SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 10
Honorable Frederick S. Chung

Rachel Tien, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408-882-2210

DATE: February 15, 2024 TIME: 9:00 A.M.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

The courthouse is open: Department 10 is now fully open for in-person hearings, as of April 18, 2023. The court strongly prefers **in-person** appearances for all contested law-and-motion matters. For all other hearings (*e.g.*, case management conferences), the court strongly prefers either **in-person or video** appearances. Audio-only appearances are permitted but disfavored, as they cause significant disruptions and delays to the proceedings. Please use telephone-only appearances as a last resort.

Scheduling motion hearings: Please call 408-882-2430 between 8:30 a.m. and 12:30 p.m. (Mon.-Fri.) to reserve a hearing date for your motion *before* you file and serve it. You must then file your motion papers no more than five court days after reserving the hearing date, or else the date will be released to other cases.

CourtCall is no longer available: Department 10 uses Microsoft Teams for remote hearings. Please click on this link if you need to appear remotely, and then scroll down to click the link for Department 10: https://www.scscourt.org/general_info/ra_teams/video_hearings_teams.shtml. Again, the court strongly prefers in-person or video appearances. Telephonic appearances are a sub-optimal relic of a bygone era.

Recording is prohibited: As a reminder, most hearings are open to the public, but state and local court rules prohibit recording of court proceedings without a court order. This prohibition applies to both in-person and remote appearances.

Court reporters: Unfortunately, the court is no longer able to provide official court reporters for civil proceedings (as of July 24, 2017). If any party wishes to have a court reporter, the appropriate form must be submitted. See https://www.scscourt.org/general_info/court_reporters.shtml.

SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

Department 10
Honorable Frederick S. Chung
Rachel Tien, Courtroom Clerk
191 North First Street, San Jose, CA 95113
Telephone: 408-882-2210

DATE: February 15, 2024 TIME: 9:00 A.M.

To contest the ruling, call (408) 808-6856 before 4:00 P.M.
Make sure to let the other side know before 4:00 P.M. that you plan to contest the ruling, in accordance with California Rule of Court 3.1308(a)(1) and Local Rule 8.E.

LINE #	CASE #	CASE TITLE	RULING
LINE 1	23CV419134	Vania Gomez de Paz et al. v. Hieu M. Dinh et al.	Click on LINE 1 or scroll down for ruling.
LINE 2	20CV372475	QTV Enterprise, LLC v. Hieu Minh Nguyen et al.	Click on LINE 2 or scroll down for ruling.
LINE 3	2015-1-CV-285674	Angie Elconin v. Thanh Ha Bui	Motion to levy judgment debtor's spouse's community property: it appears that notice is proper as to both the judgment debtor and the judgment debtor's spouse, and neither has filed an opposition to the motion. Good cause appearing, the court GRANTS the motion. Moving party to prepare proposed order.
LINE 4	16CV301399	Robert Ramirez v. Paul Ramirez et al.	Click on LINE 4 or scroll down for ruling in lines 4-5.
LINE 5	16CV301399	Robert Ramirez v. Paul Ramirez et al.	Click on LINE 4 or scroll down for ruling in lines 4-5.
LINE 6	18CV337541	Debt Resolve LLC v. Maria Reis	Claim of exemption: having now reviewed the claim of exemption (which was apparently filed on 12/28/23 but not received by the court until after 1/9/24) and the opposition, the court GRANTS the claim IN PART and orders that **$150 per pay period** ($150 every two weeks) be withheld from judgment debtor's wages until the debt is paid in full.
LINE 7	22CV395005	Jeffrey Scharf et al. v. Scharf Investments, LLC et al.	Click on LINE 7 or scroll down for ruling.
LINE 8	23CV422606	Jane Doe et al. v. Union School District et al.	Click on LINE 8 or scroll down for ruling.

- oo0oo -

Calendar Line 1
Case Name: *Vania Gomez de Paz et al. v. Hieu M. Dinh et al.*
Case No.: 23CV419134

I. BACKGROUND

This is an action between former subtenants and landlords brought by plaintiffs Vania Gomez De Paz and Porfirio Aguilar Figueroa (collectively, "Plaintiffs") against defendants Hieu M. Dinh and James G. Vidunas (collectively, "Defendants").

The original and still-operative complaint, filed on July 7, 2023, states three causes of action: (1) Negligence; (2) Tenant Harassment; and (3) Bad Faith Retention of a Security Deposit.

According to the complaint, Plaintiffs resided at 95 South 33rd Street in San Jose, California (the "Property") from November 2020 to September 2021. (Complaint, ¶ 12.) Plaintiffs signed a written agreement with Esmeralda Real Gonzales, who represented herself as the owner of the Property.[1] (*Id*. at ¶ 13.) After learning that Gonzales was not the owner, Plaintiffs asked her who was, prompting Gonzales to produce a new lease agreement between Plaintiffs and Defendant Dinh. (*Id*. at ¶¶ 16-17.) Gonzales was allegedly an agent or property manager for Defendants at the Property. (*Id*. at ¶ 14.) After the parties signed this new lease agreement, Defendants allegedly rented out the living room of the Property while continuing to charge Plaintiffs the full amount of rent. (*Id*. at ¶ 18.) In July 2021, Plaintiffs stopped paying rent and demanded that Defendants stop renting out rooms separately. (*Id.* at ¶ 19.) On August 10, 2021, an armed man arrived at the Property to yell at Plaintiffs. (*Id*. at ¶ 20.)

Currently before the court is a special motion to strike all causes of action alleged in the complaint, under Code of Civil Procedure section 425.16.[2] This is commonly called an "anti-SLAPP" motion. Plaintiffs oppose the motion to strike.

II. REQUEST FOR JUDICIAL NOTICE

"Judicial notice is the recognition and acceptance by the court, for use by the trier of fact or by the court, of the existence of a matter of law or fact that is relevant to an issue in the action without requiring formal proof of the matter." (*Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1117.) In support of their anti-SLAPP motion, Defendants request judicial notice of the following court records:

1. Exhibit A: Complaint (Case No. 23CV419134) filed on July 7, 2023;

2. Exhibit B: Cross-Complaint (Case No. 23CV419134) filed on August 14, 2023;

---

[1] It is unclear if the correct spelling is "Gonzales" or "Gonzalez," as the complaint repeatedly spells the name both ways. For the sake of consistency, the court will use only one spelling.
[2] The Notice of Motion states that it seeks to strike six causes of action ((1) Negligence; (2) Wrongful Eviction; (3) Premises Liability; (4) Breach of the Implied Covenant of Quiet Use and Enjoyment; (5) Intentional Infliction of Emotional Distress; and (6) Retaliation). This misstates the three causes of action in this case, only one of which is exactly the same as the foregoing. The court assumes that this is a product of the careless reuse of boilerplate language, but it does mean, as a technical matter, that notice is not proper for this motion.

3. Exhibit C: Unlawful Detainer Complaint (Case No. 21CV386389) filed on August 31, 2021;

4. Exhibit D: Default Judgment (Case No. 21CV386389) filed on September 22, 2023;

5. Exhibit E: Plaintiff Vania Gomez De Paz's Post-Judgment Claim of Possession (Case No. 21CV386389) filed on September 24, 2021;

6. Exhibit F: Declaration of Plaintiff Vania Gomez De Paz's attorney, Thomas P. Skinner, in Support of Plaintiff's Post-Judgment Claim of Possession (Case No. 21CV386389) filed on October 4, 2021;

7. Exhibit G: Denial of Plaintiff Vania Gomez De Paz's Post Judgment Claim (Case No. 21CV386389) filed on October 15, 2021;

8. Exhibit H: Complaint (Case No. 21CV389239) filed on September 13, 2021; and

9. Exhibit I: Plaintiff Vania Gomez De Paz's Request for Dismissal of her Complaint (Case No. 21CV389239), filed on January 4, 2022.

These are all court records, and so the court takes judicial notice of the existence of these documents and their filing dates under Evidence Code section 452, subdivision (d). The court does not take judicial notice of any factual allegations contained in these documents.

III. LEGAL STANDARDS

Code of Civil Procedure section 425.16 authorizes a person to bring a special motion to strike any claims "arising from any act [ ] in furtherance of [his or her] right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue." (Code Civ. Proc., § 425.16, subd. (b)(1).) "In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based." (Code Civ. Proc., § 425.16, subd. (b)(2).)

Courts evaluate anti-SLAPP motions using a two-step analysis. (*Country Side Villas Homeowners Assn. v. Ivie* (2011) 193 Cal.App.4th 1110, 1116.) To satisfy the first step, "the moving defendant bears the burden of establishing that the challenged allegations or claims 'aris[e] from' protected activity in which the defendant has engaged." (*Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1061 (*Park*) [citations omitted]; see also *Wilson v. Cable News Network, Inc.* (2019) 7 Cal.5th 871, 884 (*Wilson*).) "A claim arises from protected activity when that activity underlies or forms the basis for the claim." (*Park, supra,* 2 Cal.5th 1057, 1062; see also *Wilson, supra,* 7 Cal.5th at p. 884 ["A 'claim may be struck only if the speech or petitioning activity *itself* is the wrong complained of, and not just evidence of liability or a step leading to some different act for which liability is asserted.'"].)

"If the defendant carries its burden, the plaintiff must then demonstrate its claims have at least 'minimal merit.' [Citations.]" (*Park, supra,* 2 Cal.5th at p. 1061.) This is the second step. A plaintiff "must demonstrate that the [challenged claims are] both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the

evidence submitted by the plaintiff is credited." (*Soukop v. Law Offices of Herbert Hafif* (2006) 39 Cal. 4th 260, 291.)

IV. DISCUSSION

Defendants contend that the causes of action in the complaint arise out of protected activity because the service of a three-day eviction notice on Plaintiffs and the filing of an unlawful detainer lawsuit against them constitute "conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." (Code Civ. Proc., § 425.16, subd. (e)(4).)

A. General Principles

Prosecution of an unlawful detainer action is protected activity within the meaning of Code of Civil Procedure section 425.16. (See *Birkner v. Lam* (2007) 156 Cal.App.4th 275, 281 (*Birkner*).) Service of a three-day notice to quit is also protected activity within the meaning of Code of Civil Procedure section 425.16, because it is a "legally required prerequisite to the filing of the unlawful detainer action." (*Feldman v. 1100 Park Lane Associates* (2008) 160 Cal.App.4th 1467, 1480.)

On the other hand, "[t]erminating a tenancy or removing a property from the rental market are not activities taken in furtherance of the constitutional right of petition or free speech." (*Marlin v. Aimco Venezia, LLC* (2007) 154 Cal.App.4th 154, 160.) "[T]he mere fact that an action was filed after protected activity took place does not mean it arises from that activity." (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 76-77.) "Moreover, that a cause of action arguably may have been 'triggered' by protected activity does not entail that it is one arising from such. In the anti-SLAPP context, the critical consideration is whether the cause of action is based on the defendant's protected free speech or petitioning activity." (*Navellier, supra,* 29 Cal.4th at p. 89.) "Instead, courts should analyze each claim for relief—each act or set of acts supplying a basis for relief, of which there may be several in a single pleaded cause of action—to determine whether the acts are protected and, if so, whether the claim they give rise to has the requisite degree of merit to survive the motion." (*Bonni v. St. Joseph Health System* (2021) 11 Cal.5th 995, 1010 [citing *Baral v. Schnitt* (2016) 1 Cal.5th 376, 393-395].)

B. The Allegations of the Complaint

In this case, Plaintiffs maintain that they "do not take issue, or seek damages from Defendants' decision to pursue a legal unlawful detainer action"; rather, they claim that the gravamen of this action is Defendants' failure to provide a safe environment and monitor Defendants' own property. (Opp., p. 3:4-7.) As Plaintiffs point out, the complaint does not refer to the three-day notice or the unlawful detainer action itself; instead, it alleges lease violations or conduct that preceded the service of the three-day notice on August 19, 2021. (See, e.g., Complaint, ¶ 20 [alleging that Defendants' agent threatened Plaintiffs on August 10, 2021].) The fact that the three-day notice and unlawful detainer action preceded the instant action does not compel the conclusion that the causes of action asserted in this case necessarily arise from service of the notice or from the unlawful detainer case. (See *Navellier, supra,* 29 Cal.4th at p. 89; see also *Ulkarim v. Westfield LLC* (2014) 227 Cal.App.4th 1266, 1276 (*Ulkarim*) ["Courts distinguish a cause of action based on the service of a notice in connection with the termination of a tenancy or filing of an unlawful detainer complaint from a cause of

action based on the decision to terminate or other conduct in connection with the termination."].)

Plaintiffs' first cause of action for negligence alleges a series of breaches of duty by Defendants as property owners. (Complaint, ¶¶ 22-27.) According to the complaint, Defendants allegedly failed:

> . . . to exercise reasonable care in the ownership, operation, management, and control of the Subject Unit, which included but was not limited to the following: the duty to comply with all applicable state and local laws governing Plaintiffs' rights including state and municipal laws to prevent overcrowding of residential property; the duty not to interfere with Plaintiffs' quiet enjoyment of the premises; the duty to refrain from wrongfully endeavoring to recover possession of Plaintiffs' rental unit. Defendants, by their conduct as alleged herein, negligently and carelessly owned, operated, and managed the Subject Unit.

(*Id*. at ¶ 23.) The complaint further alleges that Defendants: (1) failed to identify Ms. Gonzales as an agent pursuant to Civil Code section 1962, subdivision (d); (2) negligently operated the Property by allowing overcrowding in violation of municipal and state law; and (3) failed to supervise their agents adequately. (*Id*. at ¶ 27.)

The second cause of action for tenant harassment alleges: "Defendants have engaged in acts that seriously threatened, menaced, annoyed, and harassed Plaintiffs for the purpose of influencing Plaintiffs to quit possession of the SUBJECT PREMISES," including the threat of violence and force to harm Plaintiffs. (Complaint, ¶¶ 34-35.)

The third cause of action alleges that Defendants' failed to return Plaintiffs' security deposit pursuant to Civil Code section 1950.5, subdivision (g), in breach of the lease agreement. (*Id*. at ¶¶ 39-41.)

The court discerns nothing in these allegations that implicates Defendants' "protected free speech or petitioning activity." These causes of action do not mention, or arise out of, the three-day notice to quit or unlawful detainer action. Accordingly, the court does not see how any of these allegations arise from protected conduct under the first prong of the anti-SLAPP analysis.

C. The Applicable Case Law

Defendants argue that the complaint's allegations that Defendants had a "duty to refrain from wrongfully endeavoring to recover possession of Plaintiffs' rental unit" and "harassed Plaintiff for the purpose of influencing Plaintiffs to quit possession" mean that the complaint necessarily implicates protected activity—*i.e.*, the notice of termination and unlawful detainer action. (Complaint, ¶¶ 23, 34.) California courts have consistently rejected such a deliberately narrow reading of the pleadings, however.

In *Moriarty v. Laramar Management Corp.* (2014) 224 Cal.App.4th 125, 135 (*Moriarty*), the Court of Appeal held that a defendant improperly attempted to construe "a few words in a few paragraphs" of plaintiff's complaint as being based on an unlawful detainer action, even though the complaint never mentioned the action. Similarly, in *Central Valley Hospitalists v. Dignity Health* (2018) 19 Cal.App.5th 203, 217 (*Central Valley*), the Court

denied an anti-SLAPP motion that was based on the incorrect notion that the plaintiff's claims arose from protected medical peer review activities, even though the complaint had expressly excluded peer review activities and plaintiff offered to stipulate that there would be no discovery as to any peer review. (*Central Valley, supra,* 19 Cal.App.5th at p. 217.) Here, just as in *Moriarty*, Defendants have cherry-picked words from Plaintiffs' first and second causes of action—each brought under a specific statute—in an effort to misconstrue the complaint as one arising from the notice to quit and unlawful detainer action. Plaintiffs make it clear in their opposition brief that the complaint does not arise from the notice to quit or unlawful detainer action, and the court's independent review of the complaint confirms that it is devoid of allegations concerning any of these otherwise protected activities, just as in *Moriarty* and *Central Valley*.

Defendants rely on *Birkner, supra,* in an attempt to establish a connection between Plaintiffs' complaint and Defendants' three-day notice and unlawful detainer action. In *Birkner,* tenants filed an action after a property owner served a notice to terminate their tenancy. The Court of Appeal granted the property owner's anti-SLAPP motion because "'[t]he sole basis for liability' in each of plaintiffs' causes of action 'was the service of a termination notice, pursuant to Rent Ordinance,' and Lam's 'refusal to rescind it after [p]laintiffs informed him that they constituted a protected household.'" (*Birkner, supra,* 156 Cal.App.4th at p. 283.) As noted in the later Court of Appeal decision in *Ulkarim, supra,* however, the *Birkner* Court did not adequately explain why the tenants' complaint arose from the service of the notice of termination, rather than from the property owner's decision to terminate the tenancy—the latter of which was not protected activity. (*Ulkarim, supra,* 227 Cal.App.4th at p. 1280.) Declining to follow *Birkner,* the *Ulkarim* Court determined instead:

> A tenant's complaint against a landlord filed after the service of a notice of termination and the filing of a complaint for unlawful detainer does not arise from those particular activities if the gravamen of the tenant's complaint challenges the decision to terminate the tenancy or other conduct in connection with the termination apart from the service of a notice of termination or filing of an unlawful detainer complaint

(*Id.* at p. 1279; see also *Oviedo v. Windsor Twelve Properties, LLC* (2012) 212 Cal.App.4th 97 [claim of ordinance violation arose from unlawful rent increase, rather than from unlawful detainer action]; *Clark v. Mazgani* (2009) 170 Cal.App.4th 1281, [complaint arose from fraudulent termination of tenancy and removal]; *Oakland Bulk & Oversized Terminal, LLC v. City of Oakland* (2020) 54 Cal.App.5th 738, 747, fn. 6 [noting that *Birkner* has been "criticized for failing to recognize that the critical consideration is whether the claim is *based on* defendant's protected free speech or petitioning activity."]) Thus, in *Ulkarim,* the Court of Appeal ultimately denied a property owner's anti-SLAPP motion because the gravamen of the tenant's claims arose from the property owner's underlying decision to terminate (*i.e.*, unilateral, bad faith termination of tenancy) or the property owner's conduct during and in connection with the tenancy (*e.g.*, offering business to other vendors, interfering with landline service). (*Ulkarim, supra,* 227 Cal.App.4th at pp. 1281-1282.) These facts are similar to the circumstances alleged in the present complaint, and the court likewise concludes that these causes of action do not arise out of protected activity.

Defendants repeatedly cite the judicially noticed exhibits to support their arguments, but courts have consistently "rejected efforts by moving parties to redefine the factual basis for

a plaintiff's claims as described in the complaint to manufacture a ground to argue that the plaintiff's claims arise from protected conduct." (*Bel Air Internet, LLC v. Morales* (2018) 20 Cal.App.5th 924, 936 (*Bel Air*); *Comstock v. Aber* (2012) 212 Cal.App.4th 931, 942 [holding anti-SLAPP analysis involves "what is pled—not what is proven"].) This practice is "[c]onsistent with the primary role of the complaint in identifying the claims at issue." (*Bel Air, supra,* 20 Cal.App.5th at p. 936.) While Defendants cite multiple prior court filings for the proposition that Plaintiffs' complaint arises from protected activity, Defendants cannot manufacture protected activity where the complaint pleads none. (*Ibid.* ["A plaintiff's complaint ultimately defines the contours of the claims."]; see also *Central Valley, supra,* 19 Cal.App.5th at p. 217 [rejecting defendant's construction of a peer review claim through declarations where the complaint pleaded none]; *Medical Marijuana, Inc. v. ProjectCBD.com* (2016) 6 Cal.App.5th 602, 621 ["It is not our role to engage in what would amount to a redrafting of the first amended complaint in order to read that document as alleging conduct that supports a claim that has not in fact been specifically alleged, and then assess whether the pleading that we have essentially drafted could survive the anti-SLAPP motion directed at it."].)

Having concluded that Defendants have failed to satisfy the first prong of the anti-SLAPP analysis, the court declines to address the second prong—*i.e.*, the relative merits of the Plaintiffs' causes of action. For the same reason, the court will not address Defendants' arguments regarding the litigation privilege, which is a part of the second-prong analysis. (Civ. Code, § 47, subd. (b).)

The court DENIES Defendants' special motion to strike Plaintiffs' complaint, and the court DENIES Defendants' request for attorney's fees. (See Code Civ. Proc., § 425.16, subd. (c).)

- oo0oo -

Calendar Line 2
Case Name: *QTV Enterprise, LLC v. Hieu Minh Nguyen et al.*
Case No.: 20CV372475

I. BACKGROUND

This is an action for avoidance of an allegedly fraudulent transfer brought by Plaintiff QTV Enterprise LLC ("Plaintiff" or "QTV") against three defendants: Hieu Minh Nguyen ("Mr. Nguyen"); Quy Ngoc Thi Nguyen ("Mrs. Nguyen"), who is Mr. Nguyen's wife; and Nguyen Thi Thu Thao ("Trustee"), who is Mr. Nguyen's sister and sued solely in her capacity as Trustee of the 2016 Nguyen Min Hieu & Nguyen Thi Ngoc Quy Insurance Trust.

The original and still-operative complaint, filed on October 20, 2020, states three causes of action: (1) Fraudulent Transfer re: "Granite Bay Property," in violation of Civil Code ("Civ. Code") section 3439.04(a), part of the Uniform Voidable Transfer Act ("UVTA") (Civ. Code, §§ 3439 et seq.); (2) Fraudulent Transfer re: "$1.9 Millon Granite Bay Loan," in violation of Civ. Code section 3439.04(a); and (3) Fraudulent Transfer re: "Granite Bay Property," in violation of Civ. Code section 3439.05. All three causes of action are alleged against all defendants. The Granite Bay Property refers to 4411 Polo Ranch Place in Granite Bay, CA. The transfer is alleged to have occurred on or about December 17, 2016 and to have been recorded in a grant deed on February 6, 2017. (See Complaint at ¶¶ 18-19.)

There are five exhibits attached to the complaint.

Exhibit 1 is a copy of Promissory Note entered into by Mr. Nguyen (as "Maker") and QTV (as "Payee") on July 28, 2015.

Exhibit 2 is a copy of an August 5, 2020 order of this court (Judge Folan) granting summary adjudication to QTV as to its second cause of action for breach of promissory note in a prior lawsuit (Case No. 17CV310864). Attached to the order is a copy of Judge Folan's July 14, 2020 minute order adopting the uncontested tentative ruling granting the unopposed motion for summary adjudication. Mr. Nguyen was represented by attorney Geoffrey Steele at that time. The minute order states in pertinent part:

> Counsel for Defendant Nguyen filed a notice of unavailability on March 24, 2020 generally stating that Mr. Nguyen is in Vietnam and cannot leave Vietnam until April 21, 2021 and his communications with counsel are severely restricted. That does not excuse counsel from filing an opposition and the Court finds it difficult to believe counsel cannot communicate with Mr. Nguyen by telephone, text, videoconferencing, email, written correspondence, WhatsApp or any other number of communication options if it was needed in connection with this motion. Counsel's declaration in connection with the Notice of Unavailability was rather vague on why communications were restricted. The Decision on Suspension from Exit appears to simply prevent Mr. Nguyen from leaving Vietnam and does not prevent him from communicating with others. Mr. Nguyen's counsel also did not file a motion to continue this motion on the ground that he needed additional time for discovery (from whatever source) to present evidence of a triable issue of material fact.

Exhibit 3 is a copy of a Grant Deed recorded in Placer County on September 29, 2016, showing the transfer of the Granite Bay Property to Mr. and Mrs. Nguyen as community property "[f]or a valuable consideration."

Exhibit 4 is a copy of a Grant Deed recorded in Placer County on February 6, 2017 showing the transfer of the Granite Bay Property from Mr. and Mrs. Nguyen to Defendant Trustee "[f]or No Consideration."

Exhibit 5 is a copy of a Deed of Trust recorded in Placer County on June 25, 2019 showing a $1.9 million dollar loan to Trustee by Val-Chris Investments, Inc., secured by the Granite Bay Property.

Pursuant to a January 26, 2023 order of the court (Judge Pennypacker) Defendants' defaults were set aside and they were permitted to file an Answer to the Complaint on February 23, 2023. On August 1, 2023 this court (the undersigned) heard three identical motions "to Set Aside Default, Default Judgment, Summary Adjudications, Charging Orders and Discovery Sanctions" filed by Mr. Nguyen in related cases 17CV310864, 18CV326638, and 18CV334671. The court denied those motions on August 1, 2023. On January 9, 2024, the court denied Mr. Nguyen's motions for reconsideration of the August 1 order.[3]

Currently before the court is Plaintiff's motion for summary adjudication of the complaint's first and third causes of action, filed on July 17, 2023. Defendants filed their opposition on November 16, 2023. At the parties' request, the court continued the original hearing date of November 20, 2023 to the present date of February 15, 2024, so that the parties could first obtain the court's ruling on the motions for reconsideration in the related cases.

II. REQUEST FOR JUDICIAL NOTICE

"Judicial notice may not be taken of any matter unless authorized or required by law." (Evid. Code, § 450.) A precondition to judicial notice in either its permissive or mandatory forms is that the matter to be noticed be relevant to the material issue before the Court. (*Silverado Modjeska Recreation and Park Dist. v. County of Orange* (2011) 197 Cal.App.4th 282, 307 [citing *People v. Shamrock Foods Co*. (2000) 24 Cal.4th 415, 422, fn. 2].) It is the court, and not the parties, that determines relevance. Evidence Code section 453, subdivision (b), requires a party seeking notice to "[furnish] the court with sufficient information to enable it to take judicial notice of the matter." Any request for judicial notice that does not comply with California Rule of Court 3.1113(l) is denied.

In support of its motion, QTV has submitted a request for judicial notice of 18 documents pursuant to Evidence Code section 452, subdivisions (d), (g), and (h). The request does not explain the basis upon which QTV believes any particular document should be judicially noticed. Subdivision (g) ("[f]acts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the

[3] The court takes judicial notice of the January 9, 2024 order on its own motion. (Evid. Code, § 452, subd. (d).) As to Case No. 18CV334671, the court denied the motion for reconsideration for lack of jurisdiction, as Mr. Nguyen had already taken an appeal after judgment in that case. The court also takes judicial notice of its earlier August 1, 2023 order on the motions to set aside.

subject of dispute") does not apply to any of the submitted documents. Subdivision (h) could apply to Exhibits 4, 6, and 7 (copies of recorded abstracts of judgments) and Exhibits 11-14 (copies of recorded deeds). The court grants judicial notice of these exhibits on this basis.

The court grants judicial notice of Exhibit 1 (Judge Folan's August 5, 2020 order (which is also already attached as Exhibit 2 to the complaint) under subdivision (d). Similarly, the court grants judicial notice under subdivision (d) of the following court records: (1) Exhibit 2 to the request for judicial notice, which is a copy of a court order granting summary adjudication against Mr. Nguyen in a related case in this court (No. 18CV334671—aka, the "Vector action"); (2) Exhibit 3, a copy of a judgment entered against Mr. Nguyen in a Sacramento County case (No. 34-2010-00093086—aka, the "Vinh action"); (3) Exhibit 5, a copy of a judgment entered against Mr. Nguyen in the Vinh action; (4) Exhibit 8, a copy of a notice of lien in the Vinh action; (5) Exhibit 9, a copy of a judgment entered against Mr. Nguyen on August 18, 2016 in another case in this court (No. 1-13-CV-256810, the "Pham action"); (6) Exhibit 15, a copy of a May 26, 2021 order of this court (Judge Kirwan) in the Vector action, which granted an unopposed motion for summary adjudication against Mr. Nguyen; and (7) Exhibit 18, a copy of an April 18, 2019 order of this court (Judge Pierce) in the Vector action, which granted a motion for leave to file an amended complaint.

The court denies judicial notice of Exhibit 10, an alleged copy of a court docket printed by an unknown person on an unknown date from an unspecified source. The court also denies judicial notice of Exhibit 16, a copy of a declaration filed in the Vector action. Deposition transcripts and declarations cannot be noticed as to the truth of their contents. (See *Oh v. Teachers Ins. & Annuity Assn. of America* (2020) 53 Cal.App.5th 71, 79-81 [truth of contents of court records cannot be judicially noticed]; *Intengan v. BAC Home Loans Servicing LP* (2013) 214 Cal.App.4th 1047, 1057 [court may take judicial notice of existence of declaration but not of facts asserted in it]; *Bach v. McNelis* (1989) 207 Cal.App.3d 852, 865 [court may not notice the truth of declarations or affidavits filed in court proceedings].) The mere existence of this declaration is not relevant to the issues before the court.

The court denies judicial notice Exhibit 17, a copy of an alleged screenshot of a "Zillow valuation report." There is no proper basis for judicial notice of this exhibit.

With its reply brief, QTV has submitted another request for judicial notice of four additional documents, attached as Exhibits A-D to the request. This request also cites Evidence Code section 452, subdivisions (d), (g), and (h) but fails to state the basis for judicial notice of any particular document. The court denies this request. As a general matter, the moving party may not rely on additional evidence submitted with its reply papers. (See *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-38 ["The general rule of motion practice . . . is that new evidence is not permitted with reply papers. This principle is most prominent in the context of summary judgment motions . . ."]; see also *Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 252.)[4]

[4] While the court has already taken judicial notice of some of these documents on its own motion, QTV still cannot submit new evidence with the reply.

III. QTV'S MOTION FOR SUMMARY ADJUDICATION

A. General Standards

The pleadings limit the issues presented for summary judgment or adjudication, and such a motion may not be granted or denied based on issues not raised by the pleadings. (See *Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258; *Nieto v. Blue Shield of Calif. Life & Health Ins.* (2010) 181 Cal.App.4th 60, 73 ["the pleadings determine the scope of relevant issues on a summary judgment motion"].)

The moving party bears the initial burden of production to make a prima facie showing that there are no triable issues of material fact. (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 850 (*Aguilar*).) A motion for summary judgment or adjudication shall be granted only if it completely disposes of an entire cause of action, an affirmative defense, a claim for damages, or an "issue of duty." (See Code Civ. Proc., § 437c, subd. (f)(1); *McClasky v. California State Auto. Ass'n* (2010) 189 Cal.App.4th 947, 975 ["If a cause of action is not shown to be barred in its entirety, no order for summary judgment—or adjudication—can be entered."]; *Palm Spring Villas II Homeowners Association, Inc. v. Parth* (2016) 248 Cal.App.4th 268, 288.) Summary adjudication of general "issues" or of facts is not permitted. (See *Raghavan v. The Boeing Company* (2005) 133 Cal.App.4th 1120, 1136.)

While the same standards of admissibility govern both, the opposition declarations are liberally construed while the moving party's evidence is strictly scrutinized. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768.) The evidence must be liberally construed in support of the opposing party, resolving any doubts in favor of that party. (*Yanowitz v. L'Oreal USA, Inc*. (2005) 36 Cal.4th 1028, 1037.) "Where a declaration submitted in opposition to a motion for summary judgment clearly contradicts the declarant's earlier deposition testimony or discovery responses, the trial court may fairly disregard the declaration and 'conclude there is no substantial evidence of the existence of a triable issue of fact.'" (*Whitmire v. Ingersoll-Rand Co.* (2010) 184 Cal.App.4th 1078, 1087, citing *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 21.)

Where a plaintiff or cross-complainant has moved for summary judgment or adjudication, it has the burden of showing that there is no defense to a cause of action. (Code Civ. Proc., § 437c, subd. (a).) That burden can be met if the plaintiff "has proved each element of the cause of action entitling it to judgment on that cause of action. If the plaintiff meets this burden, it is up to the defendant to show that a triable issue of one or more material facts exists as to that cause of action or a defense thereto." (Code Civ. Proc., § 437c, subd. (p)(1); *Professional Collection Consultants v. Lauron* (2017) 8 Cal.App.5th 958, 965.) "A plaintiff moving for summary adjudication meets its burden if it proves each element of the cause of action." (*Quidel Corp. v. Super. Ct*. (2020) 57 Cal.App.5th 155, 163.) "If the plaintiff meets its burden, the defendant must set forth specific facts showing a triable issue of material facts exist. (*Id*. at p. 164.)

B. The UVTA

The UVTA is found at Civil Code sections 3439 *et seq.* "A transfer made . . . by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made . . . if the debtor made the transfer . . . as follows: [¶] (1) With actual intent

to hinder, delay, or defraud any creditor of the debtor . . . ." (Civ. Code, § 3439.04, subd. (a).) Thus, a clear element of a fraudulent conveyance claim is the transfer of property by a debtor. The person or entity who has fraudulently transferred assets is often referred to as the "debtor" or "transferor," while the party to whom the assets are transferred may be referred to as the "third party" or "transferee." The goal of such a cause of action is not to obtain judgment, but rather to collect on the claim. If the transfer satisfies the provisions of Civil Code section 3439.04, subdivision (a)(1) or (2), it is voidable.

The UVTA provides for two methods of establishing a fraudulent transfer: (1) actual fraud, as defined in subdivision (a)(1) of Civil Code section 3439.04, is a transfer made with "actual intent to hinder, delay or defraud any creditor"; and (2) constructive fraud, as defined in subdivision (a)(2), requires a showing that the debtor did not receive "reasonably equivalent" value for the transfer, and the transfer was made when the debtor was engaged in a transaction for which his or her remaining assets were unreasonably small relative to the size of the transaction, or he or she intended to incur debts beyond his or her ability to pay them (Civ. Code, § 3439.04, subd. (a)(2)(A) and (B).)

Actual fraud may be inferred from certain types of conduct—*i.e.*, "badges of fraud":

- Whether the transfer or obligation was to an insider;
- Whether the debtor had retained possession or control of the property transferred after the transfer;
- Whether the transfer or obligation was disclosed or concealed;
- Whether the debtor was sued or threatened with suit before the transfer was made or obligation was incurred;
- Whether the transfer was of substantially all of the debtor's assets;
- Whether the debtor has absconded;
- Whether the debtor had removed or concealed assets;
- Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
- Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
- Whether the transfer had occurred shortly before or shortly after a substantial debt was incurred; and
- Whether the debtor had transferred the essential assets of the business to a lienor who had transferred the assets to an insider of the debtor.

(See Civ. Code, § 3439.04, subd. (b)(1)-(11).) A creditor bringing a claim under section 3439.04, subdivision (a), must prove the elements of the claim by a preponderance of the evidence. (Civ. Code, § 3439.04, subd. (c).)

At the same time, "whether a conveyance is made with fraudulent intent is a question of fact." (*Annod Corp, v. Hamilton & Samuels* (2002) 100 Cal.App.4th 1286, 1294; see also *Filip v. Bucurenciu* (2005) 129 Cal.App.4th 825, 834 (*Filip*).) "There is no minimum number of factors that must be present before the scales tip in favor of finding of actual intent to defraud. This list of factors is meant to provide guidance to the trial court, not compel a finding one way or the other." (*Filip, supra*, 129 Cal.App.4th at p. 834.)

C. The First and Third Causes of Action

The complaint's first cause of action alleges actual fraud: "Plaintiff is informed and believes and based thereon alleges that the Granite Bay Property Transfer was made with the actual intent to hinder, delay or defraud Mr. Nguyen's creditors, including Plaintiff herein, and as such, the transfer is avoidable under [Civ. Code § 3439.04(a)]." (Complaint at ¶ 23.) In order to meet its initial burden of the first cause of action, QTV must present admissible evidence that establishes: (1) that Defendants made a transfer of funds or property to which they were not entitled; (2) that QTV was a creditor of Defendants and was entitled to the funds or property that were transferred; and (3) that it can be reasonably inferred that Defendants made the transfer with the actual intent to "hinder, delay or defraud" QTV.

The complaint's third cause of action for constructive fraud is based on Civil Code section 3439.05, which states: "(a) A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation. (b) A creditor making a claim for relief under subdivision (a) has the burden of proving the elements of the claim for relief by a preponderance of the evidence." Civil Code section 3439.02 defines insolvency for purposes of the UVTA. A debtor is insolvent "if, at a fair valuation, the sum of the debtor's debts is greater than the sum of the debtor's assets." (Civ. Code, § 3439.02, subd. (a).) "A debtor that is generally not paying the debtor's debts as they become due other than as a result of a bona fide dispute is presumed to be insolvent. The presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence." (Civ. Code, § 3439.02, subd. (b).) "Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this chapter." (Civ. Code, § 3439.02(c).) "Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset." (Civ. Code, § 3439.02(d).)

The third cause of action alleges that "Defendants Mr. Nguyen and Mrs. Nguyen did not receive reasonable equivalent value for the transfer of their community property interest in the Granite Bay Property to Defendant Trustee, but instead made the Granite Bay Property Transfer for no consideration. [Plaintiff is] informed and believes and based thereon allege[s] that at the time of the Granite Bay Property Transfer Mr. Nguyen was insolvent or became insolvent as a result of said, transfer, and that the transfer is therefore avoidable pursuant to [Civ. Code § 3439.05]." (See Complaint at ¶¶ 29-30.)

In short, "actual intent" must be established for the first cause of action but is not an element of the third cause of action. Insolvency must be established for the third cause of action but is not an element of the first cause of action. To show insolvency, QTV relies upon the statutory presumption created by Defendants' failure to pay down the debt owed to QTV.

D. The Basis for QTV's Motion

QTV contends that it is entitled to summary adjudication on the ground that "there are no disputed issues of material fact, and there is no defense to Plaintiff's claims for avoidance of

fraudulent transfer against defendants as set forth in Plaintiff's First and Third Causes of Action in Plaintiff's Complaint in this action." (July 17, 2023 Notice of Motion at p. 2:9-11.)

Rule of Court 3.1350(b) states: "If summary adjudication is sought, whether separately or as an alternative to the motion for summary judgment, the specific cause of action, affirmative defense, claims for damages, or issues of duty must be stated specifically in the notice of motion and be repeated, verbatim, in the separate statement of undisputed material facts." QTV's motion does not comply with the rule, as the separate statement does not repeat verbatim the specific language in the notice of motion. Nevertheless, the court will exercise its discretion to consider the motion despite this technical defect. (See *Holt v. Brock* (2022) 85 Cal.App.5th 611, 619 [court's power to deny motion outright for failure to comply with Rule of Court 3.1350 is discretionary, not mandatory].)

QTV contends that it has submitted evidence of "badges of fraud" establishing that the transfer of the Granite Bay Property was made with the intent to defraud, as follows: the transfer was made to an "insider" (*i.e.*, to Trustee, Mr. Nguyen's sister), and to a trust whose beneficiaries are the children of Mr. and Mrs. Nguyen; Mr. and Mrs. Nguyen have retained possession of the property after the transfer; the transfer was made months after "judgments" had been entered against Mr. Nguyen and after Mr. Nguyen defaulted on the Promissory Note between him and QTV; the transfer was of Mr. Nguyen's "only known unencumbered asset available in the United States having any substantial value"; Mr. Nguyen concealed and/or removed assets by obtaining a loan secured by the Granite Bay Property with the assistance of Trustee; the transfer of the Granite Bay Property was expressly "for no consideration"; and Mr. Nguyen was insolvent at, or shortly after, the time of transfer as a result of court judgments against him and his default on promissory notes. (See Memorandum at pp. 16:1-18:9 [citing *Filip*, *supra*, 129 Cal.App.4th at p. 834, which held that a "finding of actual intent was virtually compelled" by the presentation of evidence that a property was, among other things, transferred for less than market value].) Transfers among family members are given "strict scrutiny" under the UVTA. (See *Universal Home Improvement, Inc. v. Robertson* (2020) 51 Cal.App.5th 116, 122.)

QTV also argues that Mr. Nguyen is presumed to have been insolvent at the time of the December 17, 2016 transfer under Civil Code section 3439.02, subdivision (b), because "at the time of the transfer, he was not generally paying his undisputed debts as they [became] due (nor to date has he ever paid any of those debts). To be clear, at the time of transfer, in December 2016, he owed his creditors no less than 5.5 million . . . the entire amount of which was outstanding, due and payable in full, and unpaid. Mr. Nguyen is therefore presumed to have been insolvent, and it is his burden to prove otherwise, which he cannot show." (QTV supporting memo. at p. 19:13-19.)

In addition to the request for judicial notice, QTV's motion is supported by two declarations. The first is a July 13, 2023 declaration from Quang Luong, owner and managing member of QTV. He describes Mr. Nguyen's indebtedness to QTV on the promissory note and the August 5, 2020 court order in Case No. 17CV310864 granting QTV summary adjudication. He states that the total amount due to QTV is $4,268,744.54 plus interest and that no portion of this amount has been paid. (See Luong Decl. at ¶¶ 4-14, Exhibits 1-3.) Mr. Luong also states that he is the managing member of Vector Fabrication, and he describes Mr. Nguyen's indebtedness to Vector Fabrication, the filing of the Vector action, and the granting of summary adjudication to Vector Fabrication in that action. He states that the amount found

due and owing by Mr. Nguyen to Vector Fabrication in the Vector action was $1.85 million and that none of this amount has been paid. (See Luong Decl. at ¶¶ 15-23, Exhibits 4-5.)

The second declaration is a July 5, 2023 declaration from counsel Ruben Ruiz, who authenticates the attached Exhibits 1-23. In addition to discussing the earlier QTV action and the Vector action, Ruiz discusses the judgments against Mr. Nguyen in the Vinh action in favor of both Old Republic Title and plaintiff Vinh Nguyen, and states that neither of them have been paid by Mr. Nguyen. Ruiz also describes the judgment against Mr. Nguyen in the Pham action, which he also alleges has not been paid. (See Ruiz Decl. at ¶¶ 1-30, Exhibits 1-13.) Ruiz states that value of the Granite Bay Property at the end of 2016 was approximately $2 million, and that when Mr. and Mrs. Nguyen transferred the Granite Bay Property, Mr. Nguyen's "outstanding unpaid indebtedness due and payable to his creditors, including QTV, totaled over $5.5 million. The 2016 Granite Bay Property Transfer Deed was executed by Defendants on December 17, 2016, just four days after [the] 2016 Vinh Abstract of Judgment was recorded (on December 13, 2016) with the Sacramento County Recorder's office (but before the 2018 Vinh Abstract of Judgment was recorded with the Placer County recorder's office)." (Ruiz Decl. at ¶ 33.)

Ruiz also asserts that, prior to the December 2016 transfer, Mr. and Mrs. Nguyen transferred their community property interest in the Granite Bay Property to the trust in November 2016 and then arranged for that interest to be transferred back to them for no consideration in a deed executed on December 17, 2016. (See Ruiz Decl. at ¶ 34 and Exhibits 16 and 17.) Ruiz also notes that, in responses to form interrogatories propounded by QTV, Mr. Nguyen listed the Granite Bay Property as his residence, thereby "confirming that subsequent to the Granite Bay Property Transfer [Mr. Nguyen] continued to retain possession and control of the Granite Bay Property as his primary residence in California." (Ruiz Decl. at ¶ 35 and Exhibit 18.)

QTV's evidence is sufficient to meet its initial burden of showing that actual fraud under the UVTA can be inferred from multiple indicia, or "badges," of fraud (including transfers to insiders and family members, retention of possession after transfer, concealment and transfer shortly after substantial debt was incurred); the evidence is also sufficient to show that Mr. Nguyen is presumed to have been insolvent at the time of the transfers. In short, QTV's evidence is sufficient to meet the initial burden for summary adjudication as to the first and third causes of action.

E. Defendants' Opposition

Code of Civil Procedure section 437c, subdivision (b)(3), states, "The opposition papers shall include a separate statement that responds to each of the material facts contended by the moving party to be undisputed, indicating if the opposing party agrees or disagrees that those facts are undisputed . . . . Each material fact contended by the opposing party to be disputed shall be followed by a reference to the supporting evidence. Failure to comply with this requirement of a separate statement may constitute a sufficient ground, in the court's discretion, for granting the motion."

California Rule of Court 3.1350(f) also states that, in an opposing statement: "(1) Each material fact claimed by the moving party to be undisputed must be set out verbatim on the left side of the page, below which must be set out the evidence said by the moving party to

establish that fact, complete with the moving party's references to exhibits. (2) On the right side of the page, directly opposite the recitation of the moving party's statement of material facts and supporting evidence, the response must unequivocally state whether that fact is 'disputed' or 'undisputed.' An opposing party who contends that a fact is disputed must state, on the right side of the page directly opposite the fact in dispute, the nature of the dispute and describe the evidence that supports the position that the fact is controverted. Citation to the evidence in support of the position that a fact is controverted must include reference to the exhibit, title, page, and line numbers." Rule of Court 3.1350(h) provides the format that supporting and opposing statements "must follow."

Defendants' opposing separate statement does not comply with Code of Civil Procedure section 437c, subdivision (b)(3), or Rule 3.1350. None of QTV's facts or supporting evidence are listed, as required. Many of Defendants' responses, purporting to dispute *unlisted* material facts, fail to cite any evidence in support of the position that a fact is controverted. Many of Defendants' responses fail even to indicate clearly whether a fact is being disputed. QTV's motion could be granted on the basis of Defendants' noncompliant opposing statement alone. Nevertheless, the court will exercise its discretion to consider the merits of the opposition to the motion despite the failure to submit a proper opposing statement.

Defendants' opposition first argues that the Granite Bay Property transfer was not fraudulent, citing deposition testimony from Mrs. Nguyen and the Trustee in other cases. (See Opposition at pp.7:2-8:20.)[5] The opposition next contends that the court's prior orders on summary judgment and adjudication cannot be relied upon to support an inference of actual fraud because they are interim rulings and because Mr. Nguyen filed a motion for reconsideration. (See Opposition at pp. 9:19-10:23.)

This argument attacking the court's orders is unpersuasive. An order or judgment of a court of general jurisdiction, including a summary judgment or adjudication order, is presumed valid. Any party relying upon such an order or judgment need not prove its validity; rather, the burden is on a party attacking such a judgment or order to show that the court acted outside its jurisdiction. (See *Fernandes v. Singh* (2017) 16 Cal.App.5th 932, 940; see also 8 Witkin, *Cal. Procedure*, 5th ed., 2019, Attack on Judgement in Trial Court § 5.) As the court has now denied Mr. Nguyen's motions to set aside those orders in the related cases, as well as Mr. Nguyen's motions for reconsideration of the orders denying a set aside, the orders in those cases remain in effect and are presumptively valid. It is irrelevant to the validity of those orders that some of them are based on admissions deemed admitted against Mr. Nguyen and related defendants in other cases. Defendants have failed to show any disputed material facts arising out of these orders.

The opposition also contends that the three declarations previously submitted by Mr. Nguyen on the motions to set aside in the other cases (that the opposition wrongly suggests were not previously considered by the court) establish a factual dispute as to the existence or amount of debt owed to QTV. "Between the three declarations, Hieu Nguyen explains the

[5] The request for judicial notice in the body of the opposition (at p. 6:23-26) is denied for failure to comply with Rule of Court 3.1113(l).

financial dealings between the parties and why he does not owe any of the plaintiffs any money, and why, instead they owe him money." (See Opposition at p. 11:14-16.)

The only supporting evidence submitted with the opposition is a declaration from counsel Mark Rosen that is appended to the opposition brief rather than separately filed. The Rosen declaration authenticates (and to some degree attempts to provide testimony regarding) seven documents, attached as Exhibits A-G.

Exhibit A is a deed of reconveyance that appears to have been recorded in Placer County. Exhibit B is an unmarked excerpt from Mrs. Nguyen's April 27, 2022 deposition testimony in Case No. 18CV334671, taken through an interpreter. In the submitted excerpt, she testifies that she cannot read English. When asked if she had ever bought the Granite Bay Property with her husband she testified: "About house, about business, I don't know anything. My husband asked me to sign whatever, and then I signed." She stated she did not know who the current owner of the property was. (Exhibit B at p. 18:12-19.) Exhibit C is an unmarked excerpt from Trustee's April 27, 2022 deposition in that same case. She testified that she believed that Mrs. Nguyen was still living at the Granite Bay Property, 4411 Polo Ranch Road or Place. (Exhibit C at p. 46:21-23.) In the submitted excerpt, Trustee makes no mention of the December 17, 2017 transfer of the Granite Bay Property.[6]

Exhibits D, E, and F are copies of a March 9, 2022 declaration, a March 14, 2022 "supplemental" declaration and an April 4, 2023 declaration from Mr. Nguyen, submitted in the related cases. According to the Rosen declaration, Exhibits D and E were filed in Case No. 17CV310864, and Exhibit F was filed in Case No. 18CV334671 "and subsequently filed in all of the cases in support of the motion to set aside defaults." (Rosen Decl. at ¶¶ 6-8.) The exhibits themselves show no indication of having been previously filed, but they appear to be the same declarations that the court considered and discussed with counsel for the motions "to Set Aside Default, Default Judgment, Summary Adjudications, Charging Orders and Discovery Sanctions." In its August 1, 2023 order, the court noted that these declarations were replete with hearsay and characterized by vague and equivocal statements. Only Exhibit D includes any mention of the Granite Bay Property. It states, at paragraph 49, that Nguyen signed a promissory note on July 28, 2015 in which he "gave an interest" in the Granite Bay Property to Quang Luong. No copy of this note is presented with the March 9, 2022 declaration submitted here. The July 28, 2015 promissory note attached to the complaint in this action (as Exhibit 1) makes no mention of the Granite Bay Property and states in paragraph 4 that "Maker" (Mr. Nguyen) "pledges as collateral to his payment obligation in this note his Equity Interest in Little Saigon Plaza Sacramento, LLC." In paragraph 52 of Defendants' Exhibit D, Mr. Nguyen states that on September 29, 2016 "Quang deeded back to me the Granite Bay property." These two references have little if any relevance to the alleged fraudulent transfer of the property that subsequently occurred on December 17, 2016.

---

[6] In this related case (No. 18CV334617), Judge Kirwan entered judgment against these same defendants and in favor of plaintiffs Vector Fabrication and Quang Luong on May 26, 2021. The judgment voided the transfer of the Granite Bay Property to the extent necessary to satisfy that judgment. On April 6, 2022 Judge Kirwan granted a motion by judgment creditors Vector and Luong to charge Mr. Nguyen's interest in Little Saigon Plaza Sacramento, Inc. The court takes judicial notice of the May 25, 2021 judgment and the April 6, 2022 order on its own motion pursuant to Evidence Code section 452, subdivision (d).

Exhibit G is a copy of a letter dated October 18, 2023. It was sent by Little Saigon Plaza Sacramento LLC to Mr. Nguyen, as a member of the LLC, informing him that real property owned by the LLC had been sold for $13,250,000 and that escrow had closed on April 26, 2023. The letter notes that because of the secured interest against him (based on court judgments) "neither Mr. Nguyen nor Mr. Tran will receive any portion of the proceeds from the sale of the Property." In his declaration, Rosen states that Mr. Nguyen's share of the proceeds from the sale of the property should be considered a credit to his debt that is not "accounted for at all" in the present motion.[7]

F. Discussion

The court GRANTS QTV's motion for summary adjudication.

"Claims for fraudulent transfer are governed by the UVTA. The purpose of the UVTA is to prevent debtors from placing, beyond the reach of creditors, property that should be made available to satisfy a debt." (*Chen v. Berenjian* (2019) 33 Cal.App.5th 811, 817.) "A creditor may set aside a transfer as fraudulent under Civil Code section 3439.04 by showing actual fraud as defined in subdivision (a)(1) or by showing constructive fraud as defined in subdivision (a)(2)." (*Id*. at 817.)

As to the first cause of action, QTV's evidence (those documents of which the court has taken judicial notice, the Luong declaration and the attached exhibits, and the Ruiz declaration and the attached exhibits) is sufficient to show that at the time of the transfer of the Granite Bay Property "for no consideration," Mr. and Mrs. Nguyen owed millions of dollars to QTV and were not paying down that debt. The submitted evidence also establishes several of the "badges of fraud" under Civil Code section 3439.04, subdivision (b), including transfer to an insider, retention of possession after transfer, and transfer of essentially all assets after a substantial debt was incurred. Based on QTV's initial showing that there is no material factual issue concerning this evidence, Defendants' actual intent to "hinder, delay or defraud" QTV may be inferred.

As to the third cause of action, QTV's evidence is also sufficient to establish that Defendants Mr. and Mrs. Nguyen were indebted to QTV before the date of the December 17, 2016 Granite Bay Property transfer "for no consideration," and that there is a "presumption" that they were insolvent under Civil Code section 3439.02, subdivision (b), at the time of the transfer.

When the burden shifts to the Defendants, they are unable to raise any triable issues of material fact as to either cause of action. QTV's first and third causes of action are both based specifically on the December 17, 2016 property transfer, which Defendants' evidence hardly addresses. Deposition testimony as to whether Defendants were scammed when seeking a loan does not raise a triable issue as to the December 17, 2016 transfer. Indeed, the submitted testimony from Mrs. Nguyen that she knew "nothing" about the ownership of the subject property and signed whatever her husband asked her to only supports QTV's position. The submitted testimony from Trustee Nguyen Thi Thu Thao also does not raise a triable issue as

[7] As the present motion was filed on July 17, 2023, it would obviously not have been possible for it to "account for" a letter dated October 18, 2023.

to the December 17, 2016 transfer. Indeed, her testimony that she believed Mrs. Nguyen still resided at the Granite Bay Property provides additional support for QTV's motion.

The three previously filed declarations from Mr. Nguyen also do not address the December 17, 2016 property transfer and fail to raise any triable issues as to whether that transfer was a fraudulent one. While it is generally true that the question of "whether a conveyance is made with fraudulent intent is a question of fact" (*Filip*, *supra*, 129 Cal.App.4th at p. 834), Defendants' opposition does absolutely nothing to negate any of the "badges of fraud" addressed in QTV's motion, which, if unrebutted, establish intent. Similarly, Defendants' opposition states that "Hieu Nguyen was not insolvent," but it fails to cite any *evidence* other than this bare conclusory assertion in the form of attorney argument. (Opposition at p. 15:14.) That is simply not enough.

For the foregoing reasons, the court grants summary adjudication as to the first and third causes of action.

- oo0oo -

Calendar Lines 4-5
Case Name: *Robert Ramirez v. Paul Ramirez et al.*
Case No.: 16CV301399

Plaintiff Robert Ramirez, via his guardian ad litem, Shaun Ramirez, moves to enforce a settlement agreement with Defendants Paul Ramirez and Mabel Riley. Defendants "object" to the motion and have filed their own "cross-motion" to enforce the settlement agreement, which Plaintiff opposes. Having reviewed the parties' competing filings, as well as their settlement agreement and Plaintiff's proposed "Tenants In Common Agreement," the court agrees with Plaintiff and grants his motion. The court denies defendants' motion.

The parties settled their litigation shortly before trial, as memorialized in a one-page settlement agreement dated February 28, 2019. The parties noted in the agreement that they "anticipate a more formal settlement agreement being drafted and executed but it is their intent that this document, [sic] signed by them be a binding legal agreement judicially enforceable by the Court pursuant to 664.6 and as otherwise provided by law." (Settlement Agreement, Unnumbered Paragraph 12.) Both sides concur that the settlement's core terms were accurately reflected in the agreement:

1. "Ramirez Brothers and Little Acre Estate Partnerships to be wound up and dissolved."

2. "Robert Ramirez to receive 1010 Myrtle St and 317Cherry [sic] Ave."

3. "Paul and Jane Ramirez to receive 1022 Vermont St., 546 Hedding St., and 544 University Ave."

4. "Paul and Jane Ramirez to keep all funds in Little Acre Estates accounts."

5. "Shaun Ramirez as conservator of Robert Ramirez to keep all funds in the Ramirez Brothers accounts."

6. "The parties agree to jointly retain a tax professional who will determine the best manner in which to distribute the property without causing unnecessary tax burdens to any party and to follow that professional's advice and execute all documents necessary to effect it."

(Settlement Agreement, Unnumbered Paragraphs 1-6; Plaintiff's Motion at p. 7:7-21; Defendants' Opposition at p. 3:1-8.)

Even though Defendants have filed a "cross-motion" to *enforce* the settlement agreement, they also argue that the court "does not have the authority" to enforce the agreement in the manner that Plaintiff requests. That is because Defendants believe that the court lacks the authority to force them to sign the "Tenants in Common Agreement" that Plaintiff wants them to sign. Defendants contend that the Tenants in Common Agreement adds "material terms that are inconsistent with the settlement agreement" (Opposition at p. 4:2-3); as a result, forcing them to sign it would be tantamount to making "prospective orders" or "control[ling settlement] negotiations between the parties" (*id.* at p. 5:3-4).

The court finds Defendants' arguments to be wholly without merit. First, Defendants do not dispute Plaintiff's basic assertion that the Tenants in Common Agreement was the direct result of the parties' joint retention of a tax professional who advised the parties on "the best manner in which to distribute the property without causing unnecessary tax burdens to any party," in accordance with the settlement agreement. (Settlement Agreement, Unnumbered Paragraph 6.) According to the Plaintiff, after the parties agreed on a professional to provide tax advice, after the professional recommended a specific strategy, and after the parties "jointly hired" an attorney to prepare the tenancy in common agreement consistent with that strategy, Defendants rejected the strategy. As a result, they are in breach of the settlement agreement.

Having reviewed the settlement agreement and the Tenants in Common Agreement, the court identifies no inconsistency between these documents, contrary to Defendants' unsupported allegation. Defendants claim that the Tenants in Common Agreement limits their ability to refinance and sell the property, but they fail to identify anything in the text of the agreement that actually does this. As Plaintiff points out, paragraph 3.2 of the TIC agreement makes it clear that any property owner can demand a recording of the deeds at any time, thereby creating no material impediment to the transfer of any property by the property owner. Defendants' arguments are entirely conclusory—they fail to identify anything specific in support of their claim that Tenants in Common Agreement adds "material" and "inconsistent" terms to the settlement.

Thus, enforcing the language of the settlement agreement that requires the parties to "execute all documents necessary to effect it" falls squarely within the scope of the court's authority under Code of Civil Procedure section 664.6. Paragraph 6 of the parties' settlement agreement directly provides for the signing of documents such as the Tenants in Common Agreement to "effect" the settlement.

For the foregoing reasons, Plaintiff's motion is GRANTED, and Defendants' motion is DENIED.

- oo0oo -

Calendar Line 7
Case Name: *Jeffrey Scharf et al. v. Scharf Investments, LLC et al.*
Case No.: 22CV395005

This is the third motion for attorney's fees by respondents Scharf Investments, LLC and Brian Krawez ("Respondents") in connection with a November 10, 2021 arbitration award against petitioners Jeffrey Scharf and Sherril Smith-Scharf ("Petitioners"). Given the history of the case, it is unlikely to be the last, as there is yet another appeal pending. In the first motion, filed in this case (No. 22CV395005) after Respondents successfully quashed a petition to correct the arbitration award, this court (Judge Kirwan) awarded $461,250.00 out of the $745,696.49 requested. In the second motion, filed in a related case (No. 22CV399395) after Respondents (who were petitioners in that case) prevailed on a petition to confirm the arbitration award, this court (the undersigned) awarded $361,923.55 out of the $810,545.35 requested in this case. The court also awarded $0 out of an additional $212,642.00 requested for the *first* case in the *second* motion.

Now, Respondents request an additional $499,981.50 for the fees incurred in opposing Petitioners' appeal of the court's (Judge Deen's) order granting the motion to quash the petition to correct the arbitration award. On June 30, 2023, the Court of Appeal issued a 12-page opinion affirming Judge Deen's decision in favor of Respondents. The remittitur issued on September 21, 2023.

While it is true—as Petitioners repeatedly emphasize in their opposition to this motion—that both the undersigned and Judge Kirwan found the requested amounts in Respondents' previous motions to be "unreasonable and excessive," the court finds that Respondents have now effectively corrected the infirmities that existed in their previous requests. The court no longer finds any clear evidence of a duplication of effort on the part of counsel, unlike last time: Respondents do not seek any fees for the work of co-counsel David Chun, which the court found to be problematic and excessive in its July 18, 2023 order. In addition, the court is persuaded by Respondents' assertions that the work on the appeal was extremely time consuming and challenging, given the aggressive stances taken by Petitioners on appeal (including an ill-conceived petition for rehearing in the Court of Appeal and a long-shot petition for review in the California Supreme Court) and the high quality of appellate counsel retained by Petitioners to advance their positions. Applying the lodestar method, the court finds that the number of hours expended by Paul Hastings on this appeal on behalf of Respondents was reasonable, given the level of the opposition.

Similarly, the court finds that the *average* hourly rate of the Paul Hastings timekeepers on the appeal (and this motion) of $1,120 is within the range of reasonableness, given the quality (and undoubtedly comparably high billing rates) of opposing counsel at Pillsbury Winthrop. Although the number is certainly high—higher than this court is accustomed to seeing with most counsel who appear in this court—the undersigned has not been living in a cave for the last few years and is well aware that billing rates at large law firms have recently escalated dramatically. The court agrees with Respondents that Petitioners' suggestion of a blended rate of $900/hour is arbitrary, given the facts presented here.

The court GRANTS Respondents' motion for an award of attorney's fees in the amount of $499,981.50 and $5,507.26 in costs.[8]

- oo0oo -

[8] Petitioners have not submitted any argument or objection in connection with the request for costs.

Calendar Line 8
Case Name: *Jane Doe et al. v. Union School District et al.*
Case No.: 23CV422606

On November 9, 2023, this court granted Jane Doe and Jane Doe 2's motion for a preferential trial setting. In doing so, the court rejected defendant Union School District's argument in opposition that the "interest of justice" required that the plaintiffs' cases be severed and proceed on different timelines, with separate trials. Two months later, on January 9, 2024, the District filed the present motion to sever the cases, making essentially the same argument as it did in its opposition to the trial preference motion. The District also filed an ex parte application to advance the hearing date on the motion to sever from February 15, 2024 to February 1, 2024, which the court denied. The court expressed some skepticism regarding the merits of the motion but indicated that it would "wait to review all the papers." (January 12, 2024 Order at p. 1:25-27.) Having now reviewed all the papers, the court denies the motion.

The District starts its opening memorandum by mischaracterizing the court's November 9, 2023 order, alleging that the court denied severance by "finding that the fact that the same perpetrator was involved was sufficient to support the conclusion that the claims arose from the same transaction." (Memorandum at p. 1:6-7.) The court's actual "findings" were not so simplistic:

> As to the question of severance, the court observes that there are material factors that weigh in both directions. On the one hand, Plaintiffs note that their claims involve the same school, the same school year, and most significantly of all, the same student ("John Zoe") who sexually assaulted each of them. In addition, the District apparently investigated Jane Doe and Jane Doe 2's allegations against Zoe as part of a single Title IX investigation. On the other hand, the District argues that Zoe's assaults occurred separately for each individual plaintiff, in different locations (e.g., "locker bay," "science classroom," "blacktop"), and at different times of day. As a result, Plaintiffs' negligent supervision allegations against the District could potentially call for the testimony of different, non-overlapping witnesses. The District claims that expedited discovery for Jane Doe and Jane Doe 2's cases will be onerous, and that adequate trial preparation "will be likely impossible."
>
> In the end, the court finds that although preparation for trial within 120 days will undoubtedly be challenging—for either one or both of Jane Doe and Jane Doe 2's cases—it will not be "impossible." Indeed, discovery and case investigation is a two-way street, and Plaintiffs will be under the same time constraints as Defendants. The court is skeptical of the notion that the negligent supervision claims of each plaintiff will be so different as to be the equivalent of two independent cases, as the District seems to suggest. Rather, the court finds based on the limited record before it that the assaults by Zoe appear to have followed a common pattern, and that many of the District employees responsible for supervising these middle school students (Doe, Doe 2, and Zoe) would likely be overlapping. Given the common series of acts (of abuse), the commonality of witnesses, and the common questions of law and fact, the court finds that there will be significant economies of scale in trying these cases together. Moreover, the court agrees with Plaintiffs that it would be "cruel to

> force these young girls to testify to the horrifying details of their sexual abuse at two separate trials." Indeed, the court is mindful of the fact that Zoe himself is a minor, and the impact of two repetitive and overlapping trials against him would likely be needlessly traumatic for him, too.

(November 9, 2023 Order at pp. 2:13-3:16.)

Although the present motion does not fall within the literal scope of Code of Civil Procedure section 1008, as it is technically not a "subsequent application," it is still functionally similar to a motion for reconsideration. As a result, simply reiterating the same arguments as before does not do much to persuade the court. Here, the District argues in its opening memorandum that it has now taken the depositions of the plaintiffs, and that this discovery "confirms that the allegations do not involve the same transactions or incidents and that the allegations are so different that the very legal standard for liability based on supervision of students will be different for each Plaintiff." (Memorandum at p. 1:7-10.) In the end, however, the arguments are no different than before, except that they are expressed in (much) lengthier verbiage.

First, the District expends a great deal of text in an effort to differentiate the sexual assaults on Jane Doe and Jane Doe 2, based on their deposition testimony. For the former, the incidents occurred in the science classroom, "on the grass area at lunch time," "during various breaks in the school day in the hallway, blacktop, and other common areas." (Memorandum at p. 3:2-6.) For the latter, the assaults occurred "in different areas of the campus" "after school hours between 3:00 p.m. and 4:00 p.m." because they were "dating." (*Id.* at p. 3:11-22.) But this deposition testimony merely confirms what the District previously argued in opposition to the trial preference motion: in that opposition brief, the District also argued that the sexual assaults occurred under different circumstances, at different locations and at different times of the day. In both briefs, the District argues (and argued) that there would be some non-overlapping witnesses, given these differences. At the same time, the District does not dispute plaintiffs' contention that many of the key testifying witnesses in both cases would likely be the same, including the Wellness Center counselor, the Title IX investigator, the San Jose Police Officer investigating John Zoe, other school employees, other students, and most important of all, *the parties themselves*. In short, the District sets forth no new material facts that the court did not previously consider.

Second, the District argues that "the very legal standard for liability . . . will be different for each Plaintiff," but then it fails to cite a single authority on point. Instead, the District cites the general legal standard for negligence: "'The standard of care required of an officer or employee of a public school is that which a person of ordinary prudence, charged with his duties, would exercise ***under the same circumstances***.'" (Memorandum at p. 5:5-8 [quoting *Pirkle v. Oakdale Union Grammar School District* (1953) 40 Cal.2d 207, 210 and adding italics and boldface].) By italicizing and boldfacing "under the same circumstances," the District appears to be suggesting that the legal standard is different whenever there are different facts to which the law must be applied. That is simply wrong and reflects a basic misunderstanding of the difference between legal standards (*i.e.*, the law) and circumstances (*i.e.*, the facts). The District provides no legal support for the proposition that a different negligence standard will apply to each of Jane Doe's and Jane Doe 2's claims for negligent supervision.

Third, the District does *not* make the argument in its opening memorandum that Doe's allegations and evidence must be excluded from Doe 2's case, or that Doe 2's allegations and evidence must likewise be excluded from Doe's case. Nor did the District make that argument in its opposition to the motion for a preferential trial setting. Thus, plaintiffs' opposition is based on the assumption that "each of the four children assaulted by John Zoe during the same timeframe will be called to testify for *both* cases. Victims and witnesses of John Zoe's prior wrongful conduct will also be called in both cases. It would be profoundly unjust to require all of these children to come to court and testify twice . . . ." (Opposition at p. 5:20-22 [emphasis in original].) Nevertheless, in its reply brief, the District expressly makes that argument *for the first time*, and it pretends that it articulated that argument in its opening brief: "The testimony by either Plaintiff about their experiences with John Zoe should not be admissible in each other's case—this is the primary basis (prejudice) for the District's motion to sever the cases for trial." (Reply at p. 2:1-3.) This is improper. The foregoing argument was not the "primary basis" for the District's opening brief—instead, the District focused in its opening memorandum on the notion that Doe and Doe 2's claims were based on different "transactions" or "occurrences," and that there would be juror "confusion" if the cases were tried together. At no point did the District articulate the contention that witnesses would need to be *excluded* from either of Doe's or Doe 2's cases and that this was the reason why the cases needed to be tried separately. Even worse, at no point did the District cite any authority or provide any analysis for the proposition that witnesses would need to be excluded from either of Doe's or Doe 2's cases because the prejudice to the District in allowing Zoe's behavioral and disciplinary history with other students to be admitted into evidence would outweigh its probative value in demonstrating the foreseeability of harm to the school. For the District to raise these points for the first time in reply is patently unfair to plaintiffs, and the court will not condone it.

The motion is DENIED.

- oo0oo -