These are the tentative rulings for civil law and motion matters set for Tuesday, June 24, 2014, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday, June 23, 2014. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. Telephone appearances through June 2014 will continue to be governed by the current Local Rules. More information is available at the court's website, www.placer.courts.ca.gov.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

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1. S-CV-0030179 Cornell, Darold, et al vs. Morrison Homes, Inc.

Ruling on Motion to be Relieved as Counsel

The motion by Robert Paige and Hollingshead & Associates to be relieved as counsel for Martin Magdaleno, Inc. dba El Dorado Grading ("Magdaleno") is granted, effective upon the filing of a proof of service of the court's order on Magdaleno and all parties who have appeared in this action.

Ruling on Motion for Leave to File Second Amended Complaint

Plaintiffs' motion for leave to file second amended complaint is granted. Plaintiffs shall file and serve their second amended complaint by no later than July 3, 2014.

If oral argument is requested, plaintiffs' request for telephonic appearance is granted. All telephonic appearances must be arranged through CourtCall. ***Note: Effective July 1, 2014, all telephonic appearances will be governed by Local Rule 20.8. More information regarding this change is available at www.placer.courts.ca.gov.*

2. S-CV-0030715 Zaslove, Michael, et al vs. Regal Custom Homes

Enigma Tile Company, Inc.'s motion for determination of good faith settlement is denied without prejudice. There is no proof of service in the court's file indicating that the motion was served on all parties to this action.

3. S-CV-0031681 Steward, Marjorie vs. Sun City Lincoln Hills Comm. Ass'n

The motion to reopen discovery is dropped. A notice of settlement of the entire case was filed on June 16, 2014.

4. S-CV-0031715 Jurickovich, Tyler vs. Dupont, Dane, et al

The motion for summary judgment is dropped. A notice of settlement of the entire case was filed on April 30, 2014.

5. S-CV-0032493 Haight, Lindsey vs. Jeffrey Berguson, D.O., et al

Ruling on Motion for Terminating Sanctions

Defendants Sutter Health Sacramento Sierra Region dba Sutter Auburn Faith Hospital's motion for terminating sanctions is granted. Defendants establish that plaintiff Lindsey Haight has failed to appear for her duly noticed deposition, and failed to obey a subsequent order requiring her to appear for her deposition and produce documents. Plaintiff has refused to engage in discovery, and disobeyed the order of the court. Accordingly, plaintiff's complaint shall be dismissed against moving defendants.

Ruling on Motion for Summary Judgment

In light of the ruling on defendants' motion for terminating sanctions, the motion for summary judgment is dropped as moot.

6. S-CV-0032865 Acocks, Michael, et al vs. Ford Motor Company

Ruling on Requests for Judicial Notice and Objections to Evidence

The parties' requests for judicial notice are granted. Defendant Ford Motor Company's ("Ford's") objections to evidence are overruled.

Ruling on Motion for Summary Judgment, or in the Alternative, Summary Adjudication

Ford's motion for summary judgment, or in the alternative, summary adjudication, is denied.

Summary judgment may be granted where there is no triable issue as to any material fact, and moving party is entitled to judgment as a matter of law. Code Civ. Proc. § 437c(c).

Defendants moving for summary judgment bear the burden of persuasion that one or more elements of the causes of action in question cannot be established, or that there is a complete defense thereto. Code Civ. Proc. § 437c(p)(2); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850. If the moving party carries its initial burden of production to make a prima facie showing that there are no triable issues of material fact, the burden shifts to the opposing party to make a prima facie showing of the existence of a triable issue of material fact. *Id.*

Ford first argues that summary judgment is appropriate on res judicata grounds, based on the assertion that plaintiffs were members of the certified settlement class in *In re: Navistar Diesel Engine Products Liability Litigation*, 1:11-cv—02496 (N.D. Ill.), and that final resolution of that class action resolved the same claims that are at issue in this case. In response, plaintiffs assert that they expressly opted out of the settlement class on April 10, 2013, and submit as evidence the opt-out letter, and plaintiffs' counsel's declaration stating that the letter was sent as required to the Ford Settlement Exclusion Center. (Ptlf. RSSUMF 11.) Accordingly, plaintiffs establish a triable issue of material fact, and summary judgment may not be granted.

Ford next argues that summary adjudication is appropriate as to plaintiffs' second cause of action for breach of express warranty because the applicable statute of limitations bars plaintiffs' claim. The court agrees with plaintiffs that the pendency of the class action in *In re: Navistar Diesel Engine Products Liability Litigation* tolled the applicable statute of limitations. *See San Francisco Unified School Dist. v. W.R. Grace & Co.* (1995) 37 Cal.App.4th 1318, 1336-1340 (class member is entitled to have the limitations period tolled for the period the plaintiff was a member in the class of a federal class action, up to the point of opting out).

Based on the foregoing, Ford's motion for summary judgment, or in the alternative, summary adjudication, is denied.

7. S-CV-0033371 Edwards, Michael Scott, et al vs. Bruce Olson Const., Inc.

Plaintiffs' motion to amend complaint is granted. Plaintiffs shall file their first amended complaint by no later than July 3, 2014.

8. S-CV-0033413 George, Damon, et al vs. Meritage Homes of California, Inc.

The parties' requests for judicial notice are granted.

Defendant's demurrer to second amended complaint is overruled.

Plaintiff's first cause of action for strict liability and second cause of action for construction negligence sufficiently allege facts to support the assertion that defendant may be equitably estopped to assert the statute of limitations as a defense.

A lawsuit which alleges a latent defect in the construction of improvement to real property must be brought within three or four years after plaintiff discovers, or should have discovered, the defect. Code Civ. Proc. §§ 337(1), 338(b), (c). Further, no action for latent construction defects may be commenced more than 10 years after substantial completion of the

construction project. Code Civ. Proc. § 337.15. This absolute 10-year limitations period applies regardless of when the defect was discovered. *Regents of Univ. Of Cal. v. Hartford Accident & Indemnity Co.* (1978) 21 Cal.3d 624, 630.

However, a defendant may be equitably estopped to assert that the 10-year period applies in certain circumstances. *Lantzy v. Centez Homes* (2003) 31 Cal.4th 363, 367. Under *Lantzy*, "(1) if one potentially liable for a construction defect represents, while the limitations period is still running, that all actionable damage has been or will be repaired, thus making it unnecessary to sue, (2) the plaintiff reasonably relies on this representation to refrain from bringing a timely action, (3) the representation proves false after the limitations period has expired, and (4) the plaintiff proceeds diligently once the truth is discovered [citation], the defendant may be equitably estopped to assert the statute of limitations as a defense to the action." *Id.* at 384. Plaintiffs adequately allege that defendant represented, while the limitations period was still running, that all actionable damage had been or would be repaired. (SAC, ¶¶ 16, 17, 20, 27.) Plaintiffs allege reliance on defendant's representations. (*Id.*, ¶¶ 20, 21, 27.) Plaintiffs allege that the representations proved false after the limitations period had expired. (*Id.*, ¶¶ 28-32.) Finally, plaintiffs allege that they proceeded diligently after discovering the truth. (*Id.*, ¶ 36.)

For the reasons set forth above, plaintiffs' third cause of action for breach of express warranty also adequately alleges a valid cause of action.

Finally, for reasons previously noted in the court's ruling on the demurrer to the first amended complaint, plaintiff's sixth cause of action adequately states a valid cause of action. Defendant's demurrer to this cause of action on statute of limitations grounds is overruled.

Defendant shall file and serve its answer to the second amended complaint by no later than July 11, 2014.

9. S-CV-0033494 Castaneda, Laura - In Re the Petition of

The petition to compromise minor's claim is granted. If oral argument is requested, appearance of the minor is excused.

10. S-CV-0033637 Castaneda, Laura - In Re the Petition of

The petition to compromise minor's claim is granted. If oral argument is requested, appearance of the minor is excused.

11. S-CV-0033639 Jimenez, Claudia - In Re the Petition of

The petition to compromise minor's claim is granted. If oral argument is requested, appearance of the minor is excused.

12. S-CV-0033693 Lampe, Shirley vs. Placer County Water Agency, et al

The demurrer to the complaint is dropped. No moving papers were filed.

13. S-CV-0034033 Gluz, Jason vs. Gluz, Jacob

Defendant's motion for leave to file cross-complaint is granted. Defendant shall file his cross-complaint by no later than July 3, 2014.

14. S-CV-0034296 U.S. Bank, N.A. vs. NNN Parkway Corporate Plaza, LLC, et al

Appearance required on June 24, 2014 at 8:30 a.m. in Department 40. The parties may appear telephonically. All telephonic appearances must be arranged through CourtCall. ***Note: Effective July 1, 2014, all telephonic appearances will be governed by Local Rule 20.8. More information regarding this change is available at www.placer.courts.ca.gov.*

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