

**Judge Mosbarger – Law & Motion – Wednesday, April 3, 2024 @ 9:00 AM
TENTATIVE RULINGS**

1. 21CV01364 RICHIE, ROBIN V. OROVILLE UNION HIGH SCHOOL DISTRICT ET AL

EVENT: Defendant's Motion to Continue Trial

Defendant's Motion to Continue Trial is GRANTED, the Court finding good cause for the requested continuance. The Court continues the trial date of July 22, 2024 to January 13, 2025 @ 8:00 a.m. with a 10 day estimate, the trial readiness conference set for July 18, 2024 is continued to January 9, 2025 at 1:30 p.m., and the mandatory settlement conference set for June 12, 2024 is continued to November 20, 2024 at 1:30 p.m. with Judge Benson via Zoom. The Court will sign the form of order submitted by counsel for the Defendant.

2. 22CV00029 BREIDINGER, LARRY D V. VOLLRATH, MICHAEL ET AL

EVENT: Order of Examination (Michael Vollrath)

The Court will swear in the Debtor Michael Vollrath for examination.

3. 22CV02315 BARNES, KRISTIN V. OROVILLE FORD, INC ET AL

EVENT: Defendant Ford Motor Company's Motion for Summary Judgment

Defendant Ford Motor Company's Motion for Summary Adjudication is granted in part and denied in part.

As an initial matter, the Court notes that Defendant Ford Motor Company has submitted objections to evidence as set forth and contained within its Reply to Plaintiff Kristin Barnes' Separate Statement in Opposition to Ford Motor Company's Motion for Summary Judgment/Adjudication. The Court finds that Defendant Ford Motor Company has failed to comply with the procedural requirements as set forth in California Rules of Court, Rule 3.1354(b) which requires that "objections to evidence must be served and filed separately from the other papers in support of or in opposition to the motion...[and] objections must not be restated or reargued in the separate statement". Thus, Defendant Ford Motor Company's evidentiary objections, as set forth in the Separate Statement, are overruled.

The Court finds that there is a triable issue of material fact as to whether there is actual or ostensible agency between Defendant Oroville Ford, Inc. and Defendant Ford Motor Company [See, Plaintiff's Additional Undisputed Material Facts ("AUMF" herein) Nos. 19-50], and thus Plaintiff maintains a viable cause of action for breach of contract. Defendant Ford Motor Company's Motion for Summary Adjudication as to the First Cause of Action for Breach of Contract, and Second Cause of Action for Breach of Covenant of Good Faith and Fair Dealing is denied.

“The essential elements of a cause of action under the California Uniform Commercial Code for breach of an express warranty to repair defects are (1) an express warranty to repair defects given in connection with the sale of goods; (2) the existence of a defect covered by the warranty; (3) the buyer’s notice to the seller of such a defect within a reasonable time after its discovery; (4) the seller’s failure to repair the defect in compliance with the warranty; and (5) resulting damages.” *Orichian v. BMW of N. Am., LLC* (2014) 226 Cal.App.4th 1322, 1333-1334, internal omitted; see also CACI 1230. The Court finds that the evidence submitted does not raise a triable issue of material fact as to these elements necessary to maintain a cause of action for breach of express warranty; specifically, Plaintiff has failed to present evidence to support a finding that Defendant Ford Motor Company failed to repair the defect in compliance with the warranty. [Defendant’s Undisputed Material Facts (“UMF” herein) Nos. 10, 13]. Defendant Ford Motor Company’s Motion for Summary Adjudication as to the Third Cause of Action as it relates to the alleged breach of an express warranty, is granted.

As to the alleged breach of implied warranty, Defendant is correct that “[i]n cases involving personal injuries resulting from defective products, the theory of strict liability in tort has virtually superseded the concept of implied warranties.” *Grinnell v. Charles Pfizer & Co.* (1969) 274 Cal.App.2d 424, 432. However, Plaintiff is permitted to raise alternate theories of liability, so the Court denies Defendant Ford Motor Company’s Motion for Summary Adjudication as to the Third Cause of Action on that basis. See, e.g., CACI 3934. Turning then to the issue of privity, the same analysis above in regard to agency is applicable here and the Court comes to the same conclusion: that there has been sufficient evidence presented to raise a triable issue of material fact as to whether Plaintiff is in privity with Defendant Ford Motor Company [AUMF Nos. 19-50], and thus Plaintiff maintains a viable cause of action for breach implied warranty. Defendant Ford Motor Company’s Motion for Summary Adjudication as to the Third Cause of Action as it relates to the alleged breach of an implied warranty, is denied.

Finally, the Court finds that there is a triable issue of material fact as to whether the inner bearing was defective, or any alleged defect caused the incident and Plaintiff’s injuries. [UMF Nos. 3, 7, 9, 10, 11, 12 and AUMF Nos. 53-75], and thus Plaintiff maintains a viable cause of action for products liability and negligence. Defendant Ford Motor Company’s Motion for Summary Adjudication as to the Fourth Cause of Action for Products Liability, and Fifth Cause of Action for Negligence is denied.

Counsel for Defendant Ford Motor Company shall submit a revised form of order consistent with this ruling within two weeks.

4. 22CV02599 IN RE: CLAIM OF VALDOVINOS, CARLOS

EVENT: Plaintiff’s Application and Motion for Default and Judgment of Forfeiture

The request for default judgment is granted. The Case Management Conference on May 15, 2024 at 10:30 a.m. is vacated and the Court will sign the Default Judgment and Order of Forfeiture provided by the People.

5. **23CV00822 STANDLEE, WILLIAM ET AL V. FOSTER JR, LIONEL, MD ET AL**

EVENT: Plaintiff's Motion for Leave to Amend Complaint to Allege Punitive Damages

The matter is continued to May 29, 2024 at 9:00 a.m. Counsel shall submit a Joint Status Report seven (7) days prior to the hearing to provide an update to the Court on the status of the pending Writ of Mandamus filed with the Third District Court of Appeal in a related matter, Hunt v. Foster (23CV00492/C100343).

6. **23CV02510 PEOPLE OF THE STATE OF CALIFORNIA V. MAGANA-ARREOLA, EDUARDO**

EVENT: Plaintiff's Application and Motion for Default and Judgment of Forfeiture

The request for default judgment is granted. The Case Management Conference on May 15, 2024 at 10:30 a.m. is vacated and the Court will sign the Default Judgment and Order of Forfeiture provided by the People.