

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 1

JCCP4861

SOUTHERN CALIFORNIA GAS LEAK CASES

January 6, 2021

10:30 AM

Judge: Honorable Daniel J. Buckley

CSR: J. P. Dominguez, CSR #12523

Judicial Assistant: S. Chung

ERM: None

Courtroom Assistant: M. Gomez-Barrientos

Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Mildred Regina Bagdasarian; Mildred Regina Bagdasarian; Michael Edward Baumann (Telephonic) Via LACC -- See additional appearances below.

For Defendant(s): James Joseph Dragna Via LACC (Telephonic); Robert Elliott Gooding, Jr Via LACC (Telephonic); Allen L Lanstra Via LACC (Telephonic) -- See additional appearances below.

Other Appearance Notes: Cathy Kim; Patricia K. Oliver; Michael Louis Kelly; Henry Watkins; Kelly Weil; Susan A. Owen; for Plaintiffs Deanne Miller; David Logan; for Appellant: Kevin Muck for Defendant

NATURE OF PROCEEDINGS: Hearing on Motion for Summary Adjudication on Private Plaintiffs' Claim for Punitive Damages; Hearing on Motion to Seal Certain Documents Cited in and/or Attached to Private Plaintiffs' Opposition to Defendants' Motion for Summary Adjudication of Phase One Trial Plaintiffs' Claims for Punitive Damages

Pursuant to Government Code sections 68086, 70044, and California Rules of Court, rule 2.956, Jorge P. Dominguez, CSR #12523, certified shorthand reporter is appointed as an official Court reporter pro tempore in these proceedings, and is ordered to comply with the terms of the Court Reporter Agreement. The Order is signed and filed this date.

The Hearing on Motion for Summary Adjudication on Private Plaintiffs' Claim for Punitive Damages scheduled for 01/06/2021 is 'Held - Motion Denied' for cases 18STCV00854, 18STCV01009, 18STCV01013, 18STCV01838, 18STCV04969, 18STCV05328, 18STCV06820, 18STCV10135, 19CHCV00618, 19STCV02570, 19STCV11792, 19STCV19104, 19STCV20976, 19STCV39324, 19STCV41696, 20STCV01226, 20STCV13797, 20STCV21003, 37-2016-00000754-CU-TT-CTL, 37-2016-00005842-CU-BT-CTL, 37-2017-00007459-CU-SL-CTL, BC601844, BC603602, BC603747, BC604247, BC604248, BC604815, BC604816, BC604817, BC605860, BC606736, BC606776, BC607685, BC607923, BC608037, BC608322, BC608377, BC608539, BC608540, BC608575, BC608658, BC608931, BC608950, BC608967, BC609083, BC609189, BC609288, BC609289, BC609329, BC609370, BC609526, BC609535, BC609776, BC609777, BC609820, BC609917, BC610257,

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ERM: None
Deputy Sheriff: None

PC057152, PC057966, and PC058055.

The Hearing on Motion to Seal Certain Documents Cited in and/or Attached to Private Plaintiffs' Opposition to Defendants' Motion for Summary Adjudication of Phase One Trial Plaintiffs' Claims for Punative Damages scheduled for 01/06/2021 is 'Held - Motion Granted' for case BC601844.

The matter is called for hearing.

The tentative ruling is posted on the e-service provider, Case Anywhere, for parties to read and review.

The Court confers with counsel the tentative ruling.

The Court confers with counsel regarding the ruling on the Demurrer issued on 12/30/2020. The final ruling on the Demurrer is sustained without leave to amend.

Parties are to provide a report as to the scheduled depositions for Friday's Informal Discovery Conference.

LATER:

The Court makes the following ruling on the Motion for Summary Adjudication on Private Plaintiffs' Claim for Punitive Damages and Motion to Seal Certain Documents Cited in and/or Attached to Private Plaintiffs' Opposition to Defendants' Motion for Summary Adjudication of Phase One Trial Plaintiffs' Claims for Punative Damages.

Background

Defendants Southern California Gas Company and Sempra Energy move for summary adjudication of Plaintiffs Albert Ghawi, George Ghawi, Malvina Ghawi, Peter Ghawi, Mary Yaghnam, Taghreed Yaghnam, Cathy Kraude, Kevin McCarthy, Fernando Ochoa, Hyuk Kim, William Kim, Mi-Jung Lim, Kevin Dodge, Maria Dodge, and Kevin Dodge Jr.'s demand for punitive damages.

Discussion

A. Legal Standard.

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A party may move for summary judgment “if it is contended that the action has no merit or that there is no defense to the action or proceeding.” Civ. Proc. Code § 437c(a). A party may also move for summary adjudication of a single cause of action, affirmative defense, claim for damages, or issue of duty. Civ. Proc. Code § 437c(f)(1). A cause of action has no merit if: (1) one or more elements of the cause of action cannot be separately established, even if that element is separately pleaded; or (2) a defendant establishes an affirmative defense to that cause of action. Civ. Proc. Code § 437c(o); *Union Bank v. Super. Ct.*, 31 Cal. App. 4th 573, 583 (1995).

“[F]rom commencement to conclusion, the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law.” *Aguilar v. Atlantic Richfield Co.*, 25 Cal. 4th 826, 850 (2001). However, once the movant has shown that a cause of action has no merit or defense, the burden of production shifts to the opponent to show that a triable issue of material fact exists as to that cause of action. *Id.* at 850-53. “Although he remains free to do so, the [movant] need not himself conclusively negate any such element.” *Id.* at 853.

Until the movant meets this evidentiary burden, the opponent has no burden to present evidence showing a triable issue of fact. *Hawkins v. Wilton*, 144 Cal. App. 4th 936, 940 (2006) (citing *Duckett v. Pistoiresi Ambulance Service, Inc.*, 19 Cal. App. 4th 1525, 1533 (1993)). However, if the opponent does not present sufficient evidence when required, then summary judgment in favor of the movant is appropriate. *Aguilar*, 25 Cal. 4th at 849. “A party opposing summary judgment may be able to demonstrate the existence of a triable issue of material fact through the moving party’s own evidence or witnesses.” *Fisher v. Gibson*, 90 Cal. App. 4th 275, 286 (2001).

B. Objections and Requests for Judicial Notice.

All objections to any evidence relied on by the Court below are **OVERRULED**. The Court declines to address all remaining objections pursuant to Code of Civil Procedure section 437c(q).

Similarly, all requests for judicial notice relied on by the Court below are **GRANTED**. All other requests for judicial notice are **DENIED** as irrelevant and immaterial.

C. Motion to Seal.

Sempra moves to seal the following documents referenced in Plaintiffs’ opposition and supporting materials: SCG01712351, SCG02567031, SCG03635404, SCG04531870, SCG04648934, SCG04648936, SCG04648937, SCG04648997, SCG04649001, SCG05056258,

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SCG05069584, SCG05125815, SCG05158083, SCG05167563, SCG05215524, SCG05227898, SCG05237619, SEMPRA00087811, SEMPRA00091744. For the same reasons discussed in the Court's previous ruling denying Sempra's motion for summary judgment, the Court finds, pursuant to California Rule of Court 2.550, that: (1) There exists an overriding interest that overcomes the right of public access to the record; (2) the overriding interest supports sealing the record; (3) a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) the proposed sealing is narrowly tailored; and (5) no less restrictive means exist to achieve the overriding interest.

Therefore, Defendants' motion to seal is GRANTED, and the foregoing documents, excluding documents SCG04648937, SCG05158083, and SEMPRA00091744 (which were merely cited, but not filed, by Plaintiffs), are ORDERED sealed. This ruling is without prejudice to Plaintiffs later arguing against sealing these same documents if they are later used at trial, where the Court finds that an intrinsically greater public access interest may countenance against their sealing.

D. Motion to Strike.

For the same reasons discussed in the Court's previous ruling denying Sempra's motion for summary judgment, the Court DENIES Defendants' motion to strike Plaintiffs' separate statement. Any technical defects in Plaintiffs' separate statement are inconsequential here since the Court is more than capable of identifying the facts set forth by Plaintiffs and resolving this motion accordingly.

E. Defendants' Motion Must Fail Because There Are a Plethora of Triable Issues Relating to Punitive Damages.

To obtain punitive damages, a plaintiff must prove "by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice," Civ. Code § 3294(a). "With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation." Id. at § 3294(b). Malice is "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." Id. at § 3294(c)(1). Oppression is "despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights." Id. at § 3294(c)(2). Fraud is "an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury." Id. at § 3294(c)(3).

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Here, Defendants do not argue that any relevant conduct was not committed by one of their officers, directors, or managing agents. See *id.* at § 3294(b). Rather, Defendants only argue that the conduct at issue here does not rise to the level of oppression, fraud, or malice. Plaintiffs have presented evidence about Defendants' approach to the management and operation of SS-25 at Aliso Canyon. These alleged facts, if proven, support findings of (1) willful failure to undertake meaningful safeguards in a conscious disregard of their safety obligations under the Public Utility Code, (2) blasé attitude toward well containment after the blowout, and (3) misrepresentations aimed at securing its own financial and reputational interests to the detriment of Plaintiffs' health and well-being. An extensive review of Plaintiffs' allegations is not required to conclude that denial of Defendants' motion is necessary. A brief synopsis suffices. Many other examples are offered by Plaintiffs in their opposition.

SS-25, like most natural gas wells, was comprised of three concentric steel pipes: (1) the innermost tube, called the tubing; (2) the middle tube, called the production casing or casing; and (3) the outermost tube, called the surface casing. *Pls.' Opp'n*, 5:25-6:9. The space between the tubing and casing is referred to as the annulus. *Id.* Natural gas is generally only flown through the innermost tube of the well. Defendants, however, routinely flowed gas not only within SS-25's tubing but also within the annulus—a technique called annular flowing that is generally “reserved for times of emergency or dire need.” *Id.* at 6:12-21. Plaintiffs argue Defendants engaged in this risky, unnecessary practice at SS-25 despite: (1) its lack of anti-corrosive protective measures; (2) its expiration well was beyond its fifteen-year expected useful life (SS-25 was spudded in 1953); and (3) Defendants' failure to ever directly inspect the well's casing. Plaintiffs further argue that Defendants engaged in this practice despite repeated warnings from one of their storage engineers, James Mansdorfer, who in 2009, 2011, and 2012 suggested that Defendants implement certain safeguards (such as casing inspections, cathodic protection, and subsurface safety valves) if they sought to continue annular flowing at SS-25 and other wells. *Pls.' Opp'n*, 7:17-8:15. Defendants ignored these warnings and chose to continue operating SS-25—with annular flowing—based on “luck.” *Id.* at 6:26-7:1. Defendants eliminated their internal well leak and blowout response capabilities—a critical safety measure—erroneously referring to that countermeasure as “redundant.” Defendants' reply fails to respond to this—it does not mention the word annular flow. See *Def.' Reply*, *passim*.

Plaintiffs allege Defendants' blasé attitude towards operation of SS-25 continued even after the Blowout. The opposition argues Defendants staffed their response with incompetent, unconcerned personnel: (1) Scott Furgerson, a senior officer who admitted that he was “nervous” heading the response because of his lack of knowledge; (2) Phillip Baker, the Director of Underground Storage, who confessed he too was no expert in belowground well operations; and

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(3) Amy Kitson, a storage engineering manager that had just thirteen days experience in her role before the Blowout. Rather than take charge of the emergency, Furgerson and Baker “opted to attend a party together three hours away from Aliso Canyon on the day after learning of the Blowout,” Pls.’ Opp’n, 12:9-17. None of these three managers set foot at Aliso Canyon to respond to the Blowout. Instead, they delegated the initial response to Todd Van De Putte, whose former boss “described the hiring and promotion of Van De Putte as ‘one of the mistakes of [his] career’ because [Van De Putte] ‘kn[ew] enough to be dangerous’ and had ‘really bad logic and decision making.’” Id. at 12:23-25. Like his aforementioned managers, Van De Putte too never visited Aliso Canyon. Instead, he hired a contractor, Alan Fortenberry, whom he directed via text and phone to kill the SS-25 leak despite neither man having any experience or training in killing leaking wells. The first kill attempt “formed a hydrate in the well, preventing later kill attempts by the professionals[,]” and the second—unapproved—“kill attempt exacerbated the volume of gas coming to the surface, causing a crack in the earth to form at the well cellar with gas blowing so hard Fortenberry’s hard hat blew off.” Id. at 13:9-14:6.

These allegations by Plaintiffs support a denial of the motion without touching on the allegations of delayed reporting and other misinformation spread by Defendants in the Blowout’s aftermath—disputed facts that further countenance denying this motion. A trier of fact could conclude this is not merely evidence of an “unsuccessful risk management policy.” Instead, this evidence—viewed in a light most favorable to Plaintiffs—indicates “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). Therefore, the issue of punitive damages will require trial.

Conclusion

Given the Court’s previous ruling denying Sempra’s motion for summary judgment, its arguments against alter ego derivative liability are rejected here for the same reasons. Accordingly, Defendants’ motion for summary adjudication is DENIED.

The Judicial Assistant hereby gives notice.

Clerk's Certificate of Service By Electronic Service is attached.

A copy of this minute order will append to the following coordinated cases under JCCP4861: 18STCV00854, 18STCV01009, 18STCV01013, 18STCV01838, 18STCV04969, 18STCV05328, 18STCV06820, 18STCV10135, 19CHCV00618, 19STCV02570, 19STCV11792, 19STCV19104, 19STCV20976, 19STCV39324, 19STCV41696, 20STCV01226, 20STCV13797, 20STCV21003, 37-2016-00000754-CU-TT-CTL, 37-2016-

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Additional appearances for Plaintiff(s):

Lindsey Jane Bayman (Telephonic) Via LACC
Devin Lynn Bolton (Telephonic) Via LACC
Raymond Paul Boucher (Telephonic) Via LACC
Kelly Learman Browne (Telephonic) Via LACC
Christopher L. Casillas (Telephonic) Via LACC
Jesse Max Creed (Telephonic) Via LACC
James P. Frantz, Esq. (Telephonic) Via LACC
Mark Charles Holscher (Telephonic) Via LACC
Andrew M. Jacobson (Telephonic) Via LACC
Paul Robert Kiesel (Telephonic) Via LACC
Mariana Aroditis McConnell (Telephonic) Via LACC
Matthew Pakucko (Telephonic) Via LACC
Brian Joseph Panish (Telephonic) Via LACC
R. Rex Parris, Esq. (Telephonic) Via LACC
Frank Petosa (Telephonic) Via LACC
Gary Allan Praglin (Telephonic) Via LACC
Alan Irwin Schimmel, Esq. (Telephonic) Via LACC
George Theodore Stiefel, III (Telephonic) Via LACC
Guido Emerson Toscano (Telephonic) Via LACC
Jeff S. Westerman (Telephonic) Via LACC
Evan Zucker (Telephonic) Via LACC

Additional appearances for Defendant(s):

Randy Levine Via LACC (Telephonic)
Thomas Lotterman Via LACC (Telephonic)
John Warren Rissier Via LACC (Telephonic)
Brittany Dawn Ashley Rogers Via LACC (Telephonic)
David B. Salmons Via LACC (Telephonic)
David L. Schrader, Esq. Via LACC (Telephonic)
Yardena Rachel Zwang-Weissman Via LACC (Telephonic)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 1

JCCP4861

SOUTHERN CALIFORNIA GAS LEAK CASES

January 6, 2021

10:30 AM

Judge: Honorable Daniel J. Buckley

Judicial Assistant: S. Chung

Courtroom Assistant: M. Gomez-Barrientos

CSR: J. P. Dominguez, CSR #12523

ERM: None

Deputy Sheriff: None