

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 06/24/25      TIME: 1:30 P.M.      DEPT: A      CASE NO: CV0001114

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK:

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PLAINTIFF:      ANTHONY BYRD

vs.

DEFENDANT:    MARIN AIRPORTER, A  
CALIFORNIA CORPORATION

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NATURE OF PROCEEDINGS: HEARING – OTHER – FINAL APPROVAL

**RULING**

The unopposed motion for final approval of class and PAGA settlement is **GRANTED**.

The court adopts and affirms its findings made in connection with the January 21, 2025 Order granting preliminary approval of the settlement. In connection with the notice plan, no proposed member has objected to the settlement and only three members opted out.

The court finds that the requirements for class certification for settlement purposes are met in that (a) the parties are sufficiently numerous that it is impracticable to bring them all before the court; (b) there are questions of law or fact common to the class that are substantially similar and predominate over questions affecting individual members; (c) the claims of the named representative are typical of those of the class; and (c) the named representative can fairly and adequately protect the interests of the class. (Code Civ. Proc., § 382; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App. 4<sup>th</sup> 224, 240.)

Accordingly, the court orders that:

1. The class is certified, and Plaintiff is appointed class representative.
2. The court appoints Otkupman Law Firm as class counsel and appoints Apex Class Action Administrator as the settlement administrator.
3. After considering the factors set forth in *Clark v. American Residential Services LLC* (2009) 175 Cal.App. 4<sup>th</sup> 785, 799, the court finds the class settlement to be fair and reasonable.
4. The court finds the proposed attorney's fee amount is fair and appropriate, the costs incurred by counsel and the settlement administrator are reasonable, and that the service payment to Plaintiff is fair and reasonable.

5. The court finds the PAGA settlement fair and reasonable including the requisite payment of penalties to the LWDA.

Absent objection, the court will sign the proposed order submitted by Plaintiff.

*All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.*

*The Zoom appearance information for June, 2025 is as follows:*

*<https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyaiInzo6lyz2dKaw.1>*

*Meeting ID: 160 526 7272*

*Passcode: 026935*

*If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: <https://www.marin.courts.ca.gov>*

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 06/24/25      TIME: 1:30 P.M.      DEPT: A      CASE NO. CV0004439

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK:

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PLAINTIFF:    SACHA TOMASINI, ET AL

vs.

DEFENDANT: GENERAL MOTORS, LLC,  
ET AL

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NATURE OF PROCEEDINGS: 1) DEMURRER  
2) MOTION – STRIKE

**RULING**

Defendant’s demurrer to the Fifth Cause of Action in the First Amended Complaint is **SUSTAINED** with leave to amend. The motion to strike is **GRANTED** with leave to amend.

*Allegations in Plaintiffs’ First Amended Complaint*

Plaintiffs Sacha Tomasini and Zachary Finley allege that they entered into a warranty contract with Defendant General Motors LLC (“GM”) for a 2019 Chevrolet Silverado 1500 (the “Vehicle”) that was manufactured and/or distributed by GM. Plaintiff’s first four causes of action allege violations of the Song-Beverly Consumer Warranty Act (the “Act”). The Fifth Cause of Action for fraudulent inducement-concealment alleges that GM committed fraud by allowing the Vehicle to be sold to Plaintiffs without disclosing that the Vehicle and its 8-speed transmission were defective and susceptible to sudden and premature failure.

*Procedural Deficiency*

The Court draws GM’s attention to Local Rule 2.8(C)2, which requires attachment of the operative pleading as an exhibit to the motion to strike and demurrer.

*Demurrer*

**I.      Standard**

“The function of a demurrer is to test the sufficiency of the complaint as a matter of law, and it raises only a question of law.” (*Holiday Matinee, Inc. v. Rambus, Inc.* (2004) 118 Cal.App.4th 1413, 1420.) A complaint “ordinarily is sufficient if it alleges ultimate rather than evidentiary facts” (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550), but the plaintiff must set forth the essential facts of his or her case “with reasonable precision and with particularity sufficient to acquaint [the] defendant with the nature, source and extent” of the plaintiff’s claim. (*Doheny*

*Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099 [citation and internal quotations omitted].) Legal conclusions are insufficient. (*Id.* at 1098–1099; *Doe*, 42 Cal.4th at 551, fn. 5.) The court “assume[s] the truth of the allegations in the complaint, but do[es] not assume the truth of contentions, deductions, or conclusions of law.” (*California Logistics, Inc. v. State of California* (2008) 161 Cal.App.4th 242, 247.)

## II. Discussion

GM demurs to the Fifth Cause of Action for fraudulent inducement-concealment on the grounds that it is barred by the statute of limitations, it fails to state facts sufficient to establish a fraud cause of action, and Plaintiffs fail to allege a transactional relationship giving rise to a duty to disclose.<sup>1</sup>

### A. Statute of Limitations

Plaintiffs allege that they entered into the warranty contract with GM on March 30, 2019. (First Amended Complaint (“FAC”), ¶6.) In their Fifth Cause of Action for fraudulent inducement-concealment, Plaintiffs allege that GM committed fraud by allowing the Vehicle to be sold to Plaintiffs without disclosing that the Vehicle and its 8-speed transmission were defective and susceptible to sudden and premature failure. (*Id.*, ¶69.) They further allege that GM was aware of these problems but failed to disclose them to Plaintiffs prior to and at the time of sale and thereafter. (*Id.*, ¶¶70-72, 74-79, 81.) Had GM disclosed these problems, Plaintiffs would not have purchased the Vehicle, so the contract for the Vehicle was fraudulently induced. (*Id.*, ¶¶73, 82.) From March 20, 2019 through September 21, 2023, Plaintiffs brought the Vehicle in for repairs and were told each time that the Vehicle had been repaired. (*Id.*, ¶¶23-31.)

GM demurs to the Fifth Cause of Action on the ground that it is barred by the three-year statute of limitations for fraud under Code of Civil Procedure Section 338(d) because Plaintiffs purchased the Vehicle in 2019 and did not file their original Complaint in this action until November 7, 2024. GM cites to Plaintiffs’ allegation in paragraph 11 that the alleged “[d]efects and nonconformities to warranty manifested themselves within the applicable express warranty period . . . .”

An action based on fraudulent inducement must be commenced within three years after the cause of action accrues. (Code Civ. Proc., § 338(d).) A cause of action for fraud does not accrue “until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake.” (*Ibid.*) “[T]hat date is the date the complaining party learns, or at least is put on notice, that a representation was false.” (*Brandon G. v. Gray* (2003) 111 Cal.App.4th 29, 35.)

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<sup>1</sup> Another plaintiff has filed a similar suit against GM in a matter currently pending before Judge Andrew Sweet in Department E. (See *Byers v. General Motors LLC*, Case No. 0002128.) GM has demurred to the operative complaints in that action on the same grounds as its demurrer to Plaintiffs’ First Amended Complaint here. This Court agrees with Judge Sweet’s analysis in ruling on GM’s demurrers in *Byers* and adopts the same analysis here.

Plaintiffs argue that their claim is timely under the discovery rule because they allege that GM's fraudulent concealment occurred not only at the time of sale in 2019, but every time that Plaintiffs presented Vehicle to GM's dealership(s) with concerns related to the transmission defect and up through September 2023. (SAC ¶¶ 23-31.) They argue that they had no way of uncovering GM's deception because when they brought the Vehicle for repair in this timeframe, they were told the Vehicle had been repaired. Plaintiffs also argue that GM's fraudulent concealment tolled the statute of limitations because GM minimized the scope, cause, and dangers of the defect with inadequate repair procedures and refused to investigate and remedy the defect. (See *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185, 1192 ["The doctrine of fraudulent concealment tolls the statute of limitations where a defendant, through deceptive conduct, has caused a claim to grow stale"].) Finally, Plaintiffs argue that their claim is tolled under the repair doctrine. (See *Aced v. Hobbs–Sesack Plumbing Co.* (1961) 55 Cal.2d 573, 585 ["The statute of limitations is tolled where one who has breached a warranty claims that the defect can be repaired and attempts to make repairs"]; *A&B Painting & Drywall, Inc. v. Superior Court* (2002) 25 Cal.App.4th 349, 355 ["Tolling during a period of repairs rests upon the same basis as does an estoppel to assert the statute of limitations, i.e., reliance by the plaintiff upon the words or actions of the defendant that repairs will be made"].)

The demurrer is overruled to the extent it is based on statute of limitations grounds. "[F]or a demurrer based on the statute of limitations to be sustained, the untimeliness of the lawsuit must clearly and affirmatively appear on the face of the complaint and matters judicially noticed." (*Coalition for Clean Air v. City of Visalia* (2012) 209 Cal.App.4th 408, 420; see also *Marshall v. Gibson, Dunn & Crutcher* (1995) 37 Cal.App.4th 1397, 1403 ["In order for the bar of the statute of limitations to be raised by demurrer, the defect must clearly and affirmatively appear on the face of the complaint; it is not enough that the complaint shows that the action may be barred"].) "If the dates establishing the running of the statute of limitations do not clearly appear in the complaint, there is no ground for general demurrer. The proper remedy 'is to ascertain the factual basis of the contention through discovery and, if necessary, file a motion for summary judgment . . .'" (*Roman v. County of Los Angeles* (2000) 85 Cal.App.4th 316, 324-325 [citation omitted].) "When a plaintiff reasonably should have discovered facts for purposes of the accrual of a case of action or application of the delayed discovery rule is generally a question of fact, properly decided as a matter of law only if the . . . allegations in the complaint and facts properly subject to judicial notice [] can support only one reasonable conclusion." (*Broberg v. Guardian Life Ins. Co. of America* (2009) 171 Cal.App.4th 912, 921.) In light of Plaintiffs' allegations regarding their repair attempts through September 2023 and representations made to them in connection with those attempts, the dates establishing the running of the statute of limitations do not clearly appear in the First Amended Complaint and do not support only one reasonable conclusion that the claim is untimely.

## **B. Pleading Fraud with Specificity**

"[T]he 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.” (*Lovejoy v. AT&T Corp.* (2004) 119 Cal.App.4th 151, 157-158 [citation and internal quotations omitted].) Fraud, including concealment, must be pleaded with specificity. (*Cansino v. Bank of America* (2014) 224 Cal.App.4th 1462, 1472.)

GM argues that Plaintiffs fail to allege fraud with the requisite specificity because they do not allege (i) the specific “facts” that GM allegedly failed to disclose; (ii) that GM knew of those facts at the time Plaintiffs purchased the Vehicle; (iii) the specific advertisements, brochures, or other materials where GM could have disclosed the allegedly omitted facts that Plaintiffs reviewed and relied upon in purchasing the Vehicle; (iv) how long before purchasing the Vehicle Plaintiffs viewed those materials; and (v) whether those materials, if any, were prepared by GM or someone else (such as a dealership). (See *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645 [“[G]eneral and conclusory allegations do not suffice . . . This particularity requirement necessitates pleading *facts* which show how, when, where, to whom, and by what means the representations were tendered” [citations and internal quotations omitted] [emphasis in original].)

The requirement under *Lazar* to plead how, when, where, to whom, and by what means “is intended to apply to affirmative misrepresentations. If the duty to disclose arises from the making of representations that were misleading or false, then those allegations should be described. However . . . it is harder to apply this rule to a case of simple nondisclosure. How does one show how and by what means something didn’t happen, or when it never happened, or where it never happened?” (*Alfaro v. Community Housing Improvement System & Planning Assn., Inc.* (2009) 171 Cal.App.4th 1356, 1384 [citation and internal quotations omitted].) “The pertinent question in a concealment case is not who said what to whom; the question, among others, is whether [the defendant] . . . intentionally concealed” information from the plaintiff “so that they would proceed with the transaction.” (*Vega v. Jones, Day, Reavis & Pogue* (2004) 121 Cal.App.4th 282, 296.)

“California courts apply the same specificity standard to evaluate the factual underpinnings of a fraudulent concealment claim at the pleading stage, even though the focus of inquiry shifts to the unique elements of the claim. For instance . . . the court must determine whether the plaintiff has alleged a sufficient factual basis for establishing a duty of disclosure on the part of the defendant independent of the parties’ contract. If the duty allegedly arose by virtue of the parties’ relationship and defendant’s exclusive knowledge or access to certain facts . . . the complaint must also include specific allegations establishing all the required elements, including (1) the content of the omitted facts, (2) defendant’s awareness of the materiality of those facts, (3) the inaccessibility of the facts to plaintiff, (4) the general point at which the omitted facts should or could have been revealed, and (5) justifiable and actual reliance, either through action or forbearance, based on the defendant’s omission. [M]ere conclusory allegations that the omissions were intentional and for the purpose of defrauding and deceiving plaintiff[ ] . . . are insufficient for the foregoing purposes.” (*Rattagan v. Uber Technologies, Inc.* (2024) 17 Cal.5th 1, 43-44 [citations and internal quotations omitted].)

Plaintiffs’ First Amended Complaint sufficiently alleges facts required under *Rattagan*. Plaintiffs have alleged the content of the omitted facts (i.e., that the 8-speed transmission were defective and susceptible to sudden and premature failure), GM’s awareness of the materiality of these facts (FAC ¶¶ 70, 71, 74-77, 79), the inaccessibility of those facts to Plaintiffs when they

purchased the Vehicle, including in advertisements and other marketing material (§§73, 77, 80, 82), the general point at which the facts should have been revealed (§§73, 77, 78), and justifiable and actual reliance (§§77, 85). Plaintiffs are not required to allege more specific facts in order to adequately state a cause of action.

### C. Existence of a Transactional Relationship

“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. Where . . . a fiduciary relationship does not exist between the parties, only the latter three circumstances may apply. These three circumstances, however, presuppose[ ] the existence of some other relationship between the plaintiff and defendant in which a duty to disclose can arise. A duty to disclose facts arises only when the parties are in a relationship that gives rise to the duty, such as seller and buyer, employer and prospective employee, doctor and patient, or parties entering into any kind of contractual arrangement.” (*Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, 311 [citations and internal quotations omitted].) “Such a transaction must necessarily arise from direct dealings between the Plaintiff and defendant; it cannot arise between the defendant and the public at large.” (*Ibid.*) This rule was recently reiterated by the California Supreme Court in *Rattagan, supra*, 17 Cal.5th at p. 41.

GM argues that Plaintiffs do not allege a transactional relationship or direct dealings between the parties, as Plaintiffs do not allege that they purchased the Vehicle directly from GM. As a result, GM argues, there could not have been any actionable concealment by GM that allegedly induced Plaintiffs’ purchase of the Vehicle.

Here, Plaintiffs allege that in March 2019, they entered into a warranty contract with GM for the Vehicle, which was manufactured and/or distributed by GM, and that they purchased the Vehicle at GM’s authorized dealer, Novato Chevrolet in Novato. (FAC, ¶6.) They allege that GM committed fraud by allowing the Vehicle to be sold to Plaintiffs without disclosing that the Vehicle and its 8-speed transmission were defective and susceptible to sudden and premature failure. (*Id.*, ¶69.)

In their Opposition, Plaintiffs first argue that a transactional relationship is not required. In making this argument, they rely on the four circumstances of nondisclosure or concealment identified in *Bigler-Engler*, noted above, but then ignore the additional requirement of *Bigler-Engler* that the latter three circumstances presuppose the existence of a relationship between the parties in which a duty to disclose can arise. Plaintiffs then argue that they adequately allege the requisite relationship under *Dhital v. Nissan North America, Inc.* (2022) 84 Cal.App.5th 828, in which the court found that the plaintiff sufficiently alleged a transactional relationship under somewhat similar facts: “In its short argument on this point in its appellate brief, Nissan argues plaintiffs did not adequately plead the existence of a buyer-seller relationship between the parties, because plaintiffs bought the car from a Nissan dealership (not from Nissan itself). At the pleading stage (and in the absence of a more developed argument by Nissan on this point), we conclude plaintiffs’ allegations are sufficient. Plaintiffs alleged that they bought the car from a

Nissan dealership, that Nissan backed the car with an express warranty, and that Nissan's authorized dealerships are its agents for purposes of the sale of Nissan vehicles to consumers. In light of these allegations, we decline to hold plaintiffs' claim is barred on the ground there was no relationship requiring Nissan to disclose known defects." (*Id.* at 844.)<sup>2</sup>

*Dhital* is distinguishable as the plaintiff there alleged that the car manufacturer's authorized dealerships were its agents for purposes of the sale of vehicles to customers. (*Id.* at p. 844.) Here, the First Amended Complaint does not contain any similar allegation. Rather, Plaintiffs allege only that the seller was GM's "authorized dealer" and nothing more. (FAC, ¶6.) An agency relationship between a car manufacturer and dealer is not presumed. (See *Ford Motor Warranty Cases* (2023) 89 Cal.App.5th 1324, 1341-1342.) The Court will not read an agency allegation into the First Amended Complaint where Plaintiffs specifically fail to make one. (See *Carroll v. Nissan North America, Inc.*, Case No. 2:22-cv-05783-SB-AS, 2023 WL 3433590 (C.D. Cal. Feb. 27, 2023, \*3 ["Plaintiff has not alleged any relationship between her and Defendant that supports Defendant's liability. Plaintiff alleges that she purchased her vehicle at one of Defendant's authorized dealerships, Compl. ¶75, but does not allege that 'Nissan's authorized dealerships are its agents for purposes of the sale of Nissan vehicles to consumers,' *Dhital*, 84 Cal. App. 5th at 844. Without a factual allegation supporting the existence of one of the four recognized relationships between the parties, Plaintiff fails to state a fraud claim"].)

Plaintiffs also point out that they entered into to a warranty relationship with GM. However, this is not the contract pursuant to which they purchased the Vehicle – that contract was with the dealership – and they allege they would not have purchased the Vehicle had the defects been disclosed to them. The First Amended Complaint does not allege any details regarding the purchase contract, including whether it occurred at the same time Plaintiffs received the warranty from GM or whether the two contracts were part of the same overall transaction pursuant to which Plaintiffs acquired the Vehicle. Thus, there are insufficient allegations to tie the warranty agreement with GM to Plaintiffs' decision to purchase the Vehicle. Further, while the *Dhital* court noted in its ruling that the defendant manufacturer had backed the car with an express warranty, it also found that the plaintiff adequately alleged the existence of an agency relationship between the defendant and the dealership which sold the vehicle. Both factors (the warranty agreement and the agency relationship with the dealer) were relevant to the *Dhital* court's decision. Here, as noted above, Plaintiffs have not alleged any agency relationship between GM and the dealership.

The demurrer is sustained on the ground that Plaintiffs fail to adequately allege a transactional relationship or direct dealings with GM.

### *Motion to Strike*

GM moves to strike Plaintiff's demand for punitive damages.

#### **I. Standard**

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<sup>2</sup> The California Supreme Court previously granted review in *Dhital*, but review was dismissed on December 18, 2024.

The court may, upon a motion made pursuant to Code of Civil Procedure § 435, strike out any “irrelevant, false, or improper matter inserted in any pleading.” (Cal. Code Civ. Proc. § 436.) Improperly pled damages claims may be challenged by motion to strike. (*Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 164.)

## II. Discussion

GM argues that punitive damages are not available for violations of the Act (the first four causes of action) and Plaintiffs fail to allege sufficient facts supporting a request for punitive damages in connection with their fraudulent inducement-concealment cause of action. The motion is granted as Plaintiffs have failed to state a fraudulent inducement-concealment cause of action for the reason set forth above.

*All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.*

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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 06/24/25      TIME: 1:30 P.M.      DEPT: A      CASE NO: CV0004506

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK:

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PLAINTIFF:      JENNIFER SALDANA

vs.

DEFENDANT:    COUNTY OF MARIN, ET  
AL

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NATURE OF PROCEEDINGS: 1) DEMURRER  
2) MOTION - STRIKE

RULING

Defendant County of Marin's demurrer to the Amended Complaint is **OVERRULED**. The motion to strike is **DENIED**.

*Allegations in Plaintiff's Amended Complaint*

Plaintiff Jennifer Saldana alleges that in November 2015, she was sexually assaulted by then-Probation Officer David Cole ("Cole"), who slapped Plaintiff on her buttocks at a trade show in front of colleagues. (Amended Complaint ("Complaint"), ¶11.) Plaintiff was fearful of retribution if she reported the incident, so Adult Probation Services Krupinsky ("Krupinsky") reported it on Plaintiff's behalf. (*Id.*, ¶14.) An ensuing investigation substantiated Plaintiff's allegations against Cole. (*Id.*, ¶15.) While the investigation was underway, in January 2016, Plaintiff attended a range training with Cole, who slapped the buttocks of a male officer to intimidate Plaintiff. Plaintiff reported the incident but was offered no support. (*Id.*, ¶18.)

In late July 2016, Plaintiff received a performance review with a comment about abandoning her post on an assignment, even though she had left because Cole was present. The comment was eventually removed from her evaluation but other inaccuracies remained. (*Id.*, ¶¶19, 20.) In May 2017, Plaintiff was denied a promotion to Deputy Probation Officer (DPO) even though she had been the unit's acting Senior DPO. The promotion was awarded to three other officers, including Cole. (*Id.*, ¶21.)

Krupinsky assigned Plaintiff an inordinately large caseload between January 2017 and June 2018. (*Id.*, ¶22.) After multiple requests over two years, Plaintiff was transferred to the juvenile division in June 2018 and was offered a position which consolidated the workload of two other staff members. (*Id.*, ¶23.) On June 15, 2018, Plaintiff received a performance evaluation containing false statements, including that she had referred to her probationers as "feral cats".

When she met with Deputy Chief of Probation Mariono Zamudio (“Zamudio”) to discuss her rebuttal to this statement, Zamudio threatened to open an Internal Affairs (“IA”) investigation into who was telling the truth. Although Zamudio agreed to send Plaintiff’s written rebuttal to HR to put in her personnel file, he never did so. (*Id.*, ¶¶24-26.) In May 2020, Zamudio denied Plaintiff the opportunity to travel to Michigan to transport probationers back to California, which would have resulted in overtime hours. Zamudio chose others for the assignment who did not have family responsibilities. (*Id.*, ¶27.)

On June 1, 2020, Plaintiff was informed she was moving back to the Adult Services Unit under the supervision of Cole. She was told that although she would be in Cole’s unit, her direct supervisor would be Heather Damato. The transfer was rescinded after Plaintiff expressed her concern about being in Cole’s chain of command. (*Id.*, ¶28.) On July 22, 2020, Plaintiff was informed she would be transferred to Anthony Raitano’s unit. Plaintiff objected to the transfer because Raitano and Cole are good friends, but the transfer went through anyway. When Plaintiff met with Raitano in his office, he had a prominently displayed picture of him with Cole, which she believed was intended to harass and intimidate her. (*Id.*, ¶¶29, 30.)

On August 3, 2020, Plaintiff filed a PMR 21 complaint describing the years-long pattern of harassment and retaliation she had been subjected to following the complaint of sexual assault by Cole. (*Id.*, ¶¶32, 33.) On October 6, 2020, Plaintiff received a performance evaluation. She went from having five “exceeds expectations” out of six categories to two. The evaluation also contained false and misleading statements by Plaintiff’s supervisor including statements that Plaintiff was unfocused and unreliable. This criticism was eventually removed from her evaluation. (*Id.*, ¶¶34, 35.)

The County’s investigation of Plaintiff’s August 2020 PMR complaint substantiated Plaintiff’s claims that Zamudio failed to properly report and investigate her complaints of intimidation, retaliation, sexual harassment and a hostile work environment, and that Zamudio had threatened to open an IA investigation. (*Id.*, ¶37.) Zamudio was given a written warning in connection with his failure to report and investigate Plaintiff’s January 2016 complaint. (*Id.*, ¶39.) On July 22, 2021, Plaintiff filed a grievance under PMR 26 claiming that EEO Director Roger Crawford violated County regulations by failing to timely investigate Plaintiff’s complaint and to timely deliver a copy of the County’s supplemental findings to Chief Washington. (*Id.*, ¶43.) The County took no action on Plaintiff’s PMR 26, deeming it untimely by a few days. (*Ibid.*) This decision effectively cut off Plaintiff’s means of reporting and addressing unlawful retaliation and harassment, which itself constitutes actionable retaliation. (*Id.*, ¶44.)

Plaintiff brought an action against the County in federal court, Case No. 3:23-CV-01531-AGT, alleging retaliation under Title VII of the Civil Rights Act and state law claims. The federal district court granted the County’s motion for summary adjudication of the Title VII retaliation claim and dismissed the state law claims without prejudice to file them in state court. (*Id.*, ¶6.)

Plaintiff’s First Cause of Action alleges retaliation for opposing conduct prohibited by FEHA and her Second Cause of Action alleges failure to prevent retaliation.

### *Demurrer*

### Request for Judicial Notice

Plaintiff's request for judicial notice of deposition excerpts (Exhibits 1-7) is denied. (See *Price v. Dames & Moore* (2001) 92 Cal.App.4th 355, 359 ["[A] demurrer looks *only* to the face of the pleadings and to matters judicially noticeable and not to the evidence or other extrinsic matter"] [citation and internal quotations omitted] [emphasis in original]; *McKenney v. Purepac Pharmaceutical Co.* (2008) 167 Cal.App.4th 72, 77 [only issue in demurrer hearing is "whether the complaint, as it stands, unconnected with extraneous matters, states a cause of action"] [citation and internal quotations omitted].) "The hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of having the court take judicial notice of documents whose truthfulness or proper interpretation are disputable." (*Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 374; see also *Mize v. Mentor Worldwide LLC* (2020) 51 Cal.App.5th 850, 865; *Silguero v. Creteguard, Inc.* (2010) 187 Cal.App.4th 60, 64.) While some courts have allowed judicial notice of discovery responses, they have done so where the responses are inconsistent with allegations of the pleading before the court. (See *Bounds v. Superior Court* (2014) 229 Cal.App.4th 468, 477.) Plaintiff does not offer the deposition testimony for this purpose.

The County's request for judicial notice of Plaintiff's Complaint filed with the Civil Rights Department ("CRD Complaint") (Exhibit B), the CRD's decision (Exhibit C), and the Order on Summary Judgment in the federal court action (Exhibit D) is granted. (Evid. Code §§ 452, 453.)

### Standard

"The function of a demurrer is to test the sufficiency of the complaint as a matter of law, and it raises only a question of law." (*Holiday Matinee, Inc. v. Rambus, Inc.* (2004) 118 Cal.App.4th 1413, 1420.) A complaint "ordinarily is sufficient if it alleges ultimate rather than evidentiary facts" (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550), but the plaintiff must set forth the essential facts of his or her case "with reasonable precision and with particularity sufficient to acquaint [the] defendant with the nature, source and extent" of the plaintiff's claim. (*Doheny Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099 [citation and internal quotations omitted].) Legal conclusions are insufficient. (*Id.* at 1098–1099; *Doe*, 42 Cal.4th at 551, fn. 5.) The court "assume[s] the truth of the allegations in the complaint, but do[es] not assume the truth of contentions, deductions, or conclusions of law." (*California Logistics, Inc. v. State of California* (2008) 161 Cal.App.4th 242, 247.)

### Discussion

The County demurs to both causes of action on statute of limitations grounds. The County argues that Plaintiff's retaliation cause of action in the federal court action was based on the same facts as her FEHA causes of action here, and was it was dismissed on summary judgment because the district court found it was "based chiefly on time-barred conduct, and [Plaintiff's] remaining evidence doesn't support a Title VII violation." (RJN, Exh. D.) The federal district court stated that "all but one of the adverse actions alleged by Saldana occurred" outside the statute of limitations for asserting a Title VII claim, and the continuing violation doctrine did not apply because Plaintiff failed to identify a specific act "sufficiently severe and pervasive" that occurred within the statutory period. (*Id.*) The "lone exception" that occurred within the

limitation period was the 2020 performance review which the court stated “wasn’t that bad” and did not “fit the bill” for a retaliation claim. (*Id.*)

The County contends that the same rationale should apply here because “most of the conduct alleged in the FAC is time-barred because it occurred more than three years before Plaintiff filed her administrative complaint with CRD.” (MPA, p. 3:23-25.) “The timely filing of an administrative complaint is a prerequisite to the bringing of a civil action for damages under the FEHA.” (*Blum v. Superior Court* (2006) 141 Cal.App.4<sup>th</sup> 418, 422.) A claim for retaliation must be filed with CRD within three years of the date of the alleged retaliation. (Gov. Code § 12960(e)(5).)

Plaintiff filed her administrative complaint on August 2, 2021. (RJN, Exh. B.) Therefore, the County argues, Plaintiff cannot base her FEHA claims on any conduct that occurred before August 2, 2018.

To state a claim for retaliation, a plaintiff must show that (1) she engaged in a protected activity, (2) the employer subjected the plaintiff to an adverse employment action, and (3) a causal link existed between the protected activity and the employer’s action. (*Laker v. Board of Trustees of California State University* (2019) 32 Cal.App.5<sup>th</sup> 745, 770-771.) An adverse employment action is one that “materially affects the terms, conditions, or privileges of employment.” (*Bailey v. San Francisco Dist. Attorney’s Office* (2024) 16 Cal.5<sup>th</sup> 611, 637 [citation and internal quotations omitted].) To state a claim for failure to prevent retaliation, the plaintiff must first state a claim for retaliation. (See *M.F. v. Pacific Pearl Hotel Management LLC* (2017) 16 Cal.App.5<sup>th</sup> 693, 701; *Trujillo v. North County Transit Dist.* (1998) 63 Cal.App.4<sup>th</sup> 280, 288-289; *Adetuyi v. City and County of San Francisco*, 63 F.Supp.3d 1073, 1093 (N.D. Cal. 2014).)

The County argues that conduct that occurred three years before Plaintiff filed her CRD complaint (ie., before August 2, 2018) cannot be used to support a FEHA claim. Plaintiff alleges that all of the conduct she alleges is relevant under the continuing violation doctrine, which “allows liability for unlawful employer conduct occurring outside the statute of limitations if it is sufficiently connected to unlawful conduct within the limitations period.” (*Richards v. CH2M Hill, Inc.* (2001) 26 Cal.4<sup>th</sup> 798, 802.) “[T]here is no requirement that an employer’s retaliatory acts constitute one swift blow, rather than a series of subtle, yet damaging, injuries. Enforcing a requirement that each act separately constitute an adverse employment action would subvert the purpose and intent of the statute.” (*Yanowitz v. L’Oreal USA, Inc.* (2005) 36 Cal.4<sup>th</sup> 1028, 1055-1056 [citations omitted].) In determining whether the continuing violations doctrine applies in a retaliation case where the plaintiff alleges a retaliatory course of conduct, the court considers whether the employer’s actions were (1) sufficiently similar in kind, recognizing that similar kinds of unlawful employer conduct may take a number of different forms, (2) have occurred with reasonable frequency; and (3) have not acquired a degree of permanence. (*Id.* at p. 1059.)

The conduct that Plaintiff alleges occurred before August 2, 2018 includes the shooting range incident in 2016 (FAC, ¶18), a negative performance evaluation in 2016 (FAC, ¶19), the denial of a promotion in 2017 (FAC, ¶21), the assignment of an inordinately large caseload between January 2017 and June 2018 (FAC, ¶22), a performance evaluation in June 2018 that contained false statements (FAC, ¶24), and the July 2018 meeting in which Zamudio referenced an IA investigation (¶25 and Attachment 3). The conduct Plaintiff alleges occurred after August 2,

2018 includes a the selection of other employees for travel to Michigan in May 2020 (FAC, ¶27), the June 2020 decision to transfer Plaintiff back to the Adult Services Unit under Cole, which was eventually rescinded (FAC, ¶28), the July 2020 decision to transfer Plaintiff to the unit of Raitano, a friend of Cole's, who left a picture out of him and Cole for Plaintiff to see (FAC, ¶¶29, 30), the October 2020 performance evaluation which included lower rankings than previous evaluations (FAC, ¶34), and the 2021 decision not to take action on Plaintiff's PMR (FAC, ¶¶32, 44.)

The County's demurrer is overruled. Plaintiff alleges ongoing, similar-in-kind conduct sufficient to withstand a demurrer. This Court is not bound by the federal district court's ruling which, among other things, addressed Plaintiff's allegations in the context of a different, significantly shorter limitations period. The Court's decision here is based on the sufficiency of the allegations in the Amended Complaint only and is not a substantive ruling on the applicability of the continuing violations doctrine, which may be more fully developed in discovery.

### *Motion to Strike*

#### Standard

The court may, upon a motion made pursuant to Code of Civil Procedure § 435, strike out any "irrelevant, false, or improper matter inserted in any pleading." (Cal. Code Civ. Proc. § 436.)

#### Discussion

The County moves to strike allegations on page 1, paragraphs 16, 17, 46-62, and attachments 4, 9 and 10 to the First Amended Complaint, which relate to Cole's allegedly unlawful conduct towards other employees, on the ground that they are not relevant to Plaintiff's retaliation claims. Plaintiff opposes the motion on the ground that the allegations are admissible to prove Cole's motive and intent, and to show the County has a pattern and practice of failing to take immediate and appropriate corrective action to prevent harassment and retaliation and failing to follow its own policies.

The Court denies the motion to strike. While some or all of these allegations may ultimately be found to be irrelevant or inadmissible, the Court does not make this determination at the pleading stage.

***All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.***

***The Zoom appearance information for June, 2025 is as follows:***

<https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyaiInzo6lyz2dKaw.1>

*Meeting ID: 160 526 7272*

*Passcode: 026935*

*If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: <https://www.marin.courts.ca.gov>*

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 06/24/25      TIME: 1:30 P.M.      DEPT: A      CASE NO: CV0004628

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK:

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PLAINTIFF:      MAITE DURAN ET AL

vs.

DEFENDANT:      ALCOHOL JUSTICE

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NATURE OF PROCEEDINGS: MOTION – COMPEL

RULING

Based on the stipulation of the parties this matter has been **continued to August 12, 2025 at 1:30 pm in Courtroom A.**

*All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.*

*The Zoom appearance information for June, 2025 is as follows:*

*<https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyailnzo6lyz2dKaw.1>*

*Meeting ID: 160 526 7272*

*Passcode: 026935*

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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 06/24/25      TIME: 1:30 P.M.      DEPT: A      CASE NO. CV0005175

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK:

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PLAINTIFF:    XIAOLIANG YAN

vs.

DEFENDANT: FENGHUA LUAN

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NATURE OF PROCEEDINGS: MOTION – DISMISS

RULING

**Appearances are required.**

At the hearing Defendant or her attorney shall provide this Court with a copy of the filed Judgment in San Mateo County Superior Court Case No. 24FAM00068 bearing the Judicial Officer's signature. The Notice of Entry of Judgment attached to Defendant's Declaration (and to the Complaint) includes a copy of an unfiled, unsigned Judgment.

Once the Court has reviewed the filed and executed Judgment, it intends to adopt the following ruling:

Fenghua Luan's ("Defendant") Motion to Dismiss is **GRANTED**.

***Background***

Plaintiff Xiaoliang Yan ("Plaintiff") and Defendant were previously husband and wife. The parties entered into a Marital Settlement Agreement (MSA) which was incorporated in a Judgment of Dissolution entered in San Mateo County Superior Court Case No. 24FAM00068. (See Defendant Decl., Ex, 1- Notice of Entry of Judgment). Section 4(10)(C)(a)-(b) of that MSA provides that Defendant was awarded the real property located 217 Princeton Ave, Mill Valley, CA ("the Property") and that she "shall" remove Plaintiff from all obligations concerning the home, including mortgages. Section 4(10)(C)(b) further provides that Defendant "anticipates" assuming the loan and that Plaintiff will assist with any reasonable requirements the Bank may have.

The MSA further provided that the court "shall have jurisdiction to make whatever orders may be necessary or desirable to carry out this agreement..." (MSA § 6(e).)

On January 24, 2025 Plaintiff filed the present action in Marin County Superior Court. The action seeks to have this Court act to: (1.) enforce the Judgment of Dissolution by having Plaintiff's name removed from the Property's mortgage; and (2.) award financial reimbursement for the "inequitable situation" of leaving the mortgage in his name post dissolution. (Compl., p. 3.)

Defendant moves to dismiss the action on the grounds that the Marin Superior Court lacks subject matter jurisdiction.

### *Legal Standard*

Subject matter jurisdiction refers to the court's power to hear and resolve a particular dispute or cause of action. (*Saffer v. JP Morgan Chase Bank, N.A.* (2014) 225 Cal.App.4th 1239; *Cummings v. Stanley* (2009) 177 Cal.App.4th 493.)

### *Discussion*

The parties to a stipulated judgment for dissolution of marriage may provide that the family law court retains jurisdiction to enforce its terms. (*Pont v. Pont* (2018) 31 Cal.App.5th 428, 442.) In the *Pont* case, husband and wife stipulated to a judgment of dissolution in Los Angeles, reserved jurisdiction to that court, and included a release of all claims. When the wife attempted to file an action in Orange County regarding assets that were subject to the stipulated agreement, husband successfully obtained a dismissal of the Orange County action. (*Id.*, at p. 432.)

Similarly here, the San Mateo court retained jurisdiction to enforce or carry out the Judgment of Dissolution and the MSA included releases of all claims. (*Id.*, see also MSA § 6(a)-(b), (e).)

Further, even if Plaintiff were correct and Marin County held concurrent subject matter jurisdiction, a court may refuse to exercise jurisdiction if another court with concurrent jurisdiction has already undertaken to exercise jurisdiction over the same subject matter. (*Sea World Corp. v. Superior Court* (1973) 34 Cal.App.3d 494, 499.) Between superior courts of different counties having coequal jurisdiction over a matter, the first court of equal dignity to assume and exercise jurisdiction over a matter acquires exclusive jurisdiction. (*Levine v. Smith*, 145 Cal.App.4th 1131, 1135.)

Moreover, artfully disguised civil suits concerning matters arising out of a family law case cannot appropriate the family law department's authority to act. Thus, actions arising directly from a family law case, whether pre-judgment or post-judgment, must be heard and adjudicated in the family law department and not in the civil department. (*Neal v. Superior Ct.* (2001) 90 Cal.App.4th 22, 26 [In *Neal*, husband sued his ex-wife for breach of contract because she allegedly did not comply with the terms of a family law judgment. The Court of Appeal held that the substance of the case was "a family law OSC with civil headings" and that the "excursion" to civil court was unnecessary].)

A review of the Complaint in the present case reveals that the instant action concerns matters directly arising out of the San Mateo family law case. Namely, Plaintiff alleges a "contract dispute" due to Defendant's alleged failure to remove him from the mortgage per the terms of the

San Mateo family law judgment. These claims are properly determined by the San Mateo family court.

Accordingly, the motion to dismiss is granted.

*All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.*

*The Zoom appearance information for June, 2025 is as follows:*

*<https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyaiInzo6lyz2dKaw.1>*

*Meeting ID: 160 526 7272*

*Passcode: 026935*

*If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: <https://www.marin.courts.ca.gov>*

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 06/24/25      TIME: 1:30 P.M.      DEPT: A      CASE NO: CV0005395

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK:

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PLAINTIFF:      NATHAN MISKIV

vs.

DEFENDANT:    DEPARTMENT OF  
MOTOR VEHICLES

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NATURE OF PROCEEDINGS: WRIT OF MANDATE HEARING

RULING

Based on the stipulation of the parties been **continued to July 1, 2025 at 1:30 pm in Courtroom A.**

*All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.*

*The Zoom appearance information for July 2025 is as follows:*

<https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyailnzo6lyz2dKaw.1>

Meeting ID: 160 526 7272

Passcode: 026935

*If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: <https://www.marin.courts.ca.gov>*

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 06/24/25      TIME: 1:30 P.M.      DEPT: A      CASE NO. CV0005570

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK:

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PLAINTIFF:    THE BUCK INSTITUTE FOR  
EDUCATION DBA PBL WORKS

vs.

DEFENDANT: NICHOLAS ARRIAGA

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NATURE OF PROCEEDINGS: MOTION – OTHER: PERMISSION TO SERVE BY EMAIL

RULING

Appearances required.

*All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.*

*The Zoom appearance information for June, 2025 is as follows:*

*<https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyaiInzo6lyz2dKaw.1>*

*Meeting ID: 160 526 7272*

*Passcode: 026935*

*If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: <https://www.marin.courts.ca.gov>*

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 06/24/25      TIME: 11:00 A.M.      DEPT: A      CASE NO. CV2300066

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK:

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PLAINTIFF:    MARIE HELENE SENHAUX

vs.

DEFENDANT: ROBERT BRIAN FRIED

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NATURE OF PROCEEDINGS: HEARING- OTHER: ON DISTRIBUTION FROM THE SALE

RULING

Appearances required.

*All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.*

*The Zoom appearance information for June, 2025 is as follows:*

*<https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyailnzo6lyz2dKaw.1>*

*Meeting ID: 160 526 7272*

*Passcode: 026935*

*If you are unable to join by video, you may join by telephone by calling (669) 254-5252 and using the above-provided passcode. Zoom appearance information may also be found on the Court's website: <https://www.marin.courts.ca.gov>*

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF MARIN**

DATE: 06/24/25      TIME: 1:30 P.M.      DEPT: A      CASE NO: CV2104264

PRESIDING: HON. STEPHEN P. FRECCERO

REPORTER:

CLERK: RON BAKER

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PLAINTIFF:      MARK SLATTERY, ET AL

vs.

DEFENDANT:    KENNETH L. WEBB, JR.,  
ET AL

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NATURE OF PROCEEDINGS: MOTION – SUMMARY JUDGMENT

**RULING**

This matter has been **continued to July 8, 2025 at 1:30 pm in Courtroom A.**

***All parties must comply with Marin County Superior Court Local Rules, Rule 2.10(B) to contest the tentative decision. Parties who request oral argument are required to appear in person or remotely by ZOOM. Regardless of whether a party requests oral argument in accordance with Rule 2.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 2.11.***

***The Zoom appearance information for June, 2025 is as follows:***

***<https://marin-courts-ca-gov.zoomgov.com/j/1605267272?pwd=908CbP6TV2mhCAyatlInzo6lyz2dKaw.1>***

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