Tentative Rulings
Law & Motion and Family Law Calendar for August 12, 2013

August 8, 2013, 4:00p.m.

Department Two

To request a hearing on any matter on this calendar, you must call the Court at 530/283-6305 by 12:00 noon, August 9th, notice of the intention to appear must also be given to all other parties. If the clerk is not notified of a party's intention to appear, there will be no hearing and the tentative ruling becomes the order of the court.

If you do appear and want the matter reported by an official court reporter in unlimited civil, family law or probate, you must pay the $30.00 court reporter appearance fee as provided by GC§68086(a)(1)(A) before the hearing begins.

Probate – 9:00 a.m.

Case No. PR07-6363 – Conservatorship of Curran

Tentative Ruling: **No appearance required.** The court has received the reviewed the investigator's report, and finds that conservatorship is still necessary and that the conservator is acting in the best interest of the conservatee. The court sets the next review in two years, on August 10, 2014, at 9:00a.m. In addition, the court grants the conservator's application for waiver of accounting as long as conditions set forth in Probate Code section 2628 are satisfied. The conservator is to prepare the Order.

Case No. PR11-00042 – Conservatorship of Goings

Tentative Ruling: **Appearance required.**

Case No. PR09-00044 – Conservatorship of Sherod

Tentative Ruling: **No appearance required.** The court has received the reviewed the investigator's report, and finds that conservatorship is still necessary and that the conservator is acting in the best interest of the conservatee. The court sets the next review in two years, on August 10, 2014, at 9:00a.m.

Case No. PR12-00011 – Conservatorship of West

Tentative Ruling: **Appearance required.**

Case No. PR12-00033 – Estate of Clark

Tentative Ruling: **Appearance required.** The court will conduct the sale and hear any overbids.

Case No. PR13-00028 – Estate of McGushin

Tentative Ruling: **Granted.** The court finds that notice has been given as required by law. Petitioner's Petition to Administer Estate is granted.

Case No. PR05-6269 – Estate of Ramirez

Tentative Ruling: **Approved.** The court finds that notice has been given as required by law. Petitioner's First and Final Account and Report and Petition for Settlement, Allowance of Attorney's Compensation and For Final Distribution is approved.

Case No. PR11-00003 – Estate of Shehorn

Tentative Ruling: **Approved.** The court finds that notice has been given as required by law. Petitioner's Petition for Approval of First and Final Account of Prior Administrator is approved.

Case No. PR12-00007 – Guardianship of Greenwood

Tentative Ruling: **Appearance required.**

Case No. PR13-00030 – Guardianship of Hansen

Tentative Ruling: **Appearance required.** The court has not received the investigator's report.

Case No. PR12-00014 – Guardianship of Hopper

Tentative Ruling: **Appearance required.**

Case No. PR13-00024- Guardianship of Juden

Tentative Ruling: **No appearance required.** The court has received the reviewed the guardianship investigation report, and finds that guardianship is in the best interests of the minor. The court schedules the first annual review for August 11, 2014, at 9:00a.m. The clerk of the court is reminded to send notice to the guardian one month prior to this date, informing the guardian of the duty to file a confidential status report prior to the review hearing.

Case No. PR08-6412 – Guardianship of Kelley

Tentative Ruling: **No appearance required.** The court has received and reviewed the confidential guardianship status report, and finds that continued guardianship is in the best interests of the minor. The court schedules the next annual review for July 14, 2014, at 9:00a.m. The clerk of the court is reminded to send notice to the guardian one month prior to this date, informing the guardian of the duty to file a confidential status report prior to the review hearing.

Case No. PR08-6413 – Guardianship of Kelley

Tentative Ruling: **No appearance required.** The court has received and reviewed the confidential guardianship status report, and finds that continued guardianship is in the best interests of the minor. The court schedules the next annual review for July 14, 2014, at 9:00a.m. The clerk of the court is reminded to send notice to the guardian one month prior to this date, informing the guardian of the duty to file a confidential status report prior to the review hearing.

Case No. PR6189 – Guardianship of Wright

Tentative Ruling: **No appearance required.** The court has received and reviewed the confidential guardianship status report, and finds that continued guardianship is in the best interests of the minor. The court schedules the next annual review for July 14, 2014, at 9:00a.m. The clerk of the court is reminded to send notice to the guardian one month prior to this date, informing the guardian of the duty to file a confidential status report prior to the review hearing.

Case No. PR12-00013 – Conservatorship of Brandes

Tentative Ruling: **Appearance required.**

Case No. PR11-00031 – Matter of Griffith

Tentative Ruling: **No appearance required.** The court has received the reviewed the report of the investigator, and finds that conservatorship is still necessary and that the conservator is acting in the best interest of the conservatee. The court sets the next review in two years, on August 10, 2014, at 9:00a.m.

Case No. PR07-6381 – Guardianship of Scarbrough

Tentative Ruling: **No appearance required.** The court has received and reviewed the confidential guardianship status report, and finds that continued guardianship is in the best interests of the minor. The court schedules the next annual review for August 11, 2014, at 9:00a.m. The clerk of the court is reminded to send notice to the guardian one month prior to this date, informing the guardian of the duty to file a confidential status report prior to the review hearing.

Civil – 9:30 a.m.

Case No. LC11-00275 – Fia Card Servics vs. Boydkantoff

Tentative Ruling: **Granted.** Plaintiff's Request to Vacate Notice of Settlement of Case is granted. This matter is placed on the case management conference calendar on September 9, 2013, at 2:00p.m., for further proceedings.

Case No. LC12-00273 – GCFS, Inc. vs. Pearson

Tentative Ruling: **No appearance required.** This matter is stayed, due to the bankruptcy filing.

Case No. CV09-00243 – Owens vs. Kerns

Tentative Ruling: **Granted in part.**[1] The motions for summary judgment by defendant, Suburban Manufacturing Company ("Suburban"), are denied as to Fred and Marian Arbabi ("Arbabis"), Sallie Haws ("Haws"), Robert and Marty McAllister ("McAllisters"), Roger and Sandy Puccinelli ("Puccinellis"), Kathleen Rzeplinski ("Rzeplinski") and Colin and Nancy Soong ("Soongs") and granted as to the Estates of Janet Erickson, George Santos and Barbara Santos. The motion for summary adjudication of the nineteenth cause of action is granted as to all plaintiffs except the McAllisters, Rzeplinski and the Soongs. The motion for summary adjudication as to punitive damages is granted in full.

DISCUSSION

Each plaintiff asserts four causes of action against Suburban, for strict products liability (seventeenth), negligence/products liability (eighteenth), breach of warranty (nineteenth) and strict liability (twentieth).[2] Undisputed Material Fact ("UMF") 1. Suburban seeks summary judgment as to all causes of action or, alternatively, summary adjudication of the nineteenth cause of action and the issue of punitive damages, against each plaintiff herein.

Standing to Sue

A probate estate lacks standing to sue; instead, the action must be brought by the decedent's personal representative or, if there is none, the decedent's successor in interest. (*Code of Civil Procedure section 377.30*.) The lack of standing is a jurisdictional defect. (*See, e.g., Hudis v. Crawford* (2005) 125 Cal.App.4th 1586, 1592 (lack of standing is jurisdictional defect).)

The Court takes judicial notice of its files and records herein, which reflect that the estates of Janet Erickson, George Santos and Barbara Santos were recently substituted in. (*Evidence Code section 452(d)*.) These amendments do not cure the jurisdictional defect as to the estates. Nancy Soong remains named as a plaintiff herein.

Products Liability Causes of Action

Suburban contends that plaintiffs cannot prove the material facts (1) that any of the heaters in the plaintiffs' units had the defective air blower wheels (identified by Suburban as UMF 9 as to all plaintiffs) and (2) of whether the excessive carbon monoxide produced in the plaintiffs' homes was caused by the defective air blower wheel <u>or</u> by improper installation of the heater by co-defendant Cavco (UMF 11 as to all plaintiffs). (Emphasis by Suburban.)
Suburban also proffers as undisputed the material fact that a subset of plaintiffs suffered no personal injuries or property damage. (UMF 13 as to Haws, UMFs 16 and 17 as to the McAllisters, UMFs 18 and 19 as to the Soongs.)

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[1] This ruling shall not effect the rights of Wilbur and Carlene Owens, Mark and Barbara Deeter and Rory and Jennifer Hickok, who have settled with, and Harry and Joan Carlson, who do not assert any claims against, Suburban.

[2] The seventeenth cause of action is founded upon the allegedly defective heaters manufactured by Suburban, whereas the twentieth is founded upon the allegedly defective RV park units as a whole, with the heaters identified as one of various alleged defective components.

Evidence produced in support of all UMFs numbered 9 and 11 consists of the plaintiffs' written discovery responses. See, Declaration of Claire Welgarz In Support of Motion ("Welgarz Decl."), Exhibits A-V. Suburban appears to contend that these responses are "factually devoid," which would shift the burden of production onto the plaintiffs to establish the existence of triable issues as to these material facts. (*Andrews v. Foster Wheeler LLC* (2006) 138 Cal.App.4th 96, 101.) The burden will not, however, ". . . 'shift without stringent review of . . .'" the evidence produced by Suburban. (*Ibid.* (citation omitted).)

UMF 9 - Defective Wheel in Heaters

The Court finds that the plaintiffs' interrogatory responses are not "factually devoid" as to UMF 9, in that they set forth facts from which one could infer that the heaters in a number of the plaintiffs' RV units had the defective air blower wheels. (*See,* Response to Special Interrogatory ("Special Response") No. 8 by Arbabis, Haws, McAllisters, Puccinellis, Rzeplinski, and Soongs, Exhibits F, G, K, N, O, P, Q, R, U and V to Welgarz Decl. (Suburban employee advised plaintiffs of defective air blower wheels in heaters installed in their homes).) Even if the discovery responses were "factually devoid," however, the plaintiffs have produced substantial evidence in opposition to Suburban's motion which raises a triable issue as to UMF 9. *See*, Deposition of Jim West ("West Depo."), Exhibit 33 to Declaration of James McKenna ("McKenna Decl."), pp.82:17-83:3, Exhibit G (recall work for air blower wheel done for heaters in units owned by McAllister, Puccinelli, Rzplenski and "Colin" [*sic*]; Deposition of Charles Travis, Exhibit 24 to McKenna Decl, p.99:17-100:10 (defective air blower wheel in heater in Haws' unit).

UMF 11 - Cause of Excessive Carbon Monoxide

Nor are the discovery responses proffered in support of UMF 11 "factually devoid," as they set forth facts from which one could reasonably infer that the defective air blower wheel contributed to the build up of carbon monoxide. (*See,* Special Responses Nos. 8, 9 (Suburban Service Bulletin admits that incorrect blower wheel may result in exhaust containing excessive levels of carbon monoxide), Exhibits F, G, K, N, O, P, Q, R, U and V to Welgarz Decl.) Plaintiffs need not prove that the defective air blower wheel, and not the installation by Cavco, was the sole cause of the carbon monoxide within their homes. (*See, e.g., Doupnik v. General Motors Corporation* (1990) 225 Cal.App.3d 849, 865-866 (comparative fault, arising from concurrent legal causes, applies in products liability actions).)

UMF 13, 16, 17, and 18 - Compensable Injury

The written discovery responses do, however, establish the material fact that certain plaintiffs did not suffer from, and do not claim any damages for, personal injury arising from the alleged defective heaters. (*See*, Special Responses by Haws, the McAllisters and Soongs, Nos. 2-3 and Responses to Request for Admissions ("RFA Response"), No. 32, Exhibits K, N, O, U and V to Weglarz Decl.) Instead, these plaintiffs claim "economic damages." (*Ibid*, RFA Responses 33.)

As noted by the court in *County of Santa Clara v. Atlantic Richfield Company* (2006) 137 Cal.App.4th 292:

> One thing is clear: economic loss alone, without physical injury, does not amount to the type of damage that will cause a negligence or strict liability cause of action to accrue. "In a strict liability or negligence case, the *compensable injury* must be

> *physical harm to persons or property,* not mere economic loss." *Id.*, at 318. (Citation omitted; italics in original.)

The burden of production thus shifted to the plaintiffs who do not claim personal injuries to establish the existence of a triable issue as to whether they sustained injury compensable under the products liability causes of action. These plaintiffs have done so, by producing admissible evidence that their entire heater, or other components of their heaters, had to be replaced. (*See*, Deposition of Haws, p.21:18-23 (entire heater unit replaced); Deposition of Robert McAllister, pp.54:25-55:9 (igniter replaced); Deposition of Colin Soong, p.24:5-25:19 (motor and multiple igniters replaced), Exhibits 9, 12, and 27 to McKenna Decl.; Declaration of James West, para. 10 (damage to igniters and motor caused by defective air blower wheel).) *See, KB Home v. Superior Court* (2003) 112 Cal.App.4th 1076, 1087 (component-to-component damage compensable).)

Suburban has produced no evidence on the issue of whether the defective air wheel blower ". . . is a sufficiently discrete element of the larger product that it is not reasonable to expect its failure invariably to damage other portions of the finished product." (*Ibid.*) Suburban has thus failed to meet its initial burden as to the material fact of whether these plaintiffs sustained physical harm to property.

Breach of Warranty

Suburban proffers as undisputed the material fact that no plaintiff purchased a heater directly from it (UMF 2 as to each plaintiff). In support, Suburban produces written discovery responses which establish this fact. (*See,* Special Responses Nos. 47-48; Exhibits F, G, K, N, O, P, Q, R, U and V to Welgarz Decl.)

In opposition to each UMF 2, plaintiffs produce Suburban's User's Information Model, Exhibit 32 to McKenna Decl. ("User's Manual"), which includes certain express warranties, and the deposition testimony of two Suburban employees, to the effect that the owners of the "park model" home, not Cavco or the developer, are the "end users" or "end consumers." (Deposition of Neal Stultz, pp.112:9 -113:9; Deposition of Larry Stanford, pp. 34:24 -35:1, Exhibits 25 and 26 to McKenna Decl.); plaintiffs proffer the same, and similar, evidence in support of their additional material facts numbered 24-27. (Plaintiffs' Responsive Separate Statement, pp.111-112.)

> The general rule is that privity of contract is required in an action for breach of either express or implied warranty and that there is no privity between the original seller and a subsequent purchaser who is in no way a party to the original sale. (*Burr v. Sherwin Williams Company* (1954) 42 Cal.2d 682, 695 ("*Burr*"). (citations omitted.)

To the extent the nineteenth cause of action encompasses a claim for breach of implied warranties, plaintiffs produce no evidence raising a triable issue as to whether they fall within an exception to this rule. (*See, e.g., Windham at Carmel Mountain Ranch Association v. Superior Court* (2003) 109 Cal.App.4th 1162, 1169 (exceptions established in cases involving foodstuffs, drugs, pesticides and employees injured by dangerous product purchased by employer).)[3]

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[3] This Court declines to adopt the reasoning of certain federal trial courts which, relying on *Gilbert Financial Corporation v. Steelform Contracting Company* (1978) 82 Cal.App.3d 65, have created a third party beneficiary exception to the privity rule for "end consumers." (*See,*

An exception to the privity rule arises with respect to express warranties, however, if the purchaser relied on affirmations or promises made by a manufacturer in its advertisements or on its labels. *Burr, supra*, 42 Cal.2d at 696. There thus appears to be a triable issue as to whether Suburban's affirmations in its Users Manual constituted express warranties upon which plaintiffs relied. Such triable issue is, however, limited to the McAllisters, Rzeplinski and the Soongs, the "original purchasers" of their park model homes, who may be able to establish a breach of express warranty claim against Suburban. *See*, Plaintiffs' Memorandum of Points and Authorities in Opposition, p.13:4-15. *See, e.g., Cardinal Health 301, Inc. V. Tyco Electronics Corporation* (2009) 169 Cal.App.4th 116, 138-139 (no privity between original seller and subsequent purchaser not party to original sale).

Punitive Damages

Plaintiffs do not dispute that they have disclaimed all punitive damages claims against Suburban. *See*, UMF 20 and Plaintiffs' Responsive Statement.

Evidentiary Rulings

Plaintiffs' Objections to the Evidence are overruled.

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e.g., In re: Toyota Motor Corporation Unintended Acceleration Marketing Sales Practices, and Products Liability Litigation (C.D. Cal. 2010) 754 F.Supp.2d 1145, 1185.) No California appellate opinion has extended *Gilbert* to consumer end users, whereas the general rule, as enunciated in *Burr, supra,* has been consistently reiterated. (*See, Hauter v. Zogarts* (1975) 14 Cal.3d 104, 117, (vertical privity remains requirement for breach-of-implied-warranty claim); *All West Electronics, Inc. v. M-B-W, Inc.* (1998) 64 Cal.App.4th 717, 723, (same).)

Case No. LC12-00148 – Read vs. Greenhorn Road Assoc.

Tentative Ruling: **Granted, in part.** Defendant and Cross-Complainant's Motion for Attorney's Fees, Costs and Prejudgment Interest in granted. All of the causes of action alleged in the Complaint and the Association's Cross-Complaint arose out of the same facts and circumstances relating to the Declaration and Bylaws and involved the dispute of whether the plaintiffs were liable for assessments for their four original lots. In reviewing the detailed hours billed, the court reduces the Association's attorney fees by $1315. Therefore, the amount of attorney fees awarded is $16,696.25. The costs and prejudgment interest, as calculated by the Association is also awarded.

Case No. LC12-00285 – Unifund CCR, LLC vs. Lutch

Tentative Ruling: **Appearance required.**

Family Law – 10:30 a.m.

Case No. FL85-12395 – Mar. of Alward

Tentative Ruling: **Appearance required.**

Case No. FL13-00134 – Bates vs. Nunes

Tentative Ruling: **No appearance required.** The court has received and ordered a custody and visitation agreement.

Case No. FL12-00195 – Clift vs. Nelson

Tentative Ruling: **Appearance required.** The court will hear the results of mediation.

Case No. FL09-00202 – Cravens vs. Meza

Tentative Ruling: **Appearance required.** The court has not received the recommendation.

Case No. FL09-00060 – Mar. of Creasey

Tentative Ruling: **No appearance required.** Pursuant to an agreement reached in mediation, all previous orders will remain in full force and effect. Petitioner is ordered to provide respondent with notarized permission to obtain passports for the children so that they can travel to Mexico for vacation purposes.

Case No. FL13-00021 – Handley vs. Widberg

Tentative Ruling: **Appearance required.** The court will determine child support.

Case No. FL10-00195 – Hinde vs. Keffer

Tentative Ruling: **Appearance required.**

Case No. FL12-00224 – Mar. of Judd

Tentative Ruling: **Appearance required.** The court will review the parenting plan recommendation with the parties.

Case No. FL13-00129 – Marsh vs. Vanzandt

Tentative Ruling: **Appearance required.**

Case No. FL13-00078 – Payne vs. Cuellar

Tentative Ruling: **Appearance required.** The court will review the custody and visitation orders with the parties.

Case No. FL13-00141 – Mar. of Rompasky

Tentative Ruling: **No appearance required.** As the court has ruled on the petitioner's request, this matter is taken off calendar.

Case No. FL11-00205 – Mar. of Stroud

Tentative Ruling: **Appearance required.**

Case No. FL04-25265 – Mar. of Velasco

Tentative Ruling: **Granted, in part.** Petitioner is ordered to pay respondent the sum of $7668.32 for the period of 8/1/10 through 10/31/12, plus $2556.09 for the period from 11/1/12 through 8/31/13 ($284.01 per month) for a total of **$10,508.42.** The court denies respondent's request for any additional monies due to any adverse tax consequences in 2012 and 2013, and denies respondent's request for attorneys fees and costs in bringing the motion. It appears to the court that the pension plan failed to notify respondent's counsel of any problems with the QDRO submitted, and will not attribute any liability to the petitioner. The court will allow respondent to prepare an approved QDRO effective 9/1/13, so that any amounts due the respondent will be paid directly to her.

Case No. FL11-00020 – Wratten vs. Shirer

Tentative Ruling: **Appearance required.** The court will review the recommendation with the parties.

CASE MANAGEMENT CONFERENCE TENTATIVE RULINGS

Case No. LC12-00158 – FIA Card Services vs. Boyd

Tentative Ruling: **Appearance required.** The parties should be prepared to discuss ADR options and set a trial date.

Case No. CV13-00032 – Klein vs. Wells Fargo Bank, N.A.

Tentative Ruling: **Appearance required.** The court will discuss the status of the case with the parties.

Case No. CV12-00263 – People vs. Gaulden

Tentative Ruling: **Appearance required.** The court will discuss the status of the case with the claimant.

Case No. LC12-00287 – Plumas Bank vs. Howe

Tentative Ruling: **No appearance required.** The court notes a bankruptcy stay is in place.

Case No. CV12-00179 – Ramoz vs. Willis

Tentative Ruling: **Appearance required.** If a dismissal is filed prior to the conference, this matter may be taken off calendar.

Case No. FL06-26643 – Buchanan vs. Alhino

Tentative Ruling: **Appearance required.**

Case No. PR12-00018 – Estate of Petersen

Tentative Ruling: **Appearance required.** The court will reset the hearing and will vacate the hearing scheduled for August 14.

Case No. CV12-00226 – Fire Insurance Exchange vs. Arrowhead Brass Products

Tentative Ruling: **Appearance required.** The court will set a trial date.

Case No. FL10-00082 – Glover vs. Parsons

Tentative Ruling: **Appearance required.** As previously indicated, the parties may appear through CourtCall. The court will review the visitation schedule.

Case No. CV12-00230 – Miles vs. State of California

Tentative Ruling: **Appearance required.** The court will discuss the status of the case with the parties.

Case No. CV09-00243 – Owens vs. Kerns

Tentative Ruling: **No appearance required.** The court confirms the mandatory settlement conference for August 15, 2013, at 9:00a.m.

Case No. CV12-00175 – Wilson vs. Coykendall

Tentative Ruling: **No appearance required.** At plaintiff's request, this case management conference is continued to October 16, 2013, at 2:00p.m., in order to allow the defendant to answer the complaint.

Case No. CV12-00184 – Worthen vs. Feather River Rail Society

Tentative Ruling: **No appearance required.** The court continues this case management conference to September 9, 2013, at 2:00p.m. to hear the results of mediation.