

**PLACER COUNTY SUPERIOR COURT
CIVIL LAW AND MOTION TENTATIVE RULINGS
FRIDAY, OCTOBER 16, 2020, AT 8:30 A.M.**

These are the tentative rulings for civil law and motion matters set at **8:30 a.m., Friday, October 16, 2020**. 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., Thursday, October 15, 2020**. 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.

Except as otherwise noted, these tentative rulings are issued by the **HONORABLE MICHAEL W. JONES** and if oral argument is requested, it will be heard in Department 3, located at 101 Maple Street, Auburn, California.

PLEASE NOTE: TELEPHONIC APPEARANCE IS STRONGLY ENCOURAGED FOR ALL CIVIL LAW AND MOTION MATTERS. (Emergency Local Rule 10.28; see also Local Rule 20.8.) More information is available at the court's website: www.placer.courts.ca.gov.

1. M-CV-0074733 Shelly, Eric vs. Youman, Greg

Defendant's motion for judgment on the pleadings is denied.

Defendant filed a motion for judgment on the pleadings on September 23, 2020. The proof of service attached to the motion indicates that it was served by mail in July 2020, despite the documents being signed on September 23, 2020. Defendant filed an amended motion for judgment on the pleadings on October 1, 2020. The proof of service and declaration attached to the amended motion are not signed. As proper and timely service of the motion on plaintiff has not been established, the motion could be denied for this reason alone. However even if the court addressed the substance of defendant's motion it would still be denied as moot, as it is directed at the complaint filed October 1, 2019, and not the amended complaint filed September 3, 2020.

2. **M-CV-0076919 Jalgunas, JoAnn V. vs. Rodrigues, Stephanie A.**

Defendant Stephanie Rodrigues's motion to set aside default is granted pursuant to Code of Civil Procedure section 473(b). The default entered against defendant Stephanie Rodrigues on September 15, 2020, shall be set aside.

Defendant shall file and serve her answer to the complaint on or before October 23, 2020.

3. **S-CV-0029911 Sahansra, Kulvinder Singh vs. Myers, Sandra Rae**

Petitioner's motion for clerk to enter satisfaction of judgment is **continued to November 13, 2020, at 8:30 a.m. in Department 3.**

The proof of service attached to petitioner's motion does not comply with Code of Civil Procedure section 1013a as it fails to set forth the name of the person making the service. Further, the proof of service indicates service of the motion on respondent Sandra Myers, as opposed to her counsel of record in this action.

Petitioner shall file an amended proof of service in compliance with Code of Civil Procedure section 1013a, and shall provide notice of the continuance to respondent. Petitioner shall also serve the motion on counsel for respondent, or file a further declaration explaining why such service is unnecessary.

4. **S-CV-0036159 Leichus, Richard vs. Leichus, Christopher, et al**

Appearance required on October 16, 2020, at 8:30 a.m. in Department 3.

5. **S-CV-0039479 Reeves, Lynn, et al vs. Meritage Homes of California, Inc.**

Cross-defendant Timberlake Cabinetry, a Division of American Woodmark Corporation's motion for determination of good faith settlement is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling party's proportionate share of liability for plaintiffs' injuries, and therefore is in good faith within the meaning of Code of Civil Procedure section 877.6.

6. **S-CV-0039929 Jarvis, Todd Henry vs. Calder, Robin Elizabeth**

Defendant's request for judicial notice is granted.

Plaintiff's motion to quash and/or modify bank trial subpoenas is granted in part, as set forth below.

Plaintiff's motion to quash the subpoena served on JPMorgan Chase Bank ("Chase") in its entirety is denied. The alternative motion to modify the subpoena is granted. Chase

shall comply with the subpoena as to Document Request Nos. 1 and 2. The motion is granted as to Request Nos. 3 and 4. Documents which are responsive to the subject requests would contain personal financial information of plaintiff, which is protected by the constitutional right to privacy. *Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652, 656. Where discovery seeks to invade the constitutional right to privacy, the party seeking the discovery must show that the information sought is directly relevant to claims at issue in the litigation, there is a compelling need for the information, and the information is essential to a fair resolution of the lawsuit. *Alch v. Superior Court* (2008) 165 Cal.App.4th 1412, 1425. Defendant does not demonstrate a compelling need for documents reflecting that plaintiff and defendant are on title as joint tenant owners of the subject property, as this point is conceded by plaintiff. Further, defendant does not demonstrate a compelling need for documents demonstrating plaintiff's ability to qualify for a loan, as this would be the subject of expert witness testimony, and the deadline to disclose such expert witnesses has passed.

Plaintiff's motion to quash the subpoena served on Bank of America in its entirety is denied. The alternative motion to modify the subpoena is granted. Bank of America shall comply with the subpoenas as to Document Request Nos. 1-3. The motion is granted as to Request Nos. 4 and 5 for the same reasons set forth above with respect to the Chase subpoena, Request Nos. 3 and 4.

Plaintiff's request that the court quash the subpoena recently served on Wells Fargo Bank is denied.

7. S-CV-0040007 Rice, Jerrold R. vs. Kishiyama, James S., et al

Defendant's motion for attorneys' fees is continued to November 6, 2020, at 8:15 a.m. in Department 1, to be heard by Commissioner Michael A. Jacques..

8. S-CV-0041357 CSAA Ins. Exchange vs. Leviton Manufacturing Co., Inc., et al

Motion for Summary Judgment

Rulings on Objections

Plaintiff's objections to evidence are sustained.

Defendant's objection to the declaration of John White is sustained. Defendant's objections to the declaration of Ryan Hamre are ruled on as follows: Objection Nos. 2, 4, 5, 6 and 7 are sustained. The remaining objections are overruled.

Ruling on Motion

Defendant Leviton Manufacturing Company, Inc. ("Leviton") moves for summary judgment as to plaintiff CSAA Insurance Exchange's claims for negligence and strict liability.

The party seeking summary judgment bears the burden of showing there is no triable issue of material fact and that the party is entitled to judgment as a matter of law. *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.*

Plaintiff seeks damages arising from a fire which occurred on August 31, 2016, at the home of plaintiff's insureds. Plaintiff alleges that the cause of the fire was a Ground Fault Circuit Interrupter wall receptacle ("GFCI receptacle") designed and manufactured by Leviton. In this motion, Leviton argues that the GFCI receptacle could not have caused the fire because it had no power or flow of electricity in the months leading up to the fire. Plaintiff's expert witness, Douglas Barovsky, makes the following findings:

- "...the GFCI receptacle, including its internal components and downstream loads, had no power or flow of electricity during the last few months prior to the fire." (Declaration of Douglas Barovsky ("Barovsky decl."), ¶9.)
- "When a tripped GFCI receptacle cannot be reset, it cannot initiate a fire unless it is (1) made with material that spontaneously combusts, or (2) mechanically damaged by an external physical force." (*Id.*, ¶ 10.)
- "...the silicon controlled rectifier ('SCR') of the GFCI receptacle is **intact** – it does not show any fire damage, nor does it show any visible defects of any other nature." (*Id.*, ¶ 12.)
- Although Mr. Barovsky's examination revealed that brass alloy contact fingers inside the receptacle were melted and/or possibly arc damaged, this by itself would not demonstrate that the GFCI receptacle caused the fire absent a specific failure mode, and on the facts of this case, "no 'failure mode' can provide a reasonable explanation as to why the damaged brass alloy contact fingers, without power or flow of electricity for several months, would have suddenly electrically failed and started the subject fire." (*Id.*, ¶ 13-15.)

Mr. Barovsky concludes that based on the above, there is no evidence which shows that the GFCI receptacle was the cause of the fire. (*Id.*, ¶ 17.)

In opposition, plaintiff submits evidence which contradicts the contention that a tripped GFCI receptacle which has not been reset has no power or flow of electricity. (Pltf. RUSMF 33, 34.) In its reply, Leviton argues that the evidence submitted by plaintiff is consistent with Mr. Barovsky's findings. However, Leviton also filed a supplemental declaration of Mr. Barovsky, in which he states that when the GFCI receptacle is tripped, its electrical components consume an amount of power that is insufficient to initiate an electrical fire. (Supplemental Declaration of Douglas Barovsky, ¶¶ 6-7.)

The court finds that plaintiff has demonstrated a triable issue of material fact with respect to an issue which underlies the findings and conclusions of Leviton's expert witness – the existence of power or the flow of electricity to the GFCI receptacle. The

supplemental declaration of Mr. Barovsky attempts to address the issue by new evidence regarding whether the amount of electricity or power would be sufficient to cause a fire. However, the court will not consider new evidence submitted only in reply, to which the opposing party has no opportunity to respond. *See San Diego Watercrafts, Inc. v. Wells Fargo Bank, N.A.* (2002) 102 Cal.App.4th 308, 316.

Based on the foregoing, Leviton's motion for summary judgment is denied.

9. S-CV-0041537 Samborsky, Renee vs. First Technology Federal Credit Union

Motion to be Relieved as Counsel and to Discover Names and Contact Information of Putative Class Members

Defendant's request for judicial notice is granted.

Plaintiffs' counsel moves for an order directing defendant to produce the names and contact information of putative class members within 30 days to permit a substitute class representative to be located, and for an order permitting amendment of the complaint to substitute a new class representative within 90 days. Plaintiffs' counsel also moves to be relieved as counsel for the current representative plaintiffs, Renee Samborsky and Kailey Hart.

The request to be relieved as counsel is denied without prejudice. Counsel's motion was not made on the mandatory Judicial Council forms as required by California Rules of Court, rule 3.1362, and omits certain required information.

Plaintiffs' request for precertification discovery of contact information regarding the identity of potential class members is granted.

The contact information of potential class members is generally discoverable so that the plaintiff may learn the identities of others who could potentially assist in prosecuting the case. *Pioneer Electronics (USA), Inc. v. Superior Court* (2007) 40 Cal.4th 360, 373; *see also Budget Finance Plan v. Superior Court* (1973) 34 Cal.App.3d 794, 799. "[S]hould the trial court conclude that plaintiff cannot suitably represent the class, it should afford [him] 'the opportunity to amend [his] complaint, to redefine the class, or to add new individual plaintiffs, or both, in order to establish a suitable representative.' [Citation.]" *Kagan v. Gibraltar Sav. & Loan Ass'n* (1984) 35 Cal.3d 582, 596.

Defendant argues that plaintiffs' counsel is barred from seeking the contact information of other class members because defendant previously objected to written discovery requests seeking the same information, and plaintiffs failed to timely file a motion to compel. Based on a review of the cases cited by the parties, it does not appear that plaintiff's sole recourse to obtain such information would be a motion to compel under the Discovery Code. *See Best Buy Stores, L.P. v. Superior Court* (2006) 137 Cal.App.4th 772 (court order required contact information for 200 potential class members to be provided to a third party, which would send notice letters seeking a new

class representative); *Safeco Ins. Co. of America v. Superior Court* (2009) 173 Cal.App.4th 814 (request for leave to conduct discovery to identify new class representative granted); *CashCall, Inc. v. Superior Court* (2008) 159 Cal.App.4th 273 (motion for order compelling defendant to identify class members granted although no discovery served). The court concludes that plaintiffs' counsel is not required to seek relief solely in compliance with the procedural requirements of a motion to compel. Defendant also argues that plaintiffs' counsel is barred from seeking the subject information because the discovery cut-off date already passed. To the extent Code of Civil Procedure section 2024.050 impacts plaintiffs' counsel's request, the court finds that discovery should be reopened for the express purpose of requiring defendant to provide the requested contact information for the purpose of locating a suitable representative. The court finds that the requested information is necessary for this purpose, and further that the delay in seeking the information has not prejudiced defendant.

In the exercise of its discretion as to whether to require precertification disclosure of class member contact information, "the trial court must ... expressly identify any potential abuses of the class action procedure that may be created if the discovery is permitted, and weigh the danger of such abuses against the rights of the parties under the circumstances." *Parris v. Superior Court* (2003) 109 Cal.App.4th 285, 300–301. Defendant argues that granting the motion would reward plaintiffs' counsel despite numerous problems occurring in the case including the fact that counsel allowed discovery to close without moving to certify the class. While defendant describes dilatory actions by plaintiffs' counsel, it does not demonstrate an abuse of "the class action procedure". See *First American Title Ins. Co. v. Superior Court* (2007) 146 Cal.App.4th 1564 (potential for abuse in circumstances where plaintiff was never a class member). On the other hand, plaintiffs' counsel has the right to obtain information from defendant in order to locate a suitable representative, now that defendant's settlements with the current representative plaintiffs make them unsuitable to continue to represent the class.

Based on the foregoing, the motion for an order directing defendant to produce the names and contact information of putative class members within 30 days to permit a substitute class representative to be located, and for an order permitting amendment of the complaint to substitute a new class representative within 90 days, is granted.

Order to Show Cause re Dismissal

The order to show cause re dismissal is vacated. The court sets a status conference on February 19, 2021, at 8:30 a.m. in Department 3.

10. S-CV-0041857 Trofholz Technologies, Inc. vs. Glen, Troy, et al

Application to Appear as Counsel *Pro Hac Vice*

The application of John J. Deis to appear as counsel *pro hac vice* is granted as prayed.

Motion Requesting Relief From Stipulation and Protective Order

Plaintiff moves for relief from a Stipulation and Protective Order (“Protective Order”) signed by the parties and entered by the court on April 26, 2019. The Protective Order contains the following provisions:

“Highly Confidential – Attorneys’ Eyes Only” means any Documents, Testimony or Information as defined below that are so highly sensitive that their disclosure to any Party or nonparty would adversely affect the Designating Party’s legitimate business interests or would likely cause competitive or commercial injury to the Designating Party, so their use should be further restricted.

(Protective Order, ¶ 1(e).)

Confidential Material designated as “Highly Confidential – Attorneys’ Eyes Only” produced pursuant to this Order may be disclosed or made available only to the Court, to counsel for a party (including the paralegal, clerical, and secretarial staff employed by such counsel) in this action and excluding in-house counsel, and to the persons designated below:

(a) Experts or consultants (together with their clerical staff) retained by such counsel to assist in the prosecution, defense, or settlement of this action, provided the expert or consultant is not a Party or employee of a Party.

(Protective Order, ¶ 8(a).)

On May 4, 2020, plaintiff served its expert witness disclosure which designates its CEO, Yvonne Pire, as a non-retained expert who is expected to give testimony regarding “the substance of work performed by the industry and her company specifically, the scope of work performed in relation to the Tinker Base project, damages, and other matters within the scope of the complaint.” (Declaration of Holly Jacobson, Exh. B, p. 3-4.)

Plaintiff has been aware since at least April 2019 that the Protective Order which it voluntarily entered into prohibited disclosure of certain documents to its employees. Plaintiff delayed until just a few weeks before trial before seeking relief from the Protective Order based on its intention to rely on its own CEO to provide testimony regarding the 2018 Tinker Bid that is the subject of this action. The prejudice to defendant Intellect Group, LLC, is apparent given that plaintiff previously agreed that disclosure of “Attorneys’ Eyes Only” documents “would adversely affect the Designating Party’s legitimate business interests or would likely cause competitive or

commercial injury to the Designating Party”. Under these circumstances, plaintiff fails to demonstrate good cause to be relieved from the terms of the Protective Order.

Plaintiff’s motion is denied.

Motion to Compel Production of Documents

Plaintiff’s motion to compel production of documents is continued to October 23, 2020, to be heard with defendant’s motion to compel further responses.

11. S-CV-0042129 Michael, Jerry A. vs. FCA US LLC, et al

The scheduled hearing is dropped as no moving papers were filed.

12. S-CV-0042143 Am. Healthcare Admin. Svcs., Inc., et al vs. Aizen, Lance

The demurrer to cross-complaint is continued to November 6, 2020, at 8:30 a.m. in Department 3.

13. S-CV-0042375 Ewell, Timothy, et al vs. JS Ventures, LLC, et al

Motion to be Relieved as Counsel for Movie Pass Air, LLC

The motion by A. R. Hamrick, III, Shian Brisbois and Hamrick & Evans, LLP to be relieved as counsel for defendant Movie Pass Air, LLC, is granted. The order shall be effective upon the filing of proof of service of the order after hearing on defendant Movie Pass Air, LLC.

Motion to be Relieved as Counsel for Theodore Farnsworth

The motion by A. R. Hamrick, III, Shian Brisbois and Hamrick & Evans, LLP to be relieved as counsel for defendant Theodore Farnsworth is granted. The order shall be effective upon the filing of proof of service of the order after hearing on defendant Theodore Farnsworth.

14. S-CV-0043237 Calder, Robin Elizabeth vs. Jarvis, Todd

Plaintiff’s motion for leave to file first amended complaint is granted as set forth below.

The court may permit a party to amend a pleading in the furtherance of justice and on such terms as may be just. Code Civ. Proc. §§ 473(a)(1), 576. Leave to amend is generally exercised liberally so long as there is no showing of prejudice to the opposing party. *Howard v. County of San Diego* (2010) 184 Cal.App.4th 1422, 1428; *Douglas v. Superior Court* (1989) 215 Cal.App.3d 155, 158. The court generally does not consider the validity of the proposed amended pleading in deciding whether to grant leave, as

grounds for demurrer are premature at this stage. *Kittredge Sports Co. v. Superior Court* (1989) 213 Cal.App.3d 1045, 1048.

The court previously granted defendant's motion for summary adjudication on plaintiff's claim for express indemnity with respect to a sanctions award assessed against her. Accordingly, the court denies the request for leave with respect to this claim. As to plaintiff's proposed new causes of action arising from the sanctions award, the court has not assessed the viability of such claims in ruling on this motion as defendant will have the opportunity to attack the validity of these claims through demurrer or motion to strike.

Plaintiff shall file and serve her first amended complaint, omitting the proposed seventh cause of action for express indemnity, on or before October 30, 2020.

15. S-CV-0043323 Miller, Scott A. vs. Dolmo, Bess-Carolina, et al

The motion by defendant Jeff Dewitt (DBA The UPS Store 4366) to set aside default is granted. The default entered January 6, 2020, shall be set aside. Defendant shall file and serve his answer to first amended complaint on or before October 30, 2020.

16. S-CV-0043329 Duran, Victor vs. Cherokee Trail LLC, et al

Defendant Jennifer Wilson's ("Wilson's") motion to bifurcate punitive damages is granted in part.

Pursuant to Civil Code section 3295(d), plaintiff shall be precluded from admitting evidence of Wilson's profits or financial condition until after the trier of fact returns a verdict for plaintiff awarding actual damages and finds that Wilson is guilty of malice, oppression, or fraud in accordance with Civil Code section 3294. To the extent Wilson asks the court to bifurcate the issue of liability for punitive damages from the issue of liability for plaintiff's claims, the request is denied without prejudice to being renewed at the time of trial. The trial judge is in the best position to determine management and order of the phases of trial.

17. S-CV-0043667 Firegang, Inc. vs. Heritage Oak Management, LLC, et al

Judgment creditor's motion for attorneys' fees and costs in enforcing the judgment is **continued to November 20, 2020, at 8:30 a.m. in Department 3.**

Pursuant to Code of Civil Procedure section 685.080, the court may award attorneys' fees and costs to the extent they were reasonable and necessary costs of enforcing the judgment. The starting point to determine whether attorneys' fees were reasonably incurred is the attorney's time records. *Horsford v. Board of Trustees of Cal. State Univ.* (2005) 132 Cal.App.4th 359, 395-397. Although a party is not required to provide billing statements to support its request for attorneys' fees, the party must provide sufficiently detailed information to permit the court to assess whether the number of

hours worked on each task was reasonable. The declaration of counsel submitted in support of the motion is plainly insufficient for this purpose. Neither judgment debtor nor the court can fairly evaluate the reasonableness of a request for fees in light of the minimal information that has been provided. Further, judgment creditor provides insufficient information to support the request for costs.

Judgment creditor may file and serve a supplemental brief and supporting declaration(s) in support of its motion, which either include copies of billing statements (which may have any privileged information redacted), or a detailed summary of the number of hours expended by each attorney on each discrete task, as well as evidence in support of the request for costs, by no later than **November 6, 2020**. Plaintiff may file and serve a supplemental response by no later than **November 13, 2020**.

18. S-CV-0044635 Helena Agri-Enterprises, LLC vs. Singh, Sumanpreet, et al

As a preliminary matter, although defendants have filed an “opposition to application for writ of attachment as to Madison Farms”, no application for writ of attachment as to Madison Farms, Inc. has been filed.

Plaintiff’s application for writ of attachment and right to attach order against Sumanpreet Singh (“Singh”) is **continued to November 6, 2020, at 8:30 a.m. in Department 3**.

Plaintiff seeks to attach five parcels of real property, identified solely by Assessor’s Parcel Number. Plaintiff provides insufficient evidence to establish that the properties are owned by Singh and Singh denies ownership of three of the five properties. Plaintiff may file and serve a supplemental declaration addressing Singh’s ownership of the identified properties by no later than October 26, 2020. Singh may file and serve a supplemental response by no later than November 2, 2020.

19. S-CV-0044833 Harding, Patrick vs. General Motors LLC

Demurrer to Complaint

Defendant General Motors LLC demurs to plaintiff’s complaint.

A party may demur where the pleading does not state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the allegations or the accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The allegations in the pleadings are deemed true no matter how improbable they may seem. *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.

The demurrer is overruled as to plaintiff’s first cause of action for breach of implied warranty, and second cause of action for breach of express warranty. Based on a review of the complaint as a whole, plaintiff adequately alleges these claims. Contrary to the

argument of defendant, plaintiff is not required to plead the terms of the Purchase Agreement, as the first and second causes of action do not arise from a breach of the Purchase Agreement.

The demurrer is sustained as to plaintiff's third cause of action for fraudulent inducement – concealment. To support this claim, plaintiff must allege (1) defendant intentionally concealed or suppressed a material fact; (2) defendant was under a duty to disclose the fact to plaintiff; (3) defendant intended to defraud plaintiff; (4) plaintiff was unaware of the fact, and would not have acted as he did had he known of the fact; and (5) as a result, plaintiff sustained damage. *Bigler-Engler v. Breg, Inc.* (2017) 7 Cal.App.5th 276, 310-311. Absent a fiduciary relationship between the parties, a duty to disclose arises only where (1) defendant had exclusive knowledge of the fact; (2) defendant actively concealed the fact; or (3) defendant made partial representations while also suppressing the fact. *Id.* at 311. These three circumstances still require an existing relationship created by a transaction between the parties. "Such a transaction must necessarily arise from direct dealings between the plaintiff and defendant; it cannot arise between the defendant and the public at large." *Id.*

The complaint does not allege an existing relationship caused by a transaction between plaintiff and defendant. In opposition, plaintiff argues that no such transaction is necessary in cases where the nondisclosure relates to a safety issue, citing *Daugherty v. American Honda Motor Co.* (2006) 144 Cal.App.4th 824 and *Bardin DaimlerChrysler Corp.* (2006) 136 Cal.App.4th 1255. However, in both of the cited cases, the claims under examination by the appellate court involved failure to disclose under the CLRA or the UCL, and neither case analyzed the propriety of a common law claim for fraudulent concealment. The third case cited, *Falk v. General Motors Corp.* (N.D. Cal. 2007) 496 F.Supp.2d 1088, is a federal district court case which is not binding on this court.

Plaintiff is granted leave to amend. Any amended complaint shall be filed and served on or before October 30, 2020.

Motion to Strike

Defendant General Motors, LLC moves to strike punitive damage allegations in plaintiff's complaint.

To support a prayer for punitive damages, plaintiff must allege ultimate facts supporting a finding of oppression, fraud or malice on the part of the defendant. Civil Code § 3294(a). Malice includes conduct which is intended by the defendant to cause injury to the plaintiff, or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others. Civ. Code § 3294(c)(1). Oppression includes despicable conduct which subjects a person to cruel and unjust hardship in conscious disregard of that person's rights. Civ. Code § 3294(c)(2). Fraud includes intentional misrepresentation, deceit or concealment of a material fact with the intention of depriving a person of property or legal rights or otherwise causing injury. Civ. Code § 3294(c)(3).

In light of the court's ruling on the demurrer to complaint, plaintiff fails to adequately allege fraud as a basis to support punitive damages. Further, the allegations of the complaint do not support a finding of malice or oppression. Accordingly, the motion to strike is granted.

Plaintiff is granted leave to amend. Any amended complaint shall be filed and served on or before October 30, 2020.

20. S-CV-0044907 Ahlquist, Maxwell vs. Placer Union High School District, et al

The motion to quash is continued to October 30, 2020, at 8:30 a.m. in Department 3.

21. S-CV-0045287 Swift Fin'l, LLC vs. Nexus Medical Technologies, Inc., et al

The scheduled hearing was dropped at the request of the moving party.
