alleges the following in the 2AC: > 61. Defendants and DOES 2-50, and their executives, managers, and supervisors were responsible for providing proper security and promised to provide proper security to residents of the premises. Moreover, Defendants knew prior to the murder of Decedent Griffin, that the premises lacked proper security and that there were multiple prior issues of break-ins, criminal activities, trespass, and/or assault within the premises. Despite the knowledge of Defendants and their executives, managers and supervisors of the lack of security to the premises and the danger that this lack of security presented to the safety and welfare of the residents, Defendants and DOES refused to provide proper security prior to the incident. This, especially the allegation that there were "multiple prior issues of break-ins, criminal activities, trespass, and/or assault within the premises," combined with the other allegations in the 2AC is sufficient at the pleadings stage to support the negligence and survival causes of action against Defendants. The demurrer is therefore overruled. Plaintiff shall give notice.
3	**23-01306365**	**Case Management Conference**

	David v. Local Auto Group, LLC	**(Related to Case 23-01328133 Hudson Insurance v. Blake)** **Continued to 7/29/24 at 1:30 p.m.**
3	**23-01328133** **Hudson Insurance Company v. Blake**	**1) Motion for Discharge, Restraining Order and Costs** The hearing on Plaintiff Hudson Insurance Company's Motion for Discharge is continued to **07/29/24 at 1:30 PM in Department C13**. The Court is inclined to grant the motion. However, Plaintiff cannot be discharged from liability until claimant Maria Badajoz has been given notice of this motion. (Code Civ. Proc., § 386; Code Civ. Proc., § 386.5; Cal. Prac. Guide Civ. Pro. Before Trial at ¶ 2:491.) Accordingly, the hearing shall be continued so that such notice may be given. Plaintiff shall give notice of the ruling and of the continuance. **2) Case Management Conference** **Continued to 7/29/24 at 1:30 p.m.**
4	**23-01299440** **Hulsey v. Trofimenko MD**	**Motion for Summary Judgment and/or Adjudication** Plaintiff Rickie Hulsey's Motion for Summary Judgment/Adjudication is denied. Plaintiff moves for summary judgment or adjudication on her causes of action for medical malpractice and medical battery and on the issue of punitive damages, against Defendant Vera Trofimenko, M.D. <u>Legal Standard</u> "[F]rom commencement to conclusion, the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) A "party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact. . . ." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) "A prima facie showing is one that is sufficient to support the position of the party in question." (*Id.* at p. 851.)

		Where a plaintiff seeks summary judgment, the burden is to produce admissible evidence on each element of a cause of action entitling him or her to judgment. (Code Civ. Proc. § 437c, subd. (p)(1); *S.B.C.C., Inc. v. St. Paul Fire & Marine Ins. Co.* (2010) 186 Cal. App. 4th 383, 388.) This means that a plaintiff who bears the burden of proof at trial by a preponderance of evidence must produce evidence that would require a reasonable trier of fact to find any underlying material fact more likely than not. (*LLP Morg. v. Bizar* (2005) 126 Cal. App. 4th 773, 776.) If plaintiff meets this burden, the burden then shifts to the defendant "to show that a triable issue of one or more material facts exists as to that cause of action." (Code Civ. Proc. § 437c, subd. (p)(1).) The court shall grant a motion for summary adjudication "only if it completely disposes" of "a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (Code Civ. Proc., § 437c, subd. (f)(1).) <u>Application</u> At the outset, the Court notes summary judgment cannot be had, because the motion is directed to only two out of Plaintiff's three remaining causes of action. (Code Civ. Proc., § 437c, subd. (a)(1).) With respect to Plaintiff's alternative request for summary adjudication, the motion must be denied because Plaintiff has failed to "produce *admissible* evidence on each element of a cause of action" entitling her to judgment. The exhibits attached to Plaintiff's motion are not properly authenticated. As the moving party, her evidence shall be "strictly scrutinized" while the opposing party's evidence is "liberally construed." (*Cole v. Town of Los Gatos* (2012) 205 Cal.App.4th 749, 757.) Even assuming for the sake of argument that Plaintiff had produced admissible evidence, she fails to carry her initial burden on her medical malpractice claim. "Ordinarily, a doctor's failure to possess or exercise the requisite learning or skill can be established only by the testimony of experts." (*Lawless v. Calaway* (1944) 24 Cal.2d 81, 86.) Expert testimony is required "unless negligence on the part of a doctor is demonstrated by facts which can be evaluated by resort to common knowledge," in which case, "expert testimony is not required since scientific enlightenment is not essential for the determination of an obvious fact." (*Ibid.*) Plaintiff did not submit any expert testimony on her medical malpractice claim, which cannot be evaluated by "resort to common knowledge."

		Although Plaintiff may argue that her medical battery claim does not require expert testimony, the record demonstrates there is conflicting evidence on the issue of consent. Plaintiff may *dispute* that the consent she gave was "valid," because it was purportedly coerced, but the conflict in evidence, i.e., what she says versus what she signed, creates a triable issue of fact for the fact finder to decide. (*Specht v. Keitel* (1961) 190 Cal.App.2d 332, 340, citations omitted [conflicts in the evidence present issues of fact for determination by the trier of fact, who "is the sole judge of the credibility of the witnesses" and who may "disbelieve them even though they are uncontradicted if there is any rational round for doing so"].) The issue of consent is not a question of law, hence, it is not suitable for summary adjudication. (*Oakland Raiders v. National Football League* (2005) 131 Cal.App.4th 621, 630.) Finally, Plaintiff cannot seek summary adjudication on the issue of her entitlement to punitive damages, because "a plaintiff is never entitled to punitive damages as a matter of right, not even '[u]pon the clearest proof of malice in fact.'" (*Sumpter v. Matteson* (2008) 158 Cal.App.4th 928, 930, citing *Brewer v. Second Baptist Church* (1948) 32 Cal.2d 791, 801.) For all the foregoing reasons, the motion is denied. Defendant shall give notice of the ruling.
6	**23-01322642** **Retail Strategies Group, Inc. v. Kelco Properties LLC**	**Motion for Protective Order** Defendant Kelco Properties, LLC's motion for a protective order with respect to Plaintiff's requests for production of documents is denied. Code Civ. Proc., § 2031.060(b) provide that for good cause shown, the Court may issue a protective order instructing the following: (1) That all or some of the items or categories of items in the demand need not be produced or made available at all. (2) That the time specified in Section 2031.260 to respond to the set of demands, or to a particular item or category in the set, be extended. (3) That the place of production be other than that specified in the demand. (4) That the inspection, copying, testing, or sampling be made only on specified terms and conditions. (5) That a trade secret or other confidential research, development, or commercial information not be disclosed, or

		be disclosed only to specified persons or only in a specified way. (6) That the items produced be sealed and thereafter opened only on order of the court. Here, Defendant states that after meeting and conferring (without success), it responded to the discovery at issue. Typically, the purpose of a motion for a protective order (as reflected in Code Civ. Proc., § 2031.060) is to obtain a court order that the discovery need not be responded to, or that it only needs to be responded to under certain circumstances with limitations. Indeed, a well-known treatise on the issue instructs: Instead of responding to the demand, the party to whom it is directed may seek a protective order (e.g., against overbreadth). Anyone else affected by the demand (e.g., a third person whose privacy would be infringed by disclosure of the documents) also may seek such an order. [CCP § 2031.060] (Cal. Prac. Guide Civ. Pro. Before Trial Ch. 8H-5 at ¶ 8:1452 [emphasis added].) Because Defendant already served responses to the discovery at issue, the motion is arguably moot. Plaintiff has since filed a motion to compel further responses that is scheduled for July 1, 2024. In Defendant's reply brief, it confirms that the motion to compel relates to the same disputes raised by this motion. The Court thus finds that Defendant fails to show good cause for a protective order because it has already served responses to the requests for production of documents which are now the subject of a pending motion to compel filed by Plaintiff. Plaintiff's request for sanctions is denied. Plaintiff shall give notice.

| 7 | **20-0167742**

United Auto Credit Corporation v. Click App Drive.Com Corp | **Motion for Summary Judgment and/or Adjudication**

Plaintiff United Auto Credit Corporation's motion for summary judgment or adjudication against defendants CLICK APP DRIVE.COM CORP, Alfredo A. Arias, Sr. and Alfredo A. Arias, Jr. is denied.

Plaintiff alleges in its complaint that under the agreement for purchase of retail sales contracts, CLICK APP was required to provide certain information and warranted that a variety of problems with the vehicle or customer did not exist. [Complaint (ROA #2), ¶¶ 10-17.] If the conditions of the warranties were not met, CLICK APP was required to re-purchase the retail installment sales contract. [*Id.*, ¶¶ 18-22.] the Arias guaranteed CLICK APP's performance: "guarantees the prompt full payment and performance of all indebtedness, obligations, conditions, covenants and agreements." [*Id.*, ¶¶ 15-17.]

Plaintiff alleges 21 vehicles and retail installment sales contracts that it purchased from CLICK APP that, for various reasons, CLICK APP was required under their agreement to re-purchase but did not. [Complaint, ¶¶ 29-49.]

Plaintiff also alleges that Defendants made misrepresentation about the vehicles and made fraudulent payments on them. [Complaint, ¶¶ 51-74.]

Based on these allegations, Plaintiff asserts five causes of action against Defendants in its complaint: (1) intentional misrepresentation against all Defendants; (2) negligent misrepresentation against all Defendants; (3) promissory fraud against all Defendants; (4) breach of contract (dealer agreement) against CLICK APP; and (5) breach of contract (personal guarantees) against Arias Sr. and Jr.

Summary Judgment/Adjudication Standards
A "party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact . . . ." *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal. 4th 826, 850. "A prima facie showing is one that is sufficient to support the position of the party in question." *Id.* at 851. Where a plaintiff seeks summary judgment, the burden is to produce admissible evidence on each element of a cause of action entitling him or her to judgment. Code Civ. Proc. § 437c(p)(1); *S.B.C.C., Inc.* |

v. St. Paul Fire & Marine Ins. Co. (2010) 186 Cal. App. 4th 383, 388. This means that a plaintiff who bears the burden of proof at trial by a preponderance of evidence must produce evidence that would require a reasonable trier of fact to find any underlying material fact more likely than not. *LLP Mortg. v. Bizar* (2005) 126 Cal. App. 4th 773, 776. At that point, the burden shifts to the defendant "to show that a triable issue of one or more material facts exists as to that cause of action." Code Civ. Proc. § 437c(p)(1).

Similarly, for summary adjudication, the moving party must address or otherwise dispose of an entire cause of action or issue of duty in order to obtain summary adjudication of that cause of action or issue of duty. Code Civ. Proc. §437c(p)(2).

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 that party contends that the cause of action has no merit or that there is no affirmative defense thereto, or that there is no merit to an affirmative defense as to any cause of action, or both, or 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. Code Civ. Proc. §437c(f)(1). "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." *Id.*

In order to move for summary adjudication, the party moving must specify in its notice of motion and motion the claim, causes of action, or issues it is moving on. CRC 3.1350. The court has no power to adjudicate others. *Maryland Cas. Co. v. Reeder* (1990) 221 Cal. App. 3d 961, 974 n. 4; *Homestead Savings v. Superior Court* (1986) 179 Cal. App. 3d 494, 498.

The noticed issues for summary adjudication must then be stated, verbatim, in the separate statement – with separately stated undisputed facts for each noticed issue. CRC 3.1350(b), (d).

> (1) The Separate Statement of Undisputed Material Facts in support of a motion must separately identify:
> (A) **Each cause of action**, claim for damages, issue of duty, or affirmative defense **that is the subject of the motion**; **and**
> (B) **Each supporting material fact** claimed to be without dispute **with respect to the cause of action,**

		claim for damages, issue of duty, or affirmative defense that is the subject of the motion. (2) The separate statement should include only material facts and not any facts that are not pertinent to the disposition of the motion. CRC 3.1350(d) (emphasis added). Failure to comply with the separate statement requirement constitutes ground for denial of the motion, in the court's discretion. Code Civ. Proc. § 437c(b)(1). ***Plaintiff's Motion for Summary Judgment*** While Plaintiff's notice of motion and motion, and its memorandum in support (ROA #154) says Plaintiff seeks summary judgment, Plaintiff's actual presentation of argument and evidence is limited to the breach of contract causes of action in its complaint. [*See* Memorandum of Points and Authorities ("MPA – ROA #154); Separate Statement of Undisputed Facts ("UMF" – ARO #159; Reza Declaration (ROA # 165); Schulze Declaration (ROA # 170).] Plaintiff contends that Defendants admitted to misrepresentations. [MPA at 17.] But Plaintiff does not discuss or present evidence on the other elements of the fraud causes of action. "The elements of an action for fraud and deceit based on concealment are: (1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been 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." *Boschma v. Home Loan Center, Inc.* (2011) 198 Cal.App.4th 230, 248 (citing *Hahn v. Mirda* (2007) 147 Cal.App.4th 740, 748). "Promissory fraud" is a subspecies of fraud and deceit. A promise to do something necessarily implies the intention to perform; hence, where a promise is made without such intention, there is an implied misrepresentation of fact that may be actionable fraud. An action for promissory fraud may lie where a defendant fraudulently induces the plaintiff to enter into a contract." *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 973−974; CACI 1902. "[I]n a promissory fraud action, to sufficiently allege defendant made a

		misrepresentation, the complaint must allege (1) the defendant made a representation of intent to perform some future action, i.e., the defendant made a promise, and (2) the defendant did *not really have that intent at the time that the promise was made, i.e., the promise was false*." *Beckwith v. Dahl* (2012) 205 Cal. App. 4th 1039, 1059–60. The elements of a negligent misrepresentation claim are "(1) a misrepresentation of a past or existing material fact, (2) made without reasonable ground for believing it to be true, (3) made with the intent to induce another's reliance on the fact misrepresented, (4) justifiable reliance on the misrepresentation, and (5) resulting damage." *Ragland v. U.S. Bank Nat'l Ass'n* (2012) 209 Cal. App. 4th 182, 196. Because Plaintiff has not addressed all of the causes of action in its complaint against Defendants – and thus has not presented a prima facie showing for each cause of action against Defendants – Plaintiff's motion for summary judgment must be denied. ***Plaintiff's Motion for Summary Adjudication*** Plaintiff motion for summary adjudication does not identify which causes of action it seeks summary adjudication on. It only describes the issues that it seeks summary adjudication of. Plaintiff noticed and moved for summary adjudication "that CLICK APP breached the Dealer Agreement and PERSONAL GUARANTORS breached the personal guaranty as described below." [Notice of Motion and Motion (ROA #155) at 2:16-17.] Moreover, as stated, the noticed issue do not dispose of an entire cause of action because it refers to breach only and not the other elements of a breach of contract claim. The elements of breach of contract are (1) existence of a contract, (2) plaintiff's performance or excuse from non-performance, (3) breach by defendant, and (4) damages. *First Commercial Mortgage Co. v. Reece*, 89 Cal. App. 4th 731, 745 (2001). Further, Plaintiff's separate statement does not comply with the requirements for summary adjudication. Plaintiff has not broken down its statement of undisputed material facts by the issues noticed for summary adjudication – or even by the causes of action discussed in the memorandum. [*See* ROA # 159.] Rather, Plaintiff has presented a single long list of 155 statements of fact. [*Id.*]

		Accordingly, Plaintiff's motion for summary adjudication is denied. **CLICK APP DRIVE.COM TO GIVE NOTICE**