

These are the tentative rulings for civil law and motion matters set for Tuesday, October 18, 2016, 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, October 17, 2016. 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. More information is available at the court's website, [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).**

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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-0029141            Cooley, David, et al vs. Centex Homes**

Cross-defendant Halabi, Inc's motion for 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 cross-defendant's proportionate shares of liability for plaintiffs' injuries and therefore is in good faith within the meaning of CCP§877.6.

**2. S-CV-0033635            Walsh, Liliya vs. THR California, LP, et al**

The two demurrers and two motions to strike are continued to Thursday, October 20, 2016 at 8:30 a.m. in Department 43 to be heard by the Honorable Michael W. Jones.

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**3. S-CV-0034577                      Giannini, Remy, et al vs. Stiefel, Hank**

This tentative ruling is issued by the Honorable Charles D. Wachob. If oral argument is requested, it shall be heard at 8:30 a.m. in Department 42:

Defendant Textron's (E-Z-Go's) Motion for Summary Judgment/Summary Adjudication

Ruling on Request for Judicial Notice

Defendant's request for judicial notice asserted in its reply papers is denied as plaintiff has not had an opportunity to respond to this newly submitted evidence. (*Plenger v. Alza Corp.* (1992) 11 Cal.App.4th 349, 362, fn. 8.)

Ruling on Objections

Plaintiff's objection no. 1 is overruled.

Defendant's objections nos. 1-19 to the Vigilante declaration are sustained. Defendant's objections to Exhibits 9 and 10 are sustained. Defendant's objection no. 1 to the Remy Giannini declaration is sustained.

Ruling on Motion

The trial court shall grant a motion for summary judgment if "all the papers submitted show that there is no triable issue as to any material fact and the moving party is entitled to a judgment as a matter of law." (*Code of Civil Procedure section 437c(c).*) A party to the action may also move for summary adjudication if that party contends there is no merit to one or more of the causes of action. (*Code of Civil Procedure section 437c(f)(1).*) However, a motion for summary adjudication shall only be granted where it completely disposes of a cause of action. (*Ibid.*) The trial court engages in a specific analysis when reviewing a motion for summary judgment. First, it must define the scope of the motion by looking to the operative pleading. The pleadings serve as the "outer measure of materiality" for a motion for summary judgment in addition to determining the scope of the motion. (*Government Employees Ins. Co. v. Superior Court* (2000) 79 Cal.App.4th 95, 98, fn. 4; *Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258.) The pleadings identify the issues raised and the request for summary judgment must address these issues.

Second, the moving party must meet its initial burden. A moving defendant has the initial burden of showing that a cause of action has no merit or there is a complete defense to the cause of action. (*Code of Civil Procedure section 437c(p)(2).*) The trial court must view the supporting evidence, and inferences reasonably drawn from such evidence, in the light most favorable to the opposing party. (*Aguilar v. Atlantic Richfield Company* (2001) 25 Cal.4th 826, 843.) The final part of the analysis is reached if the moving party meets its initial burden. The burden then shifts to the plaintiff to show that a triable issue of material fact exists as to the cause of action or a defense to the cause of

action. (*Code of Civil Procedure section 437c(p)(2).*) The court reviews the current motion keeping these principles in mind.

The allegations that frame the motion are found in plaintiffs' second and third causes of action. Specifically, plaintiffs allege a loss of consortium claim against defendant for its wrongful conduct, which deprive plaintiff Darleen Giannini of the "service, love, companionship, comfort, affection, society and solace of REMY GIANNINI". (FAC ¶11.) They also allege a claim for strict products liability based upon two theories. First, "the subject golf cart was defective in its design and manufacture, which rendered it unreasonably dangerous, and amongst other things, the subject golf cart was unstable and had a propensity to cause disruption to its passengers due to a high center of gravity and unsafe design when operated by a user such as defendant STIEFEL in a manner that was reasonably foreseeable and in the manner intended by the defendants." (Id. at ¶17.) Second, plaintiffs allege there were no warnings posted on the golf cart and it was dangerous and unsafe to operate with passengers on its rear. (Id. at ¶18.) These are the allegations that frame the current motion.

The primary claim asserted against defendant is for strict products liability. There are generally three types of product defects: (1) manufacturing defects; (2) warning defects; and (3) design defects. (*Anderson v. Owens-Corning Fiberglass Corp. (1991) 53 Cal.3d 987, 995.*) Plaintiffs assert warning defects and design defects against defendant in their operative pleading. (FAC ¶¶17, 18.) A warning defect exists where a manufacturer does not adequately warn the consumer of a particular risk known or knowable in light of the generally recognized and prevailing scientific and medical knowledge available at the time of manufacture and distribution. (*Id. at p. 1002.*) "Whether a warning is adequate depends on several factors, among them 'the normal expectations of the consumer as to how a product will perform, degrees of simplicity or complication in its operation or use, the nature and magnitude of the danger to which the user is exposed, the likelihood of injury, and the feasibility and beneficial effect of including a warning.'" (*Schwoerer v. Union Oil Co. (1993) 14 Cal.App.4th 103, 111.*) Defendant has met its initial burden here by submitting evidence that it sufficiently warned users of the golf cart of the dangers associated with standing in the cart. The subject golf cart was originally designed to accommodate a driver; one passenger; and two golf bags. (Defendant's SSUMF No. 3 and supporting evidence cited therein.) Defendant placed a label in the middle of the dashboard of the subject golf cart that stated as follows:

**“SAFETY AND OPERATION INSTRUCTIONS  
WARNING FAILURE TO FOLLOW THESE INSTRUCTIONS MAY RESULT IN  
SEVERE PERSONAL INJURY**

- Operate from the driver's side only. For golf course and non-highway use only, and to be operated only by authorized drivers in designated areas. All occupants must be seated. Keep entire body inside vehicle and hold on when vehicle is in motion.
- Maximum vehicle payload is 800 lbs. (363 kg) including a maximum of 2 persons, golf bags, options and/or accessories.

- Be sure occupants are seated, move direction selector to desired position, apply service brake, turn key 'ON' and accelerate smoothly.
- To release parking (PARK) brake, depress service (lower) brake pedal. To stop, release accelerator pedal and apply service brake.
- Before leaving vehicle, turn key 'OFF', move the direction selector to 'neutral' position and engage parking (PARK) brake.
- Drive slowly straight up and down slopes and in turns. Use extra care in reverse, in congested areas or on wet or loose terrain.
- Do not operate under the influence of drugs or alcohol. Vehicles must be serviced by qualified personnel only." (Defendant's SSUMF Nos. 4-6 and supporting evidence cited therein.)

This warning was subsequently obstructed by the installation of a radio after it had left defendant's possession. (Id. at Nos. 8, 9 and supporting evidence cited therein.) These facts and supporting evidence are sufficient enough to establish defendant provided a sufficient warning regarding the dangers of standing in the moving golf cart.

Moreover, defendant has presented sufficient evidence that plaintiff Remy Giannini was a sophisticated user, exempting defendant from an obligation to warn of the dangers associated with standing in the golf cart. Mr. Giannini has golfed since 1976 and frequently used a golf cart. (Id. at No. 38 and supporting evidence cited therein.) He was also employed as a golf course marshal for six years. (Id. at No. 39 and supporting evidence cited therein.) His prior employer had a rule that restricted two people per golf cart. (Id. at No. 40 and supporting evidence cited therein.) He knew that golf carts should be limited to two people and the back area was designed to carry only golf bags. (Id. at Nos. 42, 43 and supporting evidence cited therein.) Despite this, Mr. Giannini would often stand in the back area of a golf cart when he was a marshal and stood in the back of the subject golf cart. (Id. at Nos. 41, 31 and supporting evidence cited therein.)

Defendant has also met its initial burden in regards to the design defect alleged in plaintiffs' FAC. To reiterate, the motion is framed by the allegations in the operative pleading. (*Government Employees Ins. Co. v. Superior Court* (2000) 79 Cal.App.4th 95, 98, fn. 4; *Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258.) Here, those design defect allegations center around the high center of gravity in the cart. (FAC ¶17.) A design defect exists where the product fails to meet the ordinary consumer expectations of safety or the design is not as safe as it should be. (*Johnson v. United States Steel Corporation* (2015) 240 Cal.App.4th 22, 32.) There are two applicable tests for product design defects: (1) the consumer expectations test and (2) the risk-benefit theory. (*Ibid.*) The consumer expectations test applies where the product's failure permits an inference that its design performed below the legitimate, commonly accepted minimum safety assumptions of ordinary consumers. (*Id.* at pp. 32-33.) The risk-benefit theory considers factors of gravity of the danger posed by the challenged design; the likelihood such danger would occur; the mechanical feasibility of a safer alternative design; the financial costs of an improved design; and the adverse consequences to the product and consumer resulting from an alternative design. (*Barker v. Lull Engineering* (1978) 20 Cal.3d 413, 431-432.) Nonetheless, a plaintiff must present the threshold issue of a design defect that

was the reasonably foreseeable cause of the plaintiff's injuries. (*Soule v. General Motors Corp. (1994) 8 Cal.4th 548, 560.*) Here, defendant submits sufficient evidence to negate Mr. Giannini's injuries were related to a design defect related to a high center of gravity. His injuries stemmed from falling off of the golf cart after a series of abrupt driving actions on the part of defendant Hank Stiefel. (Defendant's SSUMF Nos. 34-37.)

The above facts and supporting evidence are sufficient to shift the burden on both causes of action. Specifically as to the loss of consortium cause of action, defendant has sufficiently negated that Mr. Giannini's injuries were attributable to any actions on the part of defendant. (*Vanhooser v. Superior Court (2012) 206 Cal.App.4th 921, 927-931.*) This shifts the burden to plaintiffs to establish a triable issue of material fact as to both causes of action.

Plaintiffs' however, have not submitted sufficient admissible evidence to create a triable issue. The allegations in plaintiffs' FAC focus upon a failure to warn and design defects based upon a high center of gravity. Their purported triable issues in the responsive SSUMF and additional SSUMF do not provide admissible evidence to refute the sophistication of Mr. Giannini as a seasoned golfer; that a printed warning label was originally affixed in the golf cart; or to sufficiently identify a design defect related to an alleged high center of gravity of the golf cart. (see generally Plaintiffs' Response SSUMF and Additional SSUMF.) To meet their burden, plaintiffs must present more than just claims or theories. (*Wiz Technology, Inc. v. Coopers & Lybrand (2003) 106 Cal.App.4th 1, 10-11.*) They must present a triable, material factual issue. (*Ibid.*) Plaintiffs have failed to make a sufficient showing of *material* facts here. Since plaintiffs have not sufficiently identified triable issues of material fact, the motion summary judgment is granted in favor of defendant.

**4. S-CV-0035241            Maclam, James R. vs. Fong, Richard C., et al**

The motion to compel discovery responses is dropped from the calendar at the request of the moving party.

**5. S-CV-0036831            Fitzmaurice, Kelsey vs. Hampshire, Stacy E**

Defendant's unopposed motion for leave to file cross-complaint is granted. Defendant shall file and serve her cross-complaint on or before October 28, 2016.

**6. S-CV-0036839            Grinager, Shelley vs. Tayu Investment, Inc, et al**

Terence Broughton's Motion to be Relieved as Counsel for defendant Wen Xiang Zhu is granted and he shall be relieved as counsel of record effective upon the filing of the proof of service of the signed order upon defendant Wen Xiang Zhu.

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**7. S-CV-0036897                    Bryant, Dianne vs. Eskaton Foundation, et al**

Defendant's motion to compel discovery responses is granted. Plaintiff shall provide verified responses and responsive documents, without objections, to form interrogatories, set one; special interrogatories, set one; and request for production of documents, set one, on or before October 28, 2016.

Defendant's request for sanctions is denied as the motion was unopposed. (CCP§2030.290(c); 2031.300(c).) However, repeated conduct of failing to comply with discovery obligations may lead the Court to find an abuse of the discovery process and award sanctions on that basis. (*Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, overruled on other grounds in *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4.)

**8. S-CV-0037023                    WCL Holdings I, LLC vs. Paradise Palms Dev., Inc, dba, et al**

Plaintiff's Motion for Summary Judgment

Ruling on Request for Judicial Notice

Plaintiff's request for judicial notice is granted.

Ruling on Motion

The unopposed motion is granted. 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.) The moving party has the burden of showing, by affidavit, facts establishing every element necessary to sustain a judgment in favor of the party. (*Consumer Cause, Inc. v. Smilecare* (2001) 91 Cal.App.4th 454, 468.) Once a plaintiff proves its prima facie case, the burden of proof shifts to the defendant to prove material facts. (CCP§437c(p)(1).)

Plaintiff has presented sufficient evidence to establish its breach of contract claim against defendant Roger Cook. On May 4, 2015, defendant Gadda Construction entered into a business loan agreement borrowing \$100,000 and agreeing to repay \$136,000. (Plaintiff SSUMF Nos. 1, 5-8.) Defendant Cook personally guaranteed the loan. (Id. at Nos. 6, 7, 11.) Gadda Construction ultimately defaulted on the loan, leaving an outstanding balance of \$90,826.61. (Id. at No. 10.) As defendant has not presented any evidence to establish a triable issue of material fact, the motion is granted.

Judgment is entered in favor of plaintiff against defendant Roger Cook. Plaintiff is awarded \$90,826.61 in damages; \$4,388.35 in attorney's fees; and \$1,804 in costs for a total judgment amount of \$97,018.96.

**9. S-CV-0037415            The Rice Corp., dba vs. Express Sea Transport Corp., et al**

Defendant's unopposed motion to quash service of summons is granted. The summons served on May 9, 2016 is quashed.

**10. S-CV-0037569            Smyk, Orest vs. Residence Mutual Ins. Comp, et al**

Defendant's motion for attorney's fees pursuant to CCP§425.16(c)(1) is granted. The court finds a reasonable hourly rate for the work on this motion based upon the similar work within the community is \$275 and a reasonable number of hours is 48 hours for a total award of \$13,200. Defendant is also awarded \$1,800 in costs.

**11. S-CV-0037871            Kline, Tina vs. Morrison, Maria D., et al**

The motion for determination of good faith settlement is continued to October 25, 2016 at 8:30 a.m. in Department 40 to be heard in conjunction with the motion to compel arbitration.

**12. S-CV-0037967            Nevada Irrigation District vs. PG&E Co., et al**

Plaintiff's unopposed motion for order for publication is granted. Plaintiff shall comply with CCP sections 415.10-415.50 and 1250.130 in completing service of process by publication for all persons unknown claiming an interest in the subject property.

**13. S-CV-0038145            Green Planet 21 Utility Services, LLC vs. Addiego, Michael**

The demurrer, motion to strike, and motion to dismiss are continued to November 8, 2016 at 8:30 a.m. in Department 43 by the Honorable Michael W. Jones.

**14. S-PR-0006637            Davidson Neece, Barbara Ann - In re the Estate of**

Motion for summary judgment by Angela Berardo and Gina Berardo

Objections

The objections of Robbyn Neece to the evidence offered by the Berardos are overruled in their entirety.

The objections by the Berardos to the evidence of Dr. Jonathan Mueller are sustained.

Ruling on motion

The motion for summary judgment of petitioners Angela Berardo and Gina Berardo is denied.

A party to the action may move for summary judgment if that party contends no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. C.C.P. § 437c(a). Petitioners must show that undisputed facts prove each element of the cause of action entitling them to judgment. C.C.P. § 437c(p)(1). If they meet this burden, the burden shifts to respondent to show that a triable issue of one or more material facts exists as to that cause of action. *Id.* The trial court must view the evidence and inferences reasonably drawn therefrom in the light most favorable to the opposing party. Aguilar v. Atlantic Richfield Company (2001) 25 Cal.4th 826, 843.

The motion is first denied because it is directed to only one issue raised by the petition for probate leaving other issues unaddressed and unresolved. The pleadings serve as the "outer measure of materiality" for a motion for summary judgment and determine the scope of the motion. Government Employees Ins. Co. v. Super. Court (2000) 79 Cal.App.4th 95, 98; Laabs v. City of Victorville (2008) 163 Cal.App.4th 1242, 1258. A motion for summary judgment must dispose of the entire pleading to which it is address. Cf. C.C.P. § 437c(f), governing motions for summary adjudication. This motion is directed only to moving parties' petition and, in particular, the validity of the will offered by the Berardos. See Notice of Motion for Summary Judgment, p. 1. However, the contested petition for probate raises other issues to be resolved at trial, including, inter alia, whom should be appointed personal representative, the form of appointment (whether as executor, administrator with will annexed, etc.), whether bond should be imposed (and, if so, in what amount), and whether independent administration powers should be granted (and, if so, whether with full or limited authority). Summary judgment is not available to resolve only one controverted issue while others remain outstanding for trial.

The motion is also denied on the merits. Moving parties' showing meets their initial burden of proof as to the issues reached by the motion. However, responding party Robbyn Neece has met her burden to show that numerous material facts are in dispute, including moving parties' facts 23, 30-31, 52, 53 and 58 and responding party's facts 59-62, 64-65 and 85. See separate statements offering those facts and evidence in support thereof. The evidence offered by responding party, although largely circumstantial, is sufficient to defeat the motion because the court may not opine as to the weight of the evidence. Circumstantial evidence disputing moving parties' showing is sufficient to defeat the motion. Hulett v. Farmers Ins. Exchange (1992) 10 Cal.App.4th 1051, 1060 (superseded by statute on other grounds). Further, as noted above, all inferences must be resolved in favor of responding party. If a finder of fact were to credit all of responding party's evidence, responding party could prevail.

The motion for judgment on the pleadings re petition to determine ownership of property and for other relief is continued, on the court's motion, to October 25, 2016, 8:30 a.m., in Department 40. The court apologizes for any inconvenience to the parties or counsel.

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15. S-PR-0008238

Berardo, Jr. Mathew William - In Re The Estate Of

The motion for judgment on the pleadings re petition to determine ownership of property and for other relief is continued, on the court's motion, to October 25, 2016, 8:30 a.m., in Department 40. The court apologizes for any inconvenience to the parties or counsel.

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