Tentative Rulings for August 1, 2022
Department 05

To request oral argument, you must notify Judicial Secretary Charmaine Vital at (760) 904-5722 and inform all other counsel no later than 4:30 p.m.

This court follows California Rules of Court, Rule 3.1308 (a) (1) for tentative rulings (see Riverside Superior Court Local Rule 3316). Tentative Rulings for each law & motion matter are posted on the Internet by 3:00 p.m. on the court day immediately before the hearing at https://www.riverside.courts.ca.gov/OnlineServices/TentativeRulings/tentative-rulings.php. If you do not have Internet access, you may obtain the tentative ruling by telephone at (760) 904-5722.

To request oral argument, no later than 4:30 p.m. on the court day before the hearing you must (1) notify the judicial secretary for Department 5 at (760) 904-5722 and (2) inform all other parties of the request and of their need to appear telephonically, as stated below. If no request for oral argument is made by 4:30 p.m., the tentative ruling **will become the final ruling** on the matter effective the date of the hearing. **UNLESS OTHERWISE NOTED, THE PREVAILING PARTY IS TO GIVE NOTICE OF THE RULING.**

IN LIGHT OF THE CORONAVIRUS PANDEMIC; AND UNTIL FURTHER NOTICE, COUNSEL AND SELF-REPRESENTED PARTIES ARE ENCOURAGED TO APPEAR AT ANY LAW AND MOTION DEPARTMENT TELEPHONICALLY WHEN REQUESTING ORAL ARGUMENTS.

TELEPHONIC APPEARANCES: On the day of the hearing, call into one of the below listed phone numbers, and input the meeting number (followed by #):

- Call-in Numbers: 1 (833) 568-8864 (Toll Free), 1 (669) 254-5252, 1 (669) 216-1590, 1 (551) 285-1373, or 1 (646) 828-7666
- Meeting Number: 161 782 8254

Please **MUTE** your phone until your case is called and it is your turn to speak. It is important to note that you must call fifteen (15) minutes prior to the scheduled hearing time to check in or there may be a delay in your case being heard.

For additional information and instructions on telephonic appearances, visit the court's website at https://www.riverside.courts.ca.gov/PublicNotices/remote-appearances.php.

Effective May 3, 2021, official court reporters will not be available in unlimited civil for any pretrial proceedings, law and motion matters, case management hearings, civil restraining orders, and civil petitions. (See General Administrative Order No. 2021-19-1)

1.

CVRI2101325	IBRAHIM vs COUNTY OF RIVERSIDE	Motion for Order to Seal Document(s) by SOCIAL SCIENCE SERVICES, INC.

Tentative Ruling: The unopposed motion is granted. The proposed order will be signed at the hearing.

2.

CVRI2103859	CHAMU vs GENERAL MOTORS, LLC	MOTION TO COMPEL FURTHER RESPONSES TO PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE Answer/Response to Production of Documents, MOTION TO COMPEL FURTHER RESPONSES TO PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE by JOSE CHAMU

Tentative Ruling: No tentative. The court records reflect that a Stipulated Protective Order was rejected by the clerk on 4/23/22 and 4/27/22. Counsel to report whether a protective order was in fact agreed to. If so, has GM provided any supplemental documents pursuant to this agreement?

3.

RIC2002393	CASTILLO vs CITY OF COACHELLA	Motion to Compel Non-Party Gentry Capital Partners, Inc., to Response to Deposition Subpoena for Business Records and Request for Sanctions by LILLIAN V. CASTILLO, et. al.

Tentative Ruling: The motion was served on the non-party and defendant's counsel. There is no opposition on file. The unopposed motion is granted and Gentry Capital Partners, Inc. is ordered to provide responses to the Deposition Subpoena for Business Records within 10 days of the date of this order. Gentry Capital Partners Inc., is ordered to pay to Plaintiff monetary sanctions in the reduced but reasonable amount of $685 (2.5 hours X $250 + 60 filing fee).

4.

RIC2003753	WILHITE vs COUNTY OF RIVERSIDE	Motion for Summary Judgment on 1st Amended Complaint CRAIG WILHITE by COUNTY OF RIVERSIDE

Tentative Ruling: Denied as there are triable issues of material fact. Plaintiff's objections to Exhibits E, F, and H of the Thompson Declaration and to the substance of the Thompson Declaration are overruled.

Factual and procedural background: Plaintiff, Craig Wilhite, worked for the County of Riverside as a Maintenance and Construction worker. (First Amended Complaint ¶13.) Plaintiff worked as a traffic director and waste recycling officer assigned to two different landfills – Desert Oasis near Desert Hot Springs/Blythe and Bad Lands in Moreno Valley. (FAC ¶13.) Plaintiff alleges that toxic and dangerous chemicals were released and improperly disposed of on March 17, 2020. (¶13.) Plaintiff told Rapid Recovery in Corona, the outside company hired by the County to handle

improperly disposed of toxic chemicals at this workplace, about the dangerous conditions of his work environment. (¶13.) Plaintiff alleges that Rapid Recovery did not do its work properly and left hazardous chemicals "all over the ground." (¶13.) Plaintiff then reported his concerns to his supervisors, Michael Cruz and Anthony Flores, who dismissed his concerns and expressed anger that Plaintiff had involved Rapid Recovery. (¶13.) Plaintiff then informed his supervisors he planned to report the dangerous conditions to the County of Riverside Department of Environmental Health Hazardous Materials Management Branch Emergency Response. (¶13.)

On Friday March 20, 2020, three days after reporting the hazardous chemicals, Plaintiff was terminated from his position. (¶15.) Plaintiff was not told why he was being let go. (¶15.) Plaintiff returned his worked property and immediately contacted the Riverside Department of Environmental Health Hazardous Materials Management Branch Emergency Response. (¶15.)

The operative FAC alleges the following claims against Defendants: (1) Wrongful Retaliatory Termination in Violation of Labor Code §1102.5; (2) Whistleblower Violation Under Labor Code §1102.5.

Defendant County brings the instant motion for summary judgment arguing the first and second causes of action must fail because Plaintiff does not have any evidence to show the County's legitimate, non-retaliatory reason for termination of his probationary employment was a pretext for retaliation. County asserts that Plaintiff was terminated due to an incident on March 5, 2020 where Plaintiff challenged a coworker to a fight, which was a violation of the County's zero-tolerance policy regarding workplace violence. Defendant also provides evidence of various other performance issues during Plaintiff's probationary period, including failing to get supervisor approval before exchanging duties with a coworker and lying to a supervisor about when he closed a facility gate. County asserts the manager for plaintiff's work program, Ms. Thompson, emailed Human Resources on March 6, 2020 to request that Plaintiff be released from his probationary employment with the County. On March 17, 2020, Thompson learned Plaintiff had directly confronted the County's freon contractor so aggressively that two supervisors were required to "calm him down" because the contractor was "visibly upset." (SUMF No. 34.) Thompson again emailed HR urging them to release Plaintiff from his employment. The County argues it has demonstrated a legitimate, non-retaliatory motive for releasing Plaintiff from his employment and since Plaintiff is unable to demonstrate this legitimate non-retaliatory motive was pretext the motion should be granted.

Plaintiff opposes the motion. Plaintiff contends he was harassed by Julio Lopez and that he complained to his employer about Lopez's workplace harassment. Plaintiff also contends he complained to his supervisors on various occasions prior to March 2020 about spills of hazardous materials and the fact that he had to clean those materials up when he had not been properly trained to do so. Plaintiff contends he has met his burden to show he was fired in retaliation for complaining about the hazardous workplace conditions and there are triable issues of material fact as to when the County decided to terminate his employment. Plaintiff also contends there are triable issues of material fact as to why he was terminated – was it because of performance issues or the fact that he complained about illegal dumping of hazardous materials and being harassed by a fellow employee. Plaintiff also argues there are triable issues of material fact as to whether he engaged in workplace misconduct.

Legal authorities and analysis: Summary judgment is granted when a moving party establishes the right to entry of judgment as a matter of law. (CCP § 437c(c).) The moving party bears the initial burden of production to make a prima facie showing that there are no triable issues of material fact. (CCP § 437c(p)(2); Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 850.) Defendant, as the moving party, has the burden to show either that one or more elements of the cause of action cannot be established or that there is a complete defense to that cause of action. (CCP §437c(p)(2).) Defendant can meet their burden by showing either: (1) affirmative evidence

that shows an element of the claim cannot be established; or (2) showing an absence of evidence on a critical element of Plaintiff's claim.

Once the moving party has made such a showing, the burden shifts to the responding party to show that a triable issue of one or more material facts exists as to that cause of action or as to a defense to the cause of action. (Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 849.) If the responding party does not make such a showing, summary judgment in favor of the moving party is appropriate.

"The purpose of the summary judgment procedure is not to try the issues but merely to discover … whether the parties possess evidence which demands the analysis of trial." (Colvin v. City of Gardena (1992) 11 Cal.App.4th 1270, 1275 (italics added).) Summary judgment can be granted only where the essential facts are either conceded or beyond dispute. If there is one, single material fact in dispute, the motion must be denied.

The court also has the power to summarily adjudicate that one or more causes of action have no merit, that there is no merit to one or more affirmative defenses, or that a defendant owed or did not owe a duty to plaintiff. A motion for summary adjudication shall only be granted if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty. (CCP §437c(f)(1).)

First Cause of Action – Wrongful Retaliatory Termination Under Labor Code §1102.5: Plaintiff asserts two claims under Labor Code §1102.5 without specifying a subsection. However, the language cited in the FAC indicates these claims are brought under subsection (b). (FAC ¶¶ 26, 27, 36, 38.) It is not clear how these claims are different from one another as they both appear to be brought under subsection (b) based on the same facts.

Section 1102.5(b) provides:

> An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

To establish a prima facie case of retaliation under Labor Code §1102.5, a plaintiff must make a showing that 1) they engaged in a protected activity 2) their employer subjected them to an adverse employment action, and 3) a causal link between the two. (Edgerly v. City of Oakland (2012) 211 Cal.App.4th 1191, 1199.) An employee's report to their supervisor about the supervisor's own wrongdoing is not a "disclosure" and is not protected whistleblowing activity because the employer already knows about their own wrongdoing. (Mize-Kurzman v. Marin Community College District (2012) 202 Cal.App.4th 832, 859.)

The California Supreme Court recently clarified that Labor Code §1102.6, and not McDonnell Douglas, supplies the applicable framework for litigating and adjudicating section 1102.5 whistleblower claims. The court stated the following in Lawson v. PPG Architectural Finishes, Inc. (2022) 12 Cal.5th 703, 712: "By its terms, section 1102.6 describes the applicable substantive standards and burdens of proof for both parties in a section 1102.5 retaliation case: First, it must be 'demonstrated by a preponderance of the evidence' that the employee's protected whistleblowing was a 'contributing factor' to an adverse employment action. (§ 1102.6.) Then, once the employee has made that necessary threshold showing, the employer bears 'the burden of proof to demonstrate by clear and convincing evidence' that the alleged adverse employment

action would have occurred 'for legitimate, independent reasons' even if the employee had not engaged in protected whistleblowing activities. (Ibid.)" Under section 1102.6, "a plaintiff does not need to show that the employer's nonretaliatory reason was pretextual. Even if the employer had a genuine, nonretaliatory reason for its adverse action, the plaintiff still carries the burden assigned by statute if it is shown that the employer also had at least one retaliatory reason that was a contributing factor in the action." (Lawson, 12 Cal.5th at 715-16.)

To ultimately be successful on this claim, Plaintiff will need to first demonstrate by a preponderance of the evidence that an activity identified by Section 1102.5 was a contributing factor in the alleged retaliation against him. If Plaintiff is successful, then it is Defendant's job to demonstrate by clear and convincing evidence that Plaintiff would have been terminated for legitimate, independent reasons even if Plaintiff had not engaged in activities protected by Section 1102.5. On a motion for summary judgment, the burden is first on the moving party (Defendant) to show Plaintiff cannot establish one or more elements of the cause of action or that there is a complete defense to that cause of action.

The County focuses on the second prong of the Section 1102.6 analysis , arguing that Plaintiff would have been terminated for legitimate, non-retaliatory reasons regardless of whether he complained about hazardous materials in the workplace. Defendant provides evidence that Plaintiff was terminated because he failed to listen to his supervisors, had trouble following the chain of command, had difficulty getting along with others, and had threatened a coworker with violence. (SUMF Nos. 3-4, 14-17, 23, 25, 26.) Defendant provides evidence that the County has a policy that specifically allows for termination of employment of an employee who engages in threats or violent behavior against coworkers. (SUMF No. 4.) Defendant provides evidence that Plaintiff had threatened a coworker with violence in violation of this policy, which led to Plaintiff's supervisions recommendation that his employment be terminated. (SUMF No. 27.) The County has provided evidence that Plaintiff would have been fired even if Plaintiff had not raised concerns about hazardous materials in the workplace.

The burden now shifts to Plaintiff to show there is a triable issue of material fact as to this prong of the analysis. Plaintiff provides evidence that he was harassed and bullied by Julio Lopez, the coworker he is alleged to have threatened with violence. (Plaintiff's SUMF No. 1, 4, 7, 8, 9, 13.) Plaintiff also provides evidence that a County C-27 workplace threat incident report filed against him on March 5, 2020 was not signed by any employee. (Plaintiff's SUMF No. 10.) This fact is largely irrelevant, though, because Plaintiff admits another C-27 form was filed on behalf of Julio Lopez and was signed by Lopez. (Plaintiff's SUMF No. 11.) Plaintiff has provided evidence (through his own testimony) that he was bullied by Lopez and that he did not threaten Lopez with violence. (Ex. B to Doumanian Decl. p.136:16-18; p.141:13-16.) The evidence showing Plaintiff lodged complaints about Julio Lopez's harassing behavior and that Plaintiff did not threaten Lopez with violence creates a triable issue of material fact as to whether Plaintiff was in fact terminated because he allegedly threatened Lopez with violence.

Plaintiff also provides evidence that he complained to his supervisor, Michael Cruz, at 11:30 a.m. on March 17, 2020 regarding non-compliance with EPA standards and illegal dumping. (Plaintiff's SUMF No. 15.) Just hours after making this complaint to his supervisor, Thompson concluded that Plaintiff was going to be an issue for the department and she recommended his termination. (Plaintiff's SUMF No. 16.) This evidence creates a triable issue of material fact as to whether Plaintiff would have been terminated if he had not complained to his supervisor about illegal dumping of hazardous materials.

Plaintiff also disputes the evidence that he had a pattern of bad behavior at work. Plaintiff provides evidence that his supervisors did not discipline Plaintiff during his employment. Plaintiff's supervisor, Jeff Kukulka, testified Plaintiff was not disciplined during his time with the County, he was not aware of Plaintiff ever being written up, and Kukulka never directed anyone to counsel or coach Plaintiff. (Plaintiff's SUMF No. 22; Ex. D to Doumanian Decl. p.50:7-16.) Plaintiff also

provides evidence that he did not lie to his supervisors regarding the gate closure incident. (Ex. B to Doumanian Decl. p.58:11-25.) Plaintiff also provides evidence that he followed County protocols and did not intentionally disregard his supervisors' instructions. (Id. at p.59:6-60:24.) All of this evidence creates a triable issue of material fact as to whether Plaintiff was in fact terminated for the reasons Defendant claims (i.e. lying to supervisors, being difficult to work with, and not following County rules).

Although Plaintiff's evidence is largely his own testimony, he has still provided evidence that create triable issues of material fact as to why he was terminated from his position. Given these triable issues of material fact, the motion should be denied.

Second Cause of Action – Whistleblower Violation Under Labor Code §1102.5 : As noted above, it is not clear how this cause of action is different from the first cause of action as they both appear to be brought under Labor Code §1102.5(b) based on the same facts. For this reason, the analysis is the same with respect to this cause of action and the motion is denied.