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SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY

Bryan Canary	Case No.: 24CV001914
Holly Bowers	
Plaintiffs/Petitioners,	Opposition to Motion for Attorney Fees
V.	Memo of Points and Authorities
Micah Forstein)	Declaration of Plaintiffs
Defendant/Respondent	

Unlimited Civil Case - Canary and Bowers (Home Buyers) / Forstein (Home Seller)

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INTRODUCTION and SUMMARY OF REQUEST FOR DENIAL

This is opposition to a motion demanding Plaintiffs pay the Defendant’s Attorney Fees of $145,961.60 because “the Defendant was the prevailing party due to voluntary dismissal” AND because clause 25 in a contract signed by plaintiffs allows for Attorney Fee Shifting for complaints “arising from the contract”.

The motion should be denied for the following reasons:

1. The complaint was and is subject to the “American Rule”, because all causes of action were Torts related to the unlawful induction of a contract. The representation process of the seller is NOT considered part of a contract for this exact reason and others.
2. If this is errantly categorized as a contract dispute (CIV 1549) , CIV 1717 is the statute that governs contract clauses for fee shifting and CIV 1717(b)(2) clearly indicates no fee shifting is due for any “voluntary dismissals” . All dismissals of all causes of action were voluntary.
3. The contract was not mutually consented to, as is required to form a contract per CIV 1565-1567 , thus the fee shifting clause is not binding

4. Fee shifting for punitive reasons with no other legal basis has requirements established in case precedent. The defense presented no precedents and those we present show the threshold was not remotely met.
5. The Defendant failed to mitigate his own legal fees
6. This demand violated due process that was and may still be owed to Plaintiffs by Law
7. The defendant's case precedents all presume a non-disputed consent process and each has additional unrelated nuance.

For the seven different reasons based on law and fact, this motion should be denied. For these same reasons, plaintiffs feel this was a gross abuse of process by 40+ year Defense Attorney Ken Gorman. This motion was used to instill fear in plaintiffs and the public in order to prevent Plaintiffs and others from attempting to use the California Civil System to remedy long standing, systemic frauds of the Brokers as well as individual transaction frauds in this case.

Notice of Pro Se Filing Against our Desires

The Buyers / Plaintiffs ask for the Court's consideration with this filing. Our complaint exposed the Real Estate Brokerage Industry and a portion of the California Legal Lobby in a 40 year fraud related to improper consent to contract processes engaged in by Brokers, the use of unlawful contract clauses to justify illegal activities in benefit to themselves and sellers (their only paying customer), and creation of confusion driven litigation that harmed buyers (and sellers) of real estate. That exposure prevented support for representation for this complaint and subsequent unlawful motion.

== MEMO OF POINTS AND AUTHORITIES ==

1) Torts Claims are subject to American Rule. This was only Tort Claims

All causes of action for this complaint were Torts for fraud in the representation process that destroyed the contract consent process. All nefarious behavior by the Defendant and those in service to him transpired prior to the flawed contract acceptance and consent process. Torts are subject to the "***American Rule***" where each party pays own costs. "Each party bear the cost of its attorney's fees regardless of the outcome of the litigation" Normex Steel Inc v Charles D. Flynn // Alyeska Pipeline Co. v. Wilderness Soc'y, 421 U.S. 240, 247 (1975)

See Declarations later in document in response to Gorman's Motion statements and "Question of Law and Fact that Establish this as a Tort Claim" for additional support with numerous statutes, case precedents, CACI references and an email sent to Gorman on 11/19/2024 referencing the CA DRE (California Department of Real Estate) Reference Book that explained the Tort vs Contract scenario properly. It explained the disruption of the Consent process disrupts contract formation and thus that fraud must be a Tort. Gorman ignored that information. Gorman was also in possession of the TDS which states it is not to be considered part of a contract for this exact reason and others.

Attorney Gorman's attempts to mislead the Court

Defense Attorney Ken Gorman has over 40 years in law. Gorman worked too hard to declare this a contract claim and a "conspiracy" by plaintiffs to omit a breach claim to avoid the fee shifting clause without any proper legal basis and he then tried to distort 1717(b)(2). Either Gorman's been practicing wrong for 40 years or this was an intentional, unlawful attack without legal or factual basis, and in either event he should be sanctioned.

In the alternative ….

2) Contract based Attorney Fee Shifting Clauses are subject to CIV 1717(b)(2) which calls for American Rule unless adjudicated by third party

No "breach of contract" claim based on CIV 1549 was made because there is currently no agreement between parties on mutual consent to contract as is required to form a contract.

That notwithstanding, if this complaint is errantly categorized as a contract claim and subject to the Attorney Fee Shifting clause in paragraph 25 of the agreement, such clause is governed by CIV 1717. CIV 1717(b)(2) relieves Plaintiffs of legal fee shifting by stating, "***Where an action has been 'voluntarily dismissed' or dismissed pursuant to a settlement of the case, there shall be no prevailing party for purposes of this section***." and because all causes of action were dismissed by Plaintiffs voluntarily.

1. The Plaintiffs voluntarily dismissed some causes of action with prejudice as a show of good faith, in hopes of encouraging work together to pursue the Brokers. Unfortunately, that did not work.
2. The Plaintiffs voluntarily dismissed the remaining causes of action without prejudice due to a need to change strategies for recovery based on information obtained in discovery.

Attorney Gorman's Misrepresentation of Law to the Court

On page 7 Line 14 of the Defendant's Motion Filing, Defense Attorney Gorman fraudulently misrepresents CIV 1717 by stating, "Per Civil Code section 1717, a dismissal without prejudice …does not convey prevailing party status … for breach of contract." -- ***instead of properly stating*** -- "Per Civil Code section 1717(b)(2) no voluntary dismissal conveys prevailing party status".

> (2) Where an action has been voluntarily dismissed or dismissed pursuant to a settlement of the case, there shall be no prevailing party for purposes of this section.

This is GROSS suggestion by Gorma misrepresented CIV 1717, 1717(b)(2) and the full theme of Attorney fee shifting. This attempt to fool the court by Gorman, a 40 year attorney, is sanction worthy. This motion should NEVER have been submitted to the court for this reason alone.

Thus, even if this complaint is errantly categorized as a contract dispute, the motion for Attorney Fee Shifting should be dismissed with no further consideration.

All information below is supplemental and/or in the alternative to the American Rule for Tort Clams and/or the a contract claim which did not legally or factually exist that is subject to CIV 1717(b)2 for relief of Attorny Fee obligations…

3) Nonbinding Attorney Fee Clause due to Fraud in Consent & Unlawful Contract

For the Attorney fee clause to be "binding", the contract had to be properly consented to (CIV 1565-1567).

> "As a general matter, prevailing litigants are only entitled to collect attorney's fees where there is explicit statutory authorization or a **binding** contractual provision providing for such awards" . Normex Steel Inc v Charles D. Flynn // Key Tronic Corp. v. United States, 511 U.S. 809, 814-15 (1994) (emphasis ours and where "binding" is the key word we are focusing on in the case precedent statement)

This complaint revolves around a disputed consent process involving broker concealment of disclosure documents prior to consent and incomplete representations on incomplete disclosure documents signed by the seller and accepted by the Broker days before buyers first looked at the property. This dispute does not arise from the contract and if it did, we would then call into question the legitimacy of the contract for the reasons stated prior.

Thus, the motion for Attorney Fee Shifting should be dismissed with no further consideration because no clear case can be made the contract is even binding at this time.

4) Fee shifting for punitive purposes w/o other legal basis is not qualified

Fee shifting for punitive purposes without other legal basis requires frivolousness and other factors defined clearly in precedent.

> "However, even absent such a statutory grant or contractual right, the Court retains the inherent power to shift fees in its discretion where a party acted in bad faith, vexatiously, wantonly, or for oppressive purposes. Chambers v. NASCO, 501 U.S. 32, 45-46 (1991); accord Fink v. Gomez, 239 F.3d 989, 993-94 (9th Cir. 2001) (court's inherent power to sanction available upon finding that party acted in bad faith or engaged in "conduct tantamount to bad faith," including recklessness when combined with an additional factor such as frivolousness, harassment, or an improper purpose). Normex Steel Inc v Charles D. Flynn

In this motion for Attorney Fees, Gorman made numerous references to plaintiff behavior he deemed inappropriate, including the reference to a photo of a man in Camel fully out of context to actual dialogue, anti-semitic comments which don't exist with that context, and other false references.

Over 300 emails transpired between Canary,Gorman and Forstein. A log has been created of those emails that is over 100 pages long . That can be submitted to the court for review. In no way does the actual dialogue exposed in the email log align with Attorney Gorman's limited retelling, nor does any dialogue constitute punitive fee shifting. To the contrary, Gorman's aggressive desire to mislead the court is sanction worthy at a bare minimum.

If any consideration is given initially to Gorman's statements of impropriety, these points below are more appropriately based in law and fact for counter consideration…

1. Frivilous - If the complaint was frivolous Gorman should have filed a demurrer or a motion to dismiss as soon as that became apparent and that should have happened long before 145k in legal fees stacked up.
2. Statute of Limitations - If the complaint was subject to statute of limitations Gorman should have addressed that with a demurrer or motion from the start and that should have happened long before 145k in legal fees stacked up.
3. Protective Order - If the plaintiff's request for discovery for FIFTY acts of fraud were too much, Gorman should have cautioned us about a possible need for a protective order and/or filed for a protective order. Neither happened.
4. CIV 1572/1573 - If Gorman was honestly interested in engaging in proper legal discourse with his clients billing in mind, for a case related to Misrepresentation and Concealment to induce a contract(CIV 1572/1573 and/or CIV 1709/1710) he should have been able to provide his definition of fraudulent misrepresentation and an example of such an act before racking up $145k in fees. He never did.
5. TDS / SPQ Misrepresentations - If Gorman was honestly interested in engaging in proper legal discourse with his clients billing in mind 1) when presented with 15 pages of facts related to fraud in the TDS and SPQ as part of the verified complaint incorporated via Exhibit A1.1, he would have properly replied to those with a verified response as opposed to an improper general denial on a verified complaint 2) when presented with an amended complaint to correct original complaint misunderstanding Gorman would have permitted the amended complaint to fix his own defective response, 3) when presented with the TDS and SPQ summary of frauds and omissions he / they would have simply pointed out where and when the proper and complete statements were made

6. Uncoscionable Admit responses - If Gorman was honestly interested in engaging in proper legal discourse with his client's billing in mind, he would NOT have stated, "representation statements" , "contract formation" and "omissions" were vague concepts in his clients admit responses.
7. Contract Clauses 14A, 14F, 10A7 and CAR Contract Disclaimer - If Gorman was honestly interested in engaging in proper legal discourse, he would have inquired intently on the facts we could present on the contract that show at face value Clauses 14A, 14F, 10A7 these are all unlawful per CIV 1667-1668, case precedents and manny other ways. He never did
8. CACI 4019 and 4107 - If Gorman was honestly interested in engaging in proper legal discourse, he would have recognized CACI 4109 for identifying Selling Broker's intentional withholding of material facts from a buyer as the avenue for recovery for all of us, with ZERO viable dispute position from the brokers. He never did.
9. Jue v Smiser - If Gorman was honestly interested in engaging in proper legal discourse, he would have returned our request for his position on Jue v Smiser , which defines reliance for fraud at time of signing the Contract and a buyers ability to pursue a seller for non-disclosed items found in escrow. He never did.
10. Jue v Smiser in CA Bar Publishings - If Gorman was honestly interested in engaging in proper legal discourse, he would have returned comments on why the CA Bar Publishing with reference to Jue v Smiser were not relevant. He never did.
11. CIV 3343 - If Gorman was honestly interested in engaging in proper legal discourse, he would have referenced CIV 3343 as the proper statute for discussing damages related to Misrepresentation and concealment fraud in real estate contract induction. . He never did. Instead he made bizarre comments suggesting if the plaintiffs did not get someone else to repair defects there was no recoverable damage, with no regard for the fact that plaintiffs are forced to disclose all this in the future and non-repaired items would simply be disclosed and reduce property value as they should have been for the seller.

12. 40+ Contractor Quotes for 25 conditions - If Gorman was honestly interested in engaging in proper legal discourse, he would not have misled the court to believe there were not over 40 contractor quotes for over 25 defective conditions with 17 of those having quotes from two contractors each and a caveat stating if they did not agree with any quotes we were open for dialogue.
13. Motion to Compel was his unlawful Hail Mary for escape - If our discovery responses were actually incomplete, Gorman would not have pushed off a motion to compel for over 60 days. Furthermore, on 12/18/2024, he would not have given us until 1/3/2025 to correct non-existent problems and then filed his motion to compel on 12/23/2024 just 5 days after giving us 15 days to try to figure out what he was claiming was still incomplete. NOTE: On 12/19/2024 they provided response to interrogatories, where the defendant claimed he was not disputing any defective conditions, and thus, they seem to have lost track of their futility strategy for confusion and Gorman then seemed to panic (See Declaration for details)

At https://canary-v-forstein.bryancanary.com/fee-shifting documents labeled Declaration 1 (40 year hoax), Declaration 2 (Motion Filing Analysis), Declaration 3 (Form Interrogatory Response Analysis) and Declaration 4 (email log) are currently available to the public at. We felt no need to deliver 100's upon 100's of pages of declarations to the court for this motion, but they can be filed immediately with the court if requested by the Judge.

In light of the provable facts above, the $145,000 bill , with hours that can NOT be properly verified in any reasonable manner, was the result of bill churning, a futility defense gone wrong, and or fraudulent billing.

No Defendant should be able to accumulate a $145,000 bill on a Frivolous complaint or one that is now stated to be in violation statues of limitations -- and no statements about plaintiff behavior can distract from the actual dialogue that transpired via 300 emails that reveals no sincere attempt for

dispute resolution by Gorman from Day 1, when a response marked as verified was delivered in a non-verified manner.

Thus, the motion for Attorney Fee Shifting should be dismissed with no further consideration.

5) The Defendant failed to Mitiagate Legal Fees involving Attorney Bill Churning and/or Agreed upon Futility Defense

1. The defendant and his attorney marked their complaint answer as verified but provided a general denial to the 15 pages of fact statements related to over 50 acts of actual misrepresentation and concealment. Thus they fraudulently established a discovery starting point that required hundreds of admit statements to qualify their position on 50 acts of fraud that should have been known from the verified response.
2. Upon discovery of the errant response, the plaintiffs asked to stipulate to an amended complaint on three different occasions to simplify and speed up the path to agreed upon and disputed facts for actual fraud relevant to the defendant only without conspiracy with others involved. Those requests were declined.
3. The plaintiffs eventually, voluntarily dismissed personal injury and conspiracy causes of action with prejudice, as a show of good faith, and in efforts to get the seller to “work with plaintiff” to expose the Broker frauds best characterized via CACI 4107 and 4109 . Unfortunately, after partial dismissal, the defendant was still unwilling to cooperate.
4. The plaintiffs presented a much shorter, 18 page amended complaint draft which would dramatically simplify the agreed upon and disputed questions of fact and law, and again the Defendant refused to stipulate.
5. After months of avoiding facts, on 12/19/2024 on Page 17, paragraph 55, of his response to form interrogatories Forstein admitted to all conditions, thus leaving disputed facts strictly about representation law and (defective) contract clauses, which would have eliminated the bulk of 4 months of back and forth.

6. With regards to proactively attempting to educate the Defendant and his attorney to the Brokerage Frauds, the plaintiffs included Cause of Action 7 in the original complaint, along with facts to support that in paragraphs 38-48 AND exhibits sharing the Jue v Smiser case precedent , the Bar presentations referencing Jue v Smiser, and a dozen other relevant case precedents. Defendants made the case for CACI 4107 and 4109 jury instructions easy, and the defendant and Attorney Gorman turned a blind eye.
7. In Defendant admit responses, the defendant and his attorney refused to agree to any definition for "fraudulent misrepresentation" while stating the phrases "representation statements", "contract formation", and "omissions" were vague concepts.

Thus, this demand for $145,000 in billing is outlandish given the Defendant did NOTHING in a manner conducive to mitigating his own legal fees in a Tort Claim subject to the American Rule and/or an improperly categorized Contract Dispute subject to CIV 1717(b)(2) with no exceptions.

Thus, the motion for Attorney Fee Shifting should be dismissed with no further consideration due to Defendants lack of management of his own attorney and no good faith effort to efficiently get to agreed upon and disputed facts and matters of law.

6) Violation of Due Process

The Causes of Action for Personal Injury and Conspiracy with Broker to withhold Material Fact (CACI 4109) were dismissed voluntarily by plaintiffs, but with Prejudice, as part of a negotiation strategy (as well as an attempt to try to get the Defense Attorney back on track).

1. Show of Good faith - The dismissal with prejudice was a a show of good faith to the defendant, in hopes removing some stress would encourage the defendant to spend his legal fees pursuing the brokers and others in cross complaints where he could recover legal fees while helping all of us recover

2. Requirement For Defense Attorney Management - the dismissal of these causes of action while leaving only the fraud by the defendant was an attempt to prevent the Defense Attorney from avoiding the actual fraud his client was responsible for directly.

The Causes of Action for Fraud to Induce the Contract were dismissed voluntarily by plaintiffs without prejudice due to attorney and defendant futility strategies involving the original complaint, a refusal to stipulate to an amended complaint in search of agreed upon and disputed facts, the defendant's job loss, growing concerns that collecting on any judgements may be difficult, and the need to add Corporate Brokerages to a new complaint for monetary recovery given it was apparent the Defendant and his attorney were not interested in filing proper cross complaints against them.

At time of dismissal of the final causes of action, we still had time to file complaints against the brokers with or without Forstein for anti trust acts under a 4 year statute. We also felt we could get the misrepresentation causes of action back on with a far shorter complaint with an argument for statue tolling.

This aggressive motion filed by Attorney Gormanion to shift fees without legal or factual basis was designed to threaten and paralyze us, robbing us of opportunities for Due Process still available to us as well as to scare off all others who might seek to use this system for remedy.

Thus, the motion for Attorney Fee Shifting should be dismissed with no further consideration.

7) Defendants Case Precedents NOT applicable (all had non-disputed Consent Process)

Page 6 - Chinn v KMR Property Management (2008) 166 Cal. App. 4th 175, 190.

"A dismissal with or without prejudice gives rise to prevailing party status for a cost award"

This case precedent is not applicable. This precedent starts with a valid lease (contract) with no dispute about the formation process, as is found in our complaint. It's only a case precedent because the voluntary dismissal stemmed from an arbitration setting where the parties did not clarify if the Attorney Shifting clause was or was not still valid and/or subject to 1717(b)(2) as the Judiciary had expected they might have. There's no agreement on contract validity no arbitration setting here. **Nothing about this is relevant to this complainant.** .

Page 7 - Santisas v Goodin (1998) 17 Cal 4th 599

"Caselaw makes it clear that where the relationship between the parties is based on a contract, and the plaintiff files a complaint 'arising out of' the contract, the defendant will be considered the prevailing party for attorney fees on the non-contractual causes of action… In that case, the plaintiffs filed an action alleging contract and tort claims. The Supreme Court resolved conflicting Court of Appel decisions in voluntary dismissals cases and held that the trial court has discretion to determine which party is the prevailing party entitled to fees".

This case precedent is not applicable. This precedent starts with a valid lease (contract) with no dispute about the formation process, as is found in our complaint and it includes adjudication by the courts, which was not the case with our complaint prior to voluntary dismissals. **Nothing about this is relevant to this complainant.**

Page 8 - Fed Corp v. Pell Enterprises Inc (1980) 111 Cal.App.3d 215, 277; Reynolds Metals Co v Alperson (1979) 25 Cal.3d 124, 129-130 -

"if the claims are so intertwined that it would be impracticable, if not impossible to separate the multitude of conjoined activities into compensable or noncompensible time units".

This case precedent is not applicable. This precedent starts with a valid lease (contract)

with no dispute about the formation process, as is found in our complaint. There are no intertwined claims. Our claims were Torts related to the fraud to induce a contract that was never formed at all or never formed properly due to deceit of the Brokers, the Seller's Agent, the Seller and the inclusion of non-lawful clauses in the contract provisioned by the Brokers, who were in contractual and financial service to the Seller. There were no contract claims to intertwine with. **Nothing about this is relevant to this complainant.**

Summary of Memo of Points and Authorities

The motion should be denied for all reasons provided.

== DECLARATION OF PLAINTIFFS ==

1a) Attorney Gorman's Attention to Legal Facts and Detail was absent for 6 months - Responses to Motion Paragraphs prove that beyond all doubt

Attorney Ken Gorman ignored case precedents, state statutes, other legal facts, and complaint facts for 6 months with no opposing legal positions of his own. Gorman did NOT reference a single relevant statute or case precedent in his defense while running up a $145,000 legal fee. At this time it's still believed he never read the complaint before getting well into discovery. We believe he had subbed out the complaint answer and discovery inbound and outbound to his para-legal or another party. The information below exposes a near bottomless list of misrepresentations by Gorman in his motion filing.

Page 2

On page 2, in the summary of events leading to lawsuit section, there are many mis-statements of fact.

1. Forstein lived in his home for 5 years not 8
2. $40,000 of work was done not $60,000
3. Plaintiffs moved to California in 2012, 13 years ago, not "several" years ago
4. Plaintiffs were asked to move out so their landlord could move her family into the illegal rental they were in, not so she could move back in,
5. Canary never became "disabled"
6. The renovations and rentals were completed before physical disabilities prevented Canary from doing that further.
7. The adjustment between offer and counter offer were related to terms, not conditions,
8. Forstein's, presale termite and home inspection reports were provided to plaintiffs BEFORE making an offer, not after, as suggested by Gorman (MAJOR FACT CONFUSED)

9. Forstein's 2015 home inspection report from when he purchased the property was withheld from buyers before offer, and delivered 16 days into escrow, on the day plaintiffs were supposed to remove their condition contingency. It exposed Forstein's knowledge of material defects that were NOT represented on his TDS, SPQ or his pre-sale inspection report done by others. (MAJOR FACT CONFUSED)

Page 3-4

On page 3, Ken Gorman wrote, "The entire relationship between these parties began with the offer, counteroffer, acceptance and consummation of the sale and purchase of 12 Bayview Road, pursuant to the CAR residential purchase and sale agreement, Mary-April 2021 for 895,000. That is beyond dispute"

1. That is a false statement.
2. The relationship started with property viewings followed by "representations of condition" presented in presale home inspection reports prior to making an offer.
3. It was also supposed to start with delivery of the TDS and SPQ for consideration prior to the offer as well.
4. The proper order for consenting to contract is RROA -> Representation Reliance Offer and Acceptance
5. This complaint is related to the defective representation and reliance process all of which happened prior to offer and is thus Torts for deceit and deception.
6. Thus Gorman's summation of start of relationship is fully inaccurate in an attempt to put attention on the offer and contract inappropriately.
7. THESE ARE NOT SMALL FACTS NOR ONE TO GET WRONG in a case were 1/3 of damages are for fraudulent misrepresentation discovered during escrow that is subject to Jue v Smiser Case precedent (See image below)

[8] Effect of Plaintiff's Discovery of True Facts Before Close of Escrow in Real Property Sale

The plaintiff's discovery of the true facts after signing a real property purchase agreement but before the close of escrow does not preclude a finding of justifiable reliance with respect to false representations made by the defendant before the purchase agreement was signed. The plaintiff's reliance at the inception of the agreement is sufficient to support recovery for fraud [Jue v. Smiser (1994) 23 Cal. App. 4th 312, 313, 316–318, 28 Cal. Rptr. 2d 242].

We can NOT have a conversation about fraud found in escrow if the defense attorney misrepresents what information was and was not presented BEFORE contract acceptance and what should have been presented. Information was presented

The basis of the complaint was the TDS and SPQ as conveyed to him clearly.

canary-v-forstein

Forstein, both Agents, both Txn Coordinators, both Brokers, both Brokerages (Part 1)

=== TDS 1 - TDS Fraud (8 pages) ===	**view**	**as of 1**
34.1) Failed to deliver TDS in accordance w/ CA 1102		(Br
34.2) Failed to deliver TDS in accordance w/ Representation Law		(Br
35) Delivered TDS in patently incomplete manner		(Br
36) Delivered TDS with over 50 fraudulent statements		(Se
=== SPQ 1 - SPQ Fraud (13 pages) ===	**view**	**as of 1**
37.1) Failed to deliver SPQ in accordance w/ CA 1102		(Br
37.2) Failed to deliver SPQ in accordance w/ Representation Law		(Br
38) Delivered SPQ in patently incomplete manner		(Br
39) Delivered SPQ with over 50 fraudulent statements		(Se
=== SAVID 1 - Sellers AVID Fraud (6 pages) ===	**view**	**as of 1**
40) Failed to deliver Sellers AVID in accordance w/ Representation Law		(Br
41) Delivered Seller's AVID in patently incomplete manner		(Br
42) Delivered Seller's AVID with over 50 fraudulent statements		(Se

Page 4

On page 4, the first paragraph, Ken Gorman wrote, “The gist of plaintiffs complaint is that Mr. Forstein was obligated to provide all the disclosures before plaintiffs made an offer”.

THAT IS THE EXACT GIST OF THE COMPLAINT , along with the fact that all representations made needed to be complete and full statements of fact, not statements were we were told ‘no pets were on the property” yet, “cat urine was clearly disclosed” when nobody could have surmised that?

10. PETS, ANIMALS AND PESTS: **ARE YOU (SELLER) AWARE OF...**

A. Pets on or in the Property	☐ Yes	☒ No
B. Problems with livestock, wildlife, insects or pests on or in the Property	☒ Yes	☐ No
C. Past or present odors, urine, feces, discoloration, stains, spots or damage in the Property, due to any of the above	☒ Yes	☐ No
D. Past or present treatment or eradication of pests or odors, or repair of damage due to any of the above	☒ Yes	☐ No

If so, when and by whom See pest control report. past rodent problem. Termite signs in

Explanation: Pool house.

Given Gorman had such clarity on the “gist” of our complaint with this one line summary, how exactly did he allow his client to get to $145,000 in legal fees, and, why did he state "representation statements”, “contract formation” and “omissions” were vague in their response to admits while refusing to agree to a definition of fraudulent misrepresentation?

This requirement for presentation of material fact is foundational to establishing claims for fraud to induce a contract per CIV 1572/1573, CIV 1709/1710 and with support of Jue v Smiser (1994) 23 Cal. App. 4th 312-318 , Loughrin v. Superior Court (1993) 15 Cal.App.4th 1188, 1195 , Lingsch v. Savage, supra, 213 Cal. App. 2d at 742 ; and many others.

[8] Effect of Plaintiff's Discovery of True Facts Before Close of Escrow in Real Property Sale

The plaintiff's discovery of the true facts after signing a real property purchase agreement but before the close of escrow does not preclude a finding of justifiable reliance with respect to false representations made by the defendant before the purchase agreement was signed. The plaintiff's reliance at the inception of the agreement is sufficient to support recovery for fraud [Jue v. Smiser (1994) 23 Cal. App. 4th 312, 313, 316–318, 28 Cal. Rptr. 2d 242].

CACI 4107 and 4109 are the proper jury instructions for the failure of a broker to present TDS and SPQ prior to contract acceptance .

So given he just stated the majority of our complaint in two lines so clearly here, why didn't he summarize our position like this day 1 and how did he get to $145,000 in legal fees?

On page 4, the second paragraph, Ken Gorman misrepresented and omitted our most relevant causes of action. (see image below) 1) He left out CoA 6 - Negligent Misrepresentation completely, the most relevant CoA for baseline causation and 2) He abbreviated CoA 7 to mask the true context of that.

The facts set out in Plaintiffs' complaint, which are common to all of the causes of action, all arise from the contract, commencing with the initial offer by Plaintiffs and continuing through the causes of action for 1) Actual Fraud; 2) Constructive Fraud; 3) Negligence; 4) Infliction of Emotional Distress-Intentional; 5) Infliction of Emotional Distress-Negligent; 7) Conspiracy-Broker Liability; 8) Conspiracy-Broker Constructive Fraud ; 9) Conspiracy-Principal's Breach of Duty of Good Faith and Fair Dealing; 10) Breach of Implied Covenant of Good Faith and Fair Dealing; and 11) Unjust Enrichment. Virtually everything that has occurred between Plaintiffs and Mr. Forstein stems from that. So all of the causes of action "arise from the contract" though notably, there is no cause of action for breach of contract. Per Mr. Canary's emails, that was deliberate. In fact, the CAR contract is not included in the 100 pages of exhibits.

6) Negligent Misrepresentation (omitted by Gorman in his motion)

7) “Conspiracy - Broker Liability” was in fact - “Conspiracy with Broker to Conceal material facts from buyer” → best characterized via CACI 4109.

4109. Duty of Disclosure by Seller’s Real Estate Broker to Buyer

Gorman should be sanctioned for his omission of Cause of Action 6, “Negligent Misrepresentation” in the prose of his motion. That was the default cause of action for all misrepresentation damages and Gorman managed to omit it in his motion

Gorman should be sanctioned for his deceptive abbreviation of Cause of Action 7, given ”Conspiracy- Broker liability to purchase for intentional non disclosure” is what inculcates CACI 4107 and 4109 and Gorman sought to mask that with ‘Conspiracy in Broker Liability’ which is not remotely accurate.

These acts gone unchallenged would have misled the court.

Page 4 - Gorman states, “ A true copy of the CAR agreement is Exhibit A to the Gorman declaration below.”

The “true” copy was attached in Exhibit A, but that does not mean it was a “proper or legitimate legal document”. Gorman failed to state the footer of the CAR Contract on page 10 states, “***No representation is made as to the legal validity or accuracy of any provision in any specific transaction***”.Indeed a true copy of the CAR contract is

attached, but it is unlawful in many ways as outlined elsewhere.

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Buyer Acknowledges that page 10 is part of this Agreement X(BC DS)X(AB DS)
Buyer's Initials

RPA-CA REVISED 12/18 (PAGE 10 of 10)

CALIFORNIA RESIDENTIAL PURCHASE AGREEMENT (RPA-CA PAGE 10 OF 10)
Produced with Lone Wolf Transactions (zipForm Edition) 231 Shearson Cr. Cambridge, Ontario, Canada N1T 1J5 www.lwolf.com 12 Bayview Rd

Page 4, bottom paragraph - Gorman states, “To preempt any claim that Plaintiffs did not understand the contract: they were represented by an experienced realtor, Pamela Palacios with Coldwell Banker”

Pamela Palacios was inexperienced. As a condition of working with her, she had to identify a Broker or Mentor to partner with.

Palacios could not explain clause 14A, 14F, 10A7 or others. Palacios had to ask 40 year agent, Corporate Trainer, and her paid mentor, Peter Whyte, and others to explain it.

Whyte stated the illogical and inverted representation process in 14A was simply a “long standing process” which was still followed in Monterey County, but seemingly not followed in other counties due to an informal agreement by Brokers and Agents.

Whyte had no ability to shed light on any legal statutes supporting behavior one way or another and didn’t seem to realize that an agreement not to allow performance to the contract in other counties was unjust to the seller if in fact it was legal to withhold disclosure statements.

And referring back to the “gist” of this complaint, at this time Attorney Gorman can not even explain the CAR Contract in way that legalizes or legitimizes clauses 14A, 14F, 10A7 or

others. Just because they are in the contract does NOT make them legal. That's what California's "Unlawful Contract" Statutes are designed for and it's why all statutes for contract formation, with special attention to CONSENT, must be understood and applied to contract clauses.

Page 4 , bottom paragraph, Gorman states, "in paragraph 6 of the contract, Mr. Canary wrote that he has "an active real estate license in the State of Maryland and is acting as a principle in the transaction." His emails and discovery responses state that he has bought, flipped, and rented out many homes. He is fully familiar with how home sales work and cannot be heard to say he did not understand."

Canary does know what is required to form contracts in all "civil systems", and that starts with "representations for reliance". RROA - "representations - reliance - offer -

acceptance". It's been like this since the beginning of Contracts. How Gorman does not know that is the concern.

Furthermore, in California the statutory components required to form a contract are 1) Parties Capable of Contracting 2) Their Consent, 3) A lawful object and 4) sufficient consideration.

CHAPTER 1. Definition [1549 - 1550.5] *(Chapter 1 enacted 1872.)*

1549. A contract is an agreement to do or not to do a certain thing.
(Enacted 1872.)

1550. It is essential to the existence of a contract that there should be:
1. Parties capable of contracting;
2. Their consent;
3. A lawful object; and,
4. A sufficient cause or consideration.

(Enacted 1872.)

This is why a mental health issue declared by Forstein could have been viable for his defense suggesting he wasn't properly capable to contract AND the consent has to be "mutual" , meaning without fraud or other negative factors, , which is what makes the idea of providing representations AFTER a contract is accepted fully illogical as there can be no mutual consent with that process nor did each party communicate to the other properly.

CHAPTER 3. Consent [1565 - 1590] *(Chapter 3 enacted 1872.)*

1565. The consent of the parties to a contract must be:

1. Free;
2. Mutual; and,
3. Communicated by each to the other.

(Enacted 1872.)

1566. A consent which is not free is nevertheless not absolutely void, but may be rescinded by the parties, in the manner prescribed by the Chapter on Rescission.

(Enacted 1872.)

1567. An apparent consent is not real or free when obtained through:

1. Duress;
2. Menace;
3. Fraud;
4. Undue influence; or,
5. Mistake.

(Enacted 1872.)

Canary was and still is shocked that Attorneys such as Gorman, and Brokers in California actually seemed to believe or they wanted others to believe "representations for reliance" can be delivered AFTER acceptance, with seemingly no knowledge of CIV 1565-1566 (consent) or CIV 1667 and 1667 (unlawful contracts) statutes. This is entering legal retardation territory given the statutes are so clear.

To imagine 440,000 Licensed Real Estate Brokers/Agents, and 260,000 Attorneys had no foundational contract formation understanding which is universal across the rest of the United States and anywhere else with Civil Codes for contracts is shocking.

Based on his own writing, Gorman seems to have been malpracticing for 40 years and every contract dispute he touched for any reason (real estate or other) may now be subject to review and dispute.

Page 5

Page 5 , second paragraph , Gorman states, “In fact, as per pages 8 and 9 of Exhibit D to the Gorman declaration below, Mr. Canary attempted to explain why Plaintiffs believed the attorney fees provision in the CAR contract should not apply or is nullified. To his own detriment, he stated that the complaint was not for breach of contract. So Plaintiffs were fully aware of the attorneys’ fees clause when they filed their Complaint- they just want it not to apply to them..”.

“To his own detriment, he stated that the complaint was not for breach of contract.” ???

because fraud to induce a contract transpires before a contract exists , it disrupts the consent process, one of 4 pillars required for contract formation, and thus it’s a tort by nature and subject to the America Rule? How does that work to our detriment?

“they just want it not to apply to them” ???

For the same reasons just provided, plus the fact the TDS and SPQ explicitly state they are NOT part of the contract?

II. SELLER'S INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

Seller ☐ is ☒ is not occupying the property.

A. The subject property has the items checked below: *

and if we did errantly agree they were contract disputes, CIV 1717(b)(2) applies, and when properly read it results in no fee shifting absent 3rd party adjudication?.

Gorman should be sanctioned for his industry specific incompetence and/or intentional misrepresentation of documents and law that makes this motion mute and results in abuse of process with attempts to mislead the court.

Page 5 , fourth paragraph , Gorman states, “Plaintiffs claim that they contacted over 80 attorneys about filing lawsuits, but no one would take the case because the attorneys are all in a conspiracy with the realtors,.”

1. Some seem to be in conspiracy with the realtors, with Gorman being an apparent example, and others seem to be terrified to step into court against someone like Gorman who is ignoring all statutes and laws related to contract formation and attorney fee shifting with no counter balance. We are currently exposing a situation we deem to be “insane” in the context of law and any sane attorney who knows this can transpire in these disputes had to remain quiet to protect their own reputation.
    a. CACI 4107 and 4109 accurately describe the brokers withholding of material fact in their possession but Gorman claims no evidence exists to pursue them. .
    b. Gorman was provided CoA 7 - Broker liability to purchaser for intentional non-disclosure and he looked the other way.
    c. Gorman has omitted proper reference to CIV 1717(b)(2)
    d. Gorman failed to refute relevance of Jue v Smiser
    e. Gorman failed to provide any legal support for the CAR Contract that is not otherwise warranted to be legal,
2. From the facts presented in this response alone, it seems Gorman has proven Attorneys were and are working in conspiracy with the realtors and/or concealing their deceit, and this should result in disbarment for Attorney Ken Gorman, Attorney Will Fiske of Anywhere Real Estate, the Attorneys at Broker Risk Management and many others.

Page 5 - 1st paragraph under Procedural Status, Gorman stated, “This firm was retained and filed a verified answer on June 12, 2024.”

Gorman marked the complaint answer as verified but provided a general denial to the 15 pages of fact statements related to over 50 acts of actual misrepresentation and concealment with 30 of those having financial consequence.

Verified complaint - Causes of Action with 50 counts detailed in separate document

17	**First Cause of Action / Counts 1 through 50**
18	< see Cause of Action exhibit for counts 1 through 50 >
19	
20	NOTE: Due to the volume of fraudulent acts, a document with a separate table of contents and
21	greater formatting functionality was needed.

15	
16	**Second Cause of Action / Counts 1 through 50**
17	< see Cause of Action exhibit for counts 1 through 50 >
18	
19	NOTE: Due to the volume of fraudulent acts, a document with a separate table of contents and
20	greater formatting functionality was needed.

Verified Answer - was a “general denial” ignoring 15 pages of individual fact statements that needed to be answered.

3	First Cause of Action - Actual Fraud: Denied.
4	Second Cause of Action - Constructive Fraud: Denied.

The image below is the table of content and an example of the statement of facts Gorman and Forstein generally denied with a single statement.

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== Forstein Fraud with participation by Weinstein ==

Count 1 - Well Utility Bill - Electric Usage - $32,400 / $162,000

1. Weinstein was asked to get Utility Costs from Forstein for the "Well System" prior to Making a Binding Offer to purchase.
2. Weinstein provided information via email he indicated was verbatim from Forstein.
3. It indicated the cost was $75/mo .
4. After Close of Escrow, Plaintiffs found it to be $165/mo
5. Plaintiffs contacted Forstein directly and asked him to provide documentation proving his disclosure statements were accurate. He was also asked to provide "proof" he had provided the text that was provided to the Plaintiffs, to ensure Weinstein was not fabricating text. Mis-statements in other Representation statements and on disclosure documents suggested Weinstein may have been fabricating disclosure and representation statements for Forstein.
6. Forstein refused to provide historical billing/payment information or proof he made the written statement provided by Weinstein to the Plaintiffs.
7. This is not a "warranty" or "guarantee" issue. This is a false disclosure issue that Forstein refused to clear up / prove after close of escrow when presented with facts and data that justified he prove his representation statement was accurate.
8. Damages are based on differences between Plaintiffs Experience and disclosed.
9. Compensatory - $1080/year x 30 years -= $32.400
10. Punitive - - $32,400 x 5x = $162,000

Count 2 - Home Utility Bill - Gas Usage - $36,000 / $180,000

1. Weinstein was asked to get Utility Costs from Forstein for the "Home Utilities" prior to Making a Binding Offer to purchase.
2. Weinstein provided information that was suggested to have been verbatim from Forstein.
3. The statement made no reference to gas usage at all and it contained misleading reference to electric use, as discovered later.
4. Plaintiffs rented a home a mile away and they had lived there for 9 years. That home had very low heat use so they were not surprised by a lack of reference to gas/heat costs.
5. They relied on the statement provided via email, feeling there was likely low to no gas usage and the electric bill should be free or even make money given the solar system on the home.
6. During the first cold season it was discovered this home requires heat from November through March to hold 65 degrees indoors and in 2024 it was November through April. It was also discovered the monthly electric bill averages $100/month.
7. Plaintiffs suspect Forstein suppressed a minimum of $1200/year or more in gas usage to avoid disclosure of those costs and the HVAC system imbalance and he may have suppressed electrical usage as well.
8. It's unclear at this time who created the prose that was conveyed to the Plaintiffs prior to Contract Acceptance
9. Compensatory - $1200/year x 30 years -= $36,000
10. Punitive - - $36,000 x 5x = $180,000

== Forstein, Weinstein and the Pre-Sale Home Inspector ==

Count 6 - HVAC Explosion Hazard - $8,000 / $40,000

1. Neither Weinstein or Forstein made representations about the fire/explosion hazard related to the Furnace Mounting Configuration prior to Contract Acceptance
2. Weinstein provided a pre-sale Home Inspection report on behalf of his client. The Home Inspection report was from a local home inspector who touts over 10,000 inspections since 1998. He failed to identify the defect, and it's one that all sincere inspectors call out with ease.
3. The defect was first noted by Plaintiffs inspector during escrow.
4. As it turned out,
    a. Forstein was told in 2015 the Furnace represented a fire/explosion hazard on a 2015 home inspection report.
    b. Weinstein and Forstein were told about this problem by the Contractor involved in the fix up scheme to sell the home. .
5. Weinstein and Forstein failed to represent this defect directly and/or via the pre-sale inspection report prior to Contract Acceptance when they both had material knowledge of the defect from multiple parties.
6. Changing out the furnace required reworking the plenum and that part of the duct work.
7. Compensatory - $8,000
8. Punitive - $8,000 x 5x = $40,000

Count 7 - Water Heater Explosion Hazard - $2,000 / $10,000

1. Neither Weinstein or Forstein made representations about the fire/explosion hazard related to the Water Heater prior to Contract Acceptance
2. Weinstein provided a pre-sale Home Inspection report on behalf of Forsteint. The Home Inspection report was from a local home inspector who touts over 10,000 inspections since 1998. He failed to identify the defect, nd it's one that all sincere inspectors call out with ease.
3. The defect was first noted by Plaintiffs inspector during escrow.
4. As it turned out,
    a. Forstein was told in 2015 the Furnace represented a fire/explosion hazard on a 2015 home inspection report.
    b. Weinstein and Forstein were told about this problem by the Contractor involved in the fix up scheme to sell the home. .
5. Weinstein and Forstein failed to represent this defect directly and/or via the pre-sale inspection report prior to Contract Acceptance when they both had material knowledge of the defect from multiple parties.

5 of 15

Canay et al v Weinstein / Canary et al v Forstein

Causes of Action Details
50+ Acts of Fraud

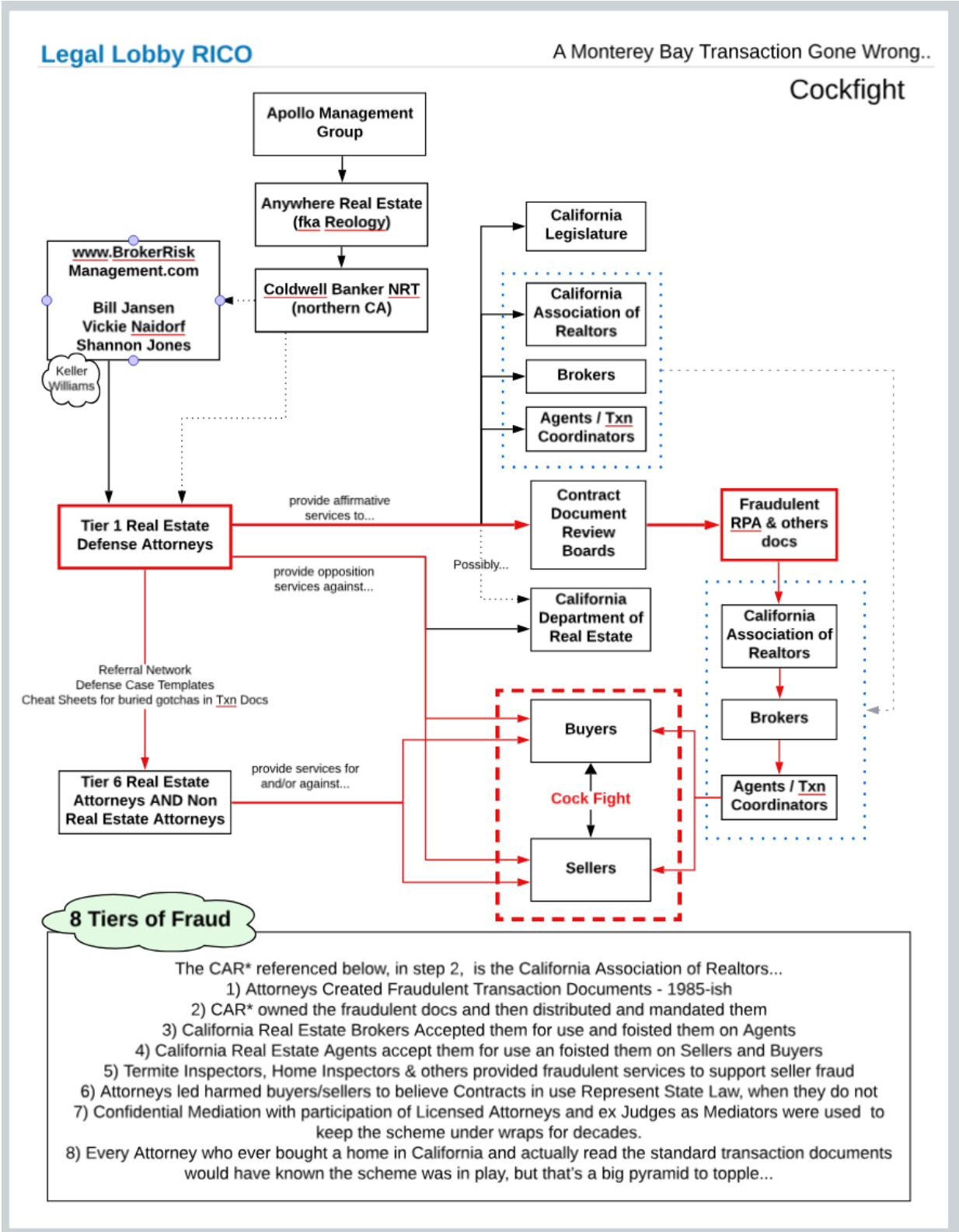
6. Compensatory - $2,000
7. Punitive - $2,000 x 5x = $10,000

Page 5 - 1st paragraph under Procedural Status, Gorman stated, "Mr.Forstein filed a Doe Cross-Complaint but has not seen any evidence justifying actually naming and serving any other entities.."

1. CACI 4107 and 4109 accurately describe the brokers withholding of material fact in their possession.(withholding of the TDS and SPQ)

2. Gorman was provided CoA 7 - Broker liability to purchaser for intentional non-disclosure and he looked the other way.
3. Gorman was provided facts in paragraphs 38-48 to support CACI 4107 and 4109 and CoA 7 and he looked the other way.
4. Gorman was provided the “Cockfight” Diagram showing exactly who was involved in the creation of the “approved” but unlawful contract that was leading the Brokers to act improperly. (see below)
5. Such willful acts to ignore facts and state none were presented when they were should result in disbarment for Attorney Ken Gorman, Attorney Will Fiske of Anywhere Real Estate, the Attorneys at Broker Risk Management and many others.

< see image below>


Legal Lobby RICO
A Monterey Bay Transaction Gone Wrong..
Cockfight
Apollo Management Group
Anywhere Real Estate (fka Reology)
Coldwell Banker NRT (northern CA)
www.BrokerRisk Management.com
Bill Jansen
Vickie Naidorf
Shannon Jones
Keller Williams
California Legislature
California Association of Realtors
Brokers
Agents / Txn Coordinators
Tier 1 Real Estate Defense Attorneys
provide affirmative services to...
Contract Document Review Boards
Fraudulent RPA & others docs
provide opposition services against...
Possibly...
California Department of Real Estate
California Association of Realtors
Brokers
Agents / Txn Coordinators
Referral Network
Defense Case Templates
Cheat Sheets for buried gotchas in Txn Docs
Buyers
Cock Fight
Sellers
Tier 6 Real Estate Attorneys AND Non Real Estate Attorneys
provide services for and/or against...
8 Tiers of Fraud
The CAR* referenced below, in step 2, is the California Association of Realtors...
1) Attorneys Created Fraudulent Transaction Documents - 1985-ish
2) CAR* owned the fraudulent docs and then distributed and mandated them
3) California Real Estate Brokers Accepted them for use and foisted them on Agents
4) California Real Estate Agents accept them for use an foisted them on Sellers and Buyers
5) Termite Inspectors, Home Inspectors & others provided fraudulent services to support seller fraud
6) Attorneys led harmed buyers/sellers to believe Contracts in use Represent State Law, when they do not
7) Confidential Mediation with participation of Licensed Attorneys and ex Judges as Mediators were used to keep the scheme under wraps for decades.
8) Every Attorney who ever bought a home in California and actually read the standard transaction documents would have known the scheme was in play, but that's a big pyramid to topple...

Page 5 - 3rd paragraph under Procedural Status, Gorman stated, “Mr. Canary propounded demands for documents and requests for admissions, initially 300 of each, later reduced. Mr. Forstein fully responded..”

Forstein did NOT fully respond.

1. There are dozens of emails documenting his failure to fully comply with requests, with details of his omissions.
2. There are supplemental deliveries showing initial failures to respond.
3. There are subsequent discovery requests only due to failure to provide information we knew he had.
4. To this day, Forstein has yet to provide key correspondence with his agent we know he had, because we have a copy of the email.
5. On 10/25/2024 Canary wrote, (see images below)

Response to Forstein Doc1 Delivery - Perjury now exists...

Summarize this email

Bryan Canary <bryan@bryancanary.com> Fri, Oct 25, 2024, 7:33 PM Reply to all

to Ken, Micah

Ken and Micah

Consider this a meet and confer request on incomplete documents for Forstein Doc Delivery 1.

Attached is a 34 page document that took far too much time to prepare.

1. 95% is based on the documents provided by Micah.
2. I've added 5% from the admit answers just to supplement some things. I will do admit analysis separate with separate meet and confer given the volume of problems and fraud revealed there as well. .

Ken -- there are many areas where Micah has claimed he complied entirely and <u>we know</u> that not to be the case.

1. emails -- we know he has not provided all emails with Chatters because we already have numerous he did not provide.
2. house damage reports - he's yet to produce the invoice or details for the rodents that hat to be live trapped in the attic and the repairs to the exterior made to keep them out.
3. APPRAISAL - there are some important things mentioned in here that we will want that should have been conveyed as part of the emails with kent -- like the appraisal done in early august. unclear why he didn't include that? That's the type of thing that is important for many reasons. Obviously.

Ken -- there are many areas where Micah has claimed he complied entirely and <u>we believe very strongly</u> that was not the case

1. payments - We watch kent pay $800 in cash to cut he grass during escrow. No repayments are noted. Are we to believe Kent agreed to cover those bills without reimbursement or that there were other deals going on with commission off the table? What's missing here? Why did Kent contribute 1300 at escrow close for a broken dishwasher and our septic inspection?

I can either re-write another request for docs with full and proper request - and he can fill in what was omitted -- or you can encourage him to do something else.

At this point, It's really about economics now for Micah as far as i'm concerned.

We tried to give him an opportunity to present summary screen shots which would have forced honesty and avoided partial delivery -- you with your CCP in mind stated that wasn't allowed -- the problem now is that Micah committed perjury when he could have been prevented from that temptation.

I hope you are charging him handsomely for your time -- as that is all that might force him into a more honest position.

Please respond by next Wednesday 10/30/2024 on this , on behalf of micah ,

Let me know how he'd like me to pursue the balance of documents and records

Bryan

One attachment • Scanned by Gmail

Tab 1

20241025 - respo...

See email log exhibit for more details.

Page 6

Page 6 - first paragraph, Gorman states, “Mr. Canary sent emails that were sometimes profane, usually inflammatory, and often hard to understand, but he was incensed that substantive responses were preceded by valid objections. Rather than even attempting a proper effort at meeting and conferring, he sent disparaging and inaccurate emails making accusations and threats. He also sent derisive emails claiming that Ken Gorman improperly answered the Complaint knowing that it had defects. That has never been clarified.”

On 8/26/2024 - Canary wrote, "Ken - We are in receipt of the response you labeled as a "Verified Answer to Complaint" . The General Denial [to cause of action 1 and 2] was applied to the 50 acts of fraud disqualifying that as a verified response. … That's not a Verified Answer to our Complaint." -

Verified complaint - Causes of Action with 50 counts detailed in separate document

17	**First Cause of Action / Counts 1 through 50**
18	< see Cause of Action exhibit for counts 1 through 50 >
19	
20	NOTE: Due to the volume of fraudulent acts, a document with a separate table of contents and
21	greater formatting functionality was needed.

15	
16	**Second Cause of Action / Counts 1 through 50**
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18	
19	NOTE: Due to the volume of fraudulent acts, a document with a separate table of contents and
20	greater formatting functionality was needed.

Verified Answer - was a "general denial" ignoring 15 pages of individual fact statements that needed to be answered.

3	First Cause of Action - Actual Fraud: Denied.
4	Second Cause of Action - Constructive Fraud: Denied.

8/27/2024 Gorman wrote, " I disagree with your assertions regarding the answer to the complaint. I opted not to demur to it though that certainly was a viable option, as I thought it more efficient for both sides to get the case "at issue" rather than engaging in pleading battles."

yet, he got to $145,000 in legal billing without ever addressing the 15 pages of fact statements he ignored in the original response and without addressing Jue v Smiser and without defining fraudulent misrepresentation ?

On 10/24/2024 Canary wrote, “Ken Hillary and Micah - I'm in receipt of the admit document responses…. At this point would you like to claim if I had said "REPRESENTATIONS" instead of "representation statements", he would have understood them OR would you like to claim he had no understanding of the relevance of this form? With these statements you are indicating that 1) forstein doesn't know what representation statements are in the context of forming a contract and 2) you have not advised him of their importance and relevance. To declare "representation statements" as vague, is beyond a foul in the legal process for forming a contract. That's a fraudulent act as an "officer of the court" and it now has serious effects on us as a third party.”

in 300+ emails and 100’s of admits, neither Gorman or Forstein would ever agree to a definition for fraudulent misrepresentation or define representations.

Page 6 - 2nd paragraph, Gorman states, “Mr. Canary sent hyperbolic emails to Mr. Gorman, Mr. Forstein, and other attorneys about various subjects related to his claims. He directed the attorneys and litigants to his many websites and posted antisemitic statements and alleged that there is a conspiracy among Basque home inspectors.”

I tried to inform everyone that I was an alternative media publisher with a focus on commercial conspiracy before we were harmed in this transaction.

The “jewish conspiracy" involving people who self describe as being “members of the tribe” is just one of many groups that get consideration in my publishing.

I view the Khazarians as separate from the Jews in ways many of the Jews themselves do. I personally find some rabbis to be the most grounded of religious leaders.

The fact that a “Forstein” and “Weinstein” are involved in this was out of our control, but they don’t even seem to be active members of any synagogue. They worship in a system that has no guiding documents at all, but one of their Pastors is an Attorney. I’m not sure how to categorize that, but it’s certainly not Jewish or religious in any context I'm familiar with.

Concerns about ex Michael Milken Disciples forming Apollo Management Group, the current owner of Anywhere Real Estate is newsworthy but not antisemetic.

As for the Basques, it’s not just a concern about the home inspectors, it’s their law firm too. Given most have no clue who the Basques are and how creative (and manipulative) they can be in commerce, exposing their creativity in legal document manipulation and commerce was a must.

It’s as if Gorman expects a journalist to overlook a relevant commercial story due to race or heritage or claimed affiliation?

If the Scientologists, Mormons, Italians or HAWAIIAN MAFIA were involved, they would have gotten comparable coverage. These were just groups easier to identify.

(NOTE: Gorman is licensed to practice law in Hawaii. Keller Williams Broker Mike Butson manages the Carmel CA office from Hawaii, but we have no understanding of the Hawaiian mafia or any reason to believe these two are involved with them in any way at this time).

Page 6 - Ken Gorman wrote, “In late October 2024, he sent the attorneys a screenshot of a man in downtown Carmel in desert camouflage with an automatic weapon with the comment, “Did you see this?” He recently sent emails to the attorneys advising that he has anagrams for them.”

As for ‘“anagrams” , if calling “Attorney Will Fiske” , “frisky fiske” is a crime, i’m guilty. I may have had one or two others but do not recall. Gorman is free to provide those if he feels like they are material for offsetting his criminal behavior.

As for a mailer to Attorneys, that image was sent only to Forstein and Gorman on 10/25/2024 and the email read, “Gentlemen - This is an email that went out 2 days ago with attachments. I am trying to soften people up so you two can attempt to get a settlement agreement with KW Coastal Estates and/or KW national for all of us. I hope you all know how to negotiate. Bryan Ps - did you see there was a gunman walking streets in Carmel by the Sea today? Strange…”

This is when I was still trying to encourage them to pursue Keller Williams for all of us, and working hard to provide them and others with the info needed for CACI 4109 and 4107 related complaints.

(see email image below)

Fwd: Complaint - Judge Vallarta (again) // Court reform summary // other important updates...

Summarize this email

Bryan Canary <bryan@bryancanary.com> Fri, Oct 25, 2024, 2:26 PM Reply to all

to Ken, Micah

Gentlemen -

This is an email that went out 2 days ago with attachments. I am trying ot soften people up so you two can attempt to get a settlement agreement with KW Coastal Estates and/or KW national for all of us.

I hope you all know how to negotiate.

Bryan

Ps - did you see there was a gunman walking streets in Carmel by the Sea today? Strange...

KSBW Action News 8 @ksbw · 1h

GUNMAN IN CARMEL | A gunman was spotted walking the streets of Carmel-by-the-Sea before shots were fired, according to witnesses.

Read the latest details: ksbw.com/article/shots-...

I forwarded Gorman and Forstein an email that had been sent to all known politicians in Monterey County, several politicians in santa cruz county, the clerk of court, the DA , state and federal politicians the Monterey county board of supervisors and about 30+ local attorneys on the bcc that exposed concerns with Judge Vallarta integrity, Court Reform concerns due to frauds being executed in the system, admit document responses that show how attorneys avoid arrival at agreed and disputed facts, 3rd party transaction coordinator

concerns and others.

This kind of group exposure to systemic problems plaguing a county with no proper leadership oversight causes counties to devolve. I then found it odd that an open air gunman was seen in Carmel indicative of other forms of devolution that would not be expected in such an area..

Given Gorman lives in Santa Cruz and Forstein lives in Kansas, I wanted to make sure they knew I was sharing my concerns with many people about Forestein related acts AND that it was as if the community's sanity was reacting in odd ways they might not otherwise hear about.

If that was taken any other way that was improper projection on their part.

Page 6 - Ken Gorman wrote, “This office served Form Interrogatories 50.0, Special Interrogatories, Request for Admissions, and Demand for Production of Documents on Mr. Canary on October 11, 2024 Mr. Canary served responses that were all defective in form and content, purposely not complying with the format requirements. Meet and confer efforts resulted in more vitriol from him. Motions to compel were brought against everything other than Requests for Admission. The responses to Form Interrogatories were served on behalf of both Plaintiffs and each of them verified the beginning of the responses. Most importantly as to this motion, they did not answer no. 50.1 because they asserted their case was not based on a contract. Somewhat concurrently, Mr. Canary began renewing his objections to the long-planned consolidation of most of the cases he filed”

Our first response to discovery was sent AFTER Gorman had provided us with Forstein responses where he stated “representation statements”, “contract formation” and

"omissions" were vague concepts while refusing to agree to a definition of fraudulent misrepresentation and AFTER he had provided us with discovery requests that indicate he had never read our complaint. We expressed our displeasure and concerns in professional manner that was ignored over and over again…

Bryan Canary <bryan@bryancanary.com> Fri, Oct 25, 2024, 1:08 PM Reply to all
to Ken, Micah

Ken and Micah -

You both were just included in the bcc of an email I just sent out to a mailing list i've been maintaining for over 16 months.

When I say this may be your only warning -- i'm not talking about CCP. I'm talking about a very very large media spotlight that i've been slowly feeding.

Ken

1. Verified complaint wth non verified answers to 50 Acts of Fraud
2. Initial email response off string
3. Request for Admits and interrogatories with very relevant chronological events out of order
4. Request for Admits and interrogatories that ignored material facts shared in the complaint
5. A failure to properly respect "reserved legal words" of utmost importance in a contract related matter -- such as "representation statement". be it verbal, written or scribbled in sand...

If th words "formed a contract" are vague -- why would you think that "created a contract" was any more so? If I recall, I finally started using "formed" because I found it in "onelaw" and/or the docs produced by the Real estate Section of the CA state bar

Your games approach the idea of if "please define 'is' or 'the' for me" -- and while I can appreciate your perceived need to present all that -- it annoys me greatly givne all facts on the table now.

If Micah is in fact paying his own fees, as we do believe is the case based on representation statements made, the more games you play the more it costs him with no true benefit - so in that regard we both respect your flexibility.

The recent problems I have with Micah (and you now to some degree) is I've had to spend 10-15 hours documenting in detail the purjury Micah has engaged in -- in away that has violated facts already known to us (and him).

The other problems I have -- are related to two neighbors here -- who truly liked Micah and appreciate his friendship -- that he has not put in a horrid spot by saying they didn't see what they saw when pet was sitting for him.

This is bad for all of us -- b/c now his deceit involving us is spilling over to those that are our neighbors now.

Re: Discovery Set 1 - Response to Forstein Requests (with URL)

Summarize this email

Bryan Canary <bryan@bryancanary.com> Fri, Nov 15, 2024, 12:50 PM Reply to all

to Micah, Ken

Ken and Micah

Below is the URL for initial sharing. It includes current response to admit, request for docs, interrogatories etc and current version of the composite docs related to the damages.

https://canary-v-forstein.bryancanary.com/

Ken -- as a reminder -- I felt I needed to do this this way because you made signed disclosure statement on page 11 of 13 of your special interrogatories that stated "i am familiar with the issues (in this case" -- "I have personally examined each of the questions" etc. and while you didn't put that with your admit requests or your docs, as far as i'm concerned those showed you may not have even read our complaint. the questions related to not viewing the property prior to making an offer, and not asking for a contingency extension and details related to the incomplete disclosure docs could NOT have been posed by anyone who read the complaint. those were big details that you, your paralegal or someone else missed when preparing a first set of discovery requests. That type of inompetence or fraud puts a burden on us that is undue and it drains the defendant of resources in a way that concerns us. Thus we had to do what was in our best interest to try to get this dialogue back on track.

I've got a google drive folder called "DA Docs" (as in District Attorney share). .It currently has 49 files in it. Thats just our version of the underlying transaction documents that are used to support the composite documents. I haven't shared those yet. Micah has many/monst of those related to the contract. If we need to get into sharing all those, it's just a folder share and I can do that. It's a waste of time now. but know that is avail to when needed as needed.

b

This complaint does not arise from the contract. The complaint arises from fraud to induce a contract and I even showed Gorman where to learn about that… (see image below)

CA DRE Reference Book

Summarize this email

Bryan Canary <bryan@bryancana... Tue, Nov 19, 2024, 11:49 PM Reply to all

to Ken, Hillary, Micah

Ken (and Micah) -

This is an extremely serious question and concern related to your inquiry in the Form interrogatories related to regulatory bodies.

Ken

1. Do you know what the CA DRE "reference book" is?
2. Do you have a copy of the CA DRE "reference book"?

When I first went looking for authority resources for CA real estate law -- after finding dozens of case precedents wihch showed in the early 1990s the judges were pushing back on contracts in use -- good resources explaining what had happened were oddly hard to find. the Attorneys had really done a number of confusing things.

Then I found a web page on the CA DRE web site that had the "Reference Book" on it by chapter. In total it's over 500 pages.

Ih that book

1. they explained the tort vs contract dispute.
2. They validated any document that can convey title, not just a deed. (supporting 13B and the contract as the vehicle to transfer title and the assignment of contracts()
3. They explained the requirement for all actions taken on a path towards forming a contract as needing to be in good faith.
4. Constructive Fraud - it states constructive fraud should never exist because "everyone" is supposed to know representation law. (can you imagine that -- that tells you how old it is)
5. The book's origins, seemed to date back 100 years or more and probably back to 1870s when most of CA real estate law and fraud was put on the books.

Without a properly consented to contract it was a Tort Claim and the fact that Gorman, a 40 year attorney can't get that a Tort is a Tort is a Tort even after being provided authorities for it is beyond concerning.

If Gorman had read the CA DRE reference book he would have learned that, and after that I found it everywhere when looking at reviews for fraud to induce contracts.

As for objections to consolidation, Gorman signed on with three other Attorneys for a Consolidation motion. That response has been filed with the court under 24CV001176. That response shows there was NOT overlapping matters of law and fact between any of the related actors and it like this motion was without proper legal basis.

Page 7

Page 7 - Gorman wrote, " Because the dismissals of causes of action 3 through 11 were with prejudice, there is no question that Mr. Forstein is the prevailing party as to those causes of action for all purposes."

"all purposes" ?

> Attorney Ken Gorman has been practicing law for 40 years and he believes a plaintiffs voluntary dismissal with prejudice for negotiation purposes gives him rights to recover attorney fees? **When do the sanctions come? Gorman's statement of "all purposes" is fraudulent and it's impossible to accept the idea a 40 year attorney did that without intention , in hopes of 1) misleading the court and/or 2) terrifying us. The idea that a dismissal with prejudice for the following reasons could result in legal fees shifting is beyond terrorizing.**

Causes of Action 3 through 11 were for Torts related to personal injury and conspiracy with Brokers. They were voluntarily dismissed by plaintiffs as part of plaintiffs own strategy to 1) reduce stress on forestry in hopes of getting more cooperation and 2) to attempt to

manage Gorman.

On 11/22/2024 Canary wrote,

24CV001914 - Dismissal Partial - CoA's 3-11 and PI for 1 and 2 - DRAFT FOR REVIEW

Summarize this email

Bryan Canary <bryan@bryan... Fri, Nov 22, 2024, 12:08 PM Reply to all
to Ken, Hillary, Micah

Ken (and Micah)

Per dialogue in a prior email, we are ready to drop all personal injury related CoAs and PI damage pursuit for the remaining two CoAs for Actual and Constructive Fraud.

Attached is a draft of the 2 page dismissal form. The most relevant part should be:

> 1a - with prejudice
> 1b6 - 5/9/2024 complaint - CoA's 3, 4, 5, 6, 7, 8, 9, 10, 11 & all claims to personal injury re CoA's 1 & 2

Ken - please confirm this form accurately represents our intentions and satisfies your/Micahs needs for a recorded proof of dismissal of these CoAs and damage options.

Ken - There is only one signature line on this form. This dismissal is for both Holly and I. Do you know if we need to fill out two of these or if we can put both our names and signatures on one? The clerks at the counter are less than useless when it comes to these details. They often contradict their own rules to us on different filings. . Worst case, I'll take three versions to the clerk for filing -- one with both our signatures on it and two done individually and see what they take. If I just took this in with my signature only and said nothing, as I did with the GC when his attorney pushed us out of the case, they'd probably not think about it and assume it was all of us -- but unsure you would then be happy about that.... With this email you have proof of our intentions -- which is worth more to us than any of these forms.

On 11/22/2024 Canary went on to write,

> Ken - Please note, we do feel like your behavior, while representing Micah Forstein, has pushed us to this action against our own best interest. We feel your desire to patently ignore proper and legally based dialogue about 1) fraudulent misrepresentation to induce a contract 2) the phrase "representations statements" 3) the phrase "contract formation", 4) the word "omit", 5) legal positions that contradict CA 1102.8, 6) legal positions that contradict CA 1572 and 1573, 7) legal positions that contradict Jue vs Smiser and other case precedents without providing rebuttals when requested 8) legal positions that contradict the CA DRE reference book, ALL WHILE asking for admissions to irrelevant and non-existant facts and lesser relevant information has required us to perform this release. Micah has employed you. With this statement we release Micah for your actions thus far. However, we reserve the right to pursue you for Violations of the Attorney Code of Conduct, the CCP, statutes for fraud, and Legal Malpractice with damages to third parties in the future, and as CA statute of limitations allows.
>
> Ken - Please respond to confirm this meets our mutual understanding of this partial dismissal for Micah, and provide any instructions you believe to be accurate about a need for one form with two signatures or two separate forms, that will satisfy you and/or the courts. I will want to speak to you about how we will address or how this will affect the discovery requests outstanding but will do that once this is on file. As stated prior, we feel an amended complaint is warranted due to 1) this partial dismissal 2) the evidence provided via discovery, and 3) the incomplete verified response provided to start out this dispute process that ignored 15 pages of fact statements. .
>
> Micah - I wouldn't look at this as a small win by any means. We never expected to be able to collect on anything beyond compensatory and a 3x to 5x multiplier. This PI stuff was done to test the system and any Attorney that took up your defense. We were curious to see what or how they might or might not try to manipulate those CoAs. We were able to record in detail what needed to be seen on your dime, so thanks for that. Many people in the future will benefit from your investment in legal lobby exposure as well as real estate industry exposure. You will be remembered as the guy who catalyzed the changes for everyone else. From our perspective the pursuit of the PI related CoAs and damages became a distraction, thus the legal dismissal. [redacted].

Page 7 - Gorman wrote, " Mr. Forstein asserts that the recent dismissals of the first two causes of action without prejudice entitle him to full reimbursement of his attorneys' fees as the prevailing party pursuant to the contract."

If improperly categorized as contract complaints they'd be subject to CIV 1717(b)(2) ."***Where an action has been voluntarily dismissed or dismissed pursuant to a settlement of the case, there shall be no prevailing party for purposes of this section.***"

> (2) Where an action has been voluntarily dismissed or dismissed pursuant to a settlement of the case, there shall be no prevailing party for purposes of this section.

This is fraudulent misrepresentation of law , a desire to mislead the court and an attempt to terrify plaintiffs in an oppressive and malicious manner.

Page 7 - Gorman wrote, " Plaintiffs made it clear in communications surrounding the recent dismissals that they were dismissing the case to moot the pending motions to compel and requests for sanctions and the recently filed motions for consolidation. They had not filed a substantive response to the motions to compel.."

On 12/2/2024 Canary wrote, (see image below)

Re: 24CV001914 - 1st Amended Complaint - REV 1 - 25 pages - Meet and Confer

Summarize this email

Bryan Canary <bryan@bryancanary.com> Mon, Dec 2, 2024, 3:56 PM Reply to all

to Ken, Micah, Hillary

Ken

We will be completing our response to your discovery for the first complaint .

1. We are doing that as you have requested even though it was inappropriate in many ways
2. We are doing that even though we've updated documents shared with you that very clearly separate Forstein's acts of disclosure fraud from acts of fraud by others.
3. We are doing that even though much of the content provided was for PI and for purposes of a preview of what a consolidated complaint might look like.
4. We are doing that even though much of the content provided was for PI and those were dropped.

We will be glad to stipulate the amended complaint as a non-verified complaint. We are doing that with other parties now as well.

1. We feel it is very appropriate to get an amended complaint on file with only the fact statements needed for fraudulent misrepresentation for Forstein.

2. We feel it is very important to get an amended complaint on file against Forstein that does not read like it's a complaint for a consolidation situation.

3. By dropping our causes of action for all PI related injuries we dramatically changed the scope of this complaint, and given our original complaint had major defects related to the inclusion of relevant fact statements that were then ignored in your initial verified response, this is a very appropriate request.

4. By removing all reference to the contractors, home inspectors and licensees, there can be no confusion about his liability for his false disclosure statements as compared to acts or actions by others that are separate.

When we are done submitting our discovery to you for the first complaint, as requested/required, we will be circling back on this and we do expect a stipulation to a non-verified complaint for the reasons provided.

Bryan

600 pages of document were provided via damage item for organization.

https://canary-v-forstein.bryancanary.com

canary-v-forstein

Home | Discovery | Fee Shifting | Emails | Backstory | Ot

Current Total Page estimate for the composite documents related to Monetary Damages: 525 pages via ~ 30 documents.

Forstein Solo and/or possibly with his Agent (45 pages)			
1) Utils 1 - Well Utility Costs (5, $43/mo)	view	as of 11/20/2024	(Forstein Fraud -waiting on additional util bills for final $)
2) Utils 2 - Home Utility Costs (4, $145 to $195/mo)	view	as of 11/21/2024	(Forstein Fraud - waiting on additional util bills for final $)
3) Owner 2 - HVAC Ducts (14, $15k (7k net w HI2))	view	as of 11/20/2024	(Forstein Fraud - Failure to disclose)
4) Owner 1 - Septic Mainline (22, 12k)	view	as of 11/20/2024	(Forstein Fraud - waiting on receipts)
5) Well System Contracts (xx)	view	not relevant for now...	
Forstein, his Agent & his Presale Home Inspector (180 pages)			
6) HI 2 - Gas Furnace Combustion Hazard (14, 8k)	view	as of 11/24/2024	(Forstein Fraud - knew from 2015 report)
7) HI 3 - Gas Water Heater Combustion Hazard (15, 2k)	view	as of 11/24/2024	(Forstein Fraud - knew from 2015 report)
8) HI 1- 2nd floor attic defects (33, 10k)	view	as of 11/21/2024	(Forstein Fraud - knew from first hand experience)
9) HI 6 - North Yard Flooding (23, 7k)	view	as of 11/18/2024	(Forstein Fraud - it was visible from front door)
10) HI 4a - Crawl Structural Defects (40, 5k)	view	as of 11/19/2024	(Forstein Fraud - should have known from 1st floor defect)
11) HI 4b - Crawl Insl - upside down/away from heated (40, 2k)			(Forstein Fraud - knew from 2015 report)
12) HI 5 - Drainage Defect - Concrete Seizing (19, 3,5k)	view	as of 11/20/2024	(Forstein Fraud - it was visible from front door)
13) HI 7 - Water supply - No Hot Water (18, 17k)	view	as of 11/20/2024	(Forstein Fraud - knew from 2015 report)
14) HI 9 - Moss and Paint Overspray On Roof(17,2k)	view	as of 11/19/2024	(Forstein Fraud - did or should have known / 2015 ref too)
Forstein, his Agent, & his Presale Termite Inspector (29 pages)			
15) TI 1- Crawl structural (16, 5k) (same as HI 4)	view	as of 11/27/2024	(Forstein Fraud - should have known from 1st floor defect)
16) TI 2 - 2nd floor attic (15, 10k) (same as HI 1)	view	as of 11/27/2024	(Forstein Fraud - knew from first hand experience)
17) TI 3 - Fascia (16, 8k) (same as Painter 1)	view	as of 11/27/2024	(Forstein Fraud - it was visible to him before concealment)
18) void			
19) void			
Forstein, his Agent and his General Contractor (148 pages)			
20) GC 1- Concealed Structural Defects (43,10k)	view	as of 11/21/2024	(Forstein Fraud - knew from 2015 report & photo/email in 2021)
21) GC 2 - Structural work w/o Permits or Disclosure (8, 0k)	view	as of 11/24/2024	(Forstein Fraud - failed to disclose structural work)
22) GC 3 - Concealed Mold in Util / Bathroom (33, 15k)	view	as of 11/21/2024	(Forstein Fraud - knew from invasive repairs during occupancy)
23) GC 4 - 2nd floor attic Rodent Poo and Pee! (10, 10k)	view	as of 11/21/2024	(Forstein Fraud - he was there...) (allocated via HI1 and TI 2)
24) GC 5 - Concealed 2nd floor bath subfloor Defect (20, 3k)	view	as of 11/21/2024	(Forstein Fraud - failed to disclose structural integrity concern)
25) GC 6 - Concealed Cat Urine (42, 28k)	view	as of 11/22/2024	(Forstein Fraud - he was there....)
26) GC 7 - Work Quoted/Paid for but not done (13, 1k)	view	as of 11/24/2024	(Forstein Negligence unless new facts exposed)
Forstein, his Agent and his Painter (127 pages)			
27) Painter1 - Concealed Fascia (23, 8k)	view	as of 11/26/2024	(Forstein Fraud - it was visible to him before concealment)
28) Painter 2 - Painted ext w int paint (16, 15k)	view	as of 11/26/2024	(Forstein Negligence unless new facts exposed)
29) Painter 3 - Concealed siding beyond useful life (21,15k)	view	as of 11/26/2024	(Forstein Fraud - it was visible to him before concealment)
30) Painter 4 - Concealed rodent urine in ceilings (19, 2k)	view	as of 11/27/2024	(Forstein Fraud - it was visible to him before concealment)
31) Painter 5 - Concealed water damage in garage drywall (19, 6k)	view	as of 11/27/2024	(Forstein Fraud - it was visible to him before concealment)
32) Painter 6 - Oversprayed on Roof and Cedar Closets (16,4k)	view	as of 11/27/2024	(Forstein Negligence unless new facts exposed)
33) Painter 7 - Charged for work not done (12,3k)	view	as of 11/27/2024	(Misleading but no negligence or fraud, unless new facts exposed)

On 12/5/2024 Canary wrote,

24CV001914 - Demand for Docs - Status Update...

Summarize this email

Bryan Canary <bryan@bryancanary.com> Thu, Dec 5, 2024, 3:37 PM Reply to all

to Ken, Micah, Hillary

Ken and Micah -

Your request for documents has been reviewed and answered to the best of our ability. I will be forwarding that answer over in the coming days. A draft is online for your review and access now along with the documents provided so far. Links and information below.

1st Interrogatory produced request for all documents

Ken, your very first demand asks for all document related to paragraph 3 in our complaint which reads:

> "Unbeknownst to Plaintiffs at the time of Bid Consideration, the Seller had engaged in a "fix up and disclosure fraud scheme" organized by his Seller's Agent They conspired to sell his home for $250,000 more than it was worth. The home would have required a construction loan had all facts been known to the Plaintiffs at time of Bid Consideration, Contract Acceptance and/or Deed Conveyance."

As far as we are concerned that was a request for every single document we intended on producing. It can't be anything less as we have to describe all the deceit, all the discovery of deceit , all reliance issues, and damage estimates to answer that demand for docs. \

Thus please think of all we provide you as being an answer to your first request for docs.

Excessive requests

Thus, every single question asked after that was only asking for a subset of documents requested in interrogatory 1 AND many of those requests were inappropriate as they sought identification of documents related to "conspiracy" , which we are not suing for. You also sought information for documents related to the manipulation of Forstein and other crimes committed against us that we were not suing Forstein for.

Original Complaint intentions/courtesy

Our original complaint was written out of Courtesy for Forstein. It was intended to allow you and him to understand what information we were aware of, such that he might pursue recovery from others if he was in fact taken advantage , or if his behavior could be attributed to mental illness or other matters. When it became apparent that Fortstein had made some very bad choices contrary to even his own agent's suggestions while actively participating in other acts of obvious and willful deceit, -- you should have retracted some of your requests and/or allowed us to amend our complaint. You attempted to take advantage of our kindness in ways inappropriate.

Introduction to our Demand for Docs Response

We have a response document for you that acts as an index to the documents for each request.

Our documents will be provided in an organized manner that enables you, us and others to access the documents by date and/or topic.

At no time should you feel we are trying to provide our documents in a disorganised or confusing manner. if you feel that way, reach out and I will try to explain any confusion that may exist.

I am currently handling 1000's of documents related to this and I have been able to keep them in order so I can find them when I need them. I am relying on years in corporate america doing engineering level document tracking for tracking the documents and the frauds. Forstein should be familiar with document control needs with paper and digital files at that level from his decades as an engineer too.

I have no need nor desire to provide you documents that are not in some sort of order or organization unlike what you provided to us, with documents out of chronological order that had to be re-ordered.

While the file names may not be perfect, there are typically chronological systems in the folders and/or the data is grouped in ways that is easy to identify.

CCP 2031.060 for issues or concerns related to your request...

1. https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=2031.060.&nodeTreePath=7.4.14.1&lawCode=CCP
2. 2030.f.2 speaks to unreasonably cumulative and duplicative. -- in many ways that describes your entire request given you did and do know we are suing forstein for his disclosure frauds only and nothing else.

CCP 2031.210 for issues or concerns related to your request...

1. https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=2031.210.&lawCode=CCP
2. We have provided objections as appropriate.
3. We have provided notices of no documents the few times it was relevant.
4. In most cases with objections we then provided specific reference to the relevant documents to answer your requests
5. There were far better ways to ask for documents and information than to jsut go paragraph by paragraph in our complaint. You took an easy route for you that was not actually appropriate for response by any party given the overlap and duplicity you knew it would create -- with an understanding of why we wrote that complaint that way...

Folders you will be provided

As of now it seems you will be provided with two folders and possibly a third for miscellaneous

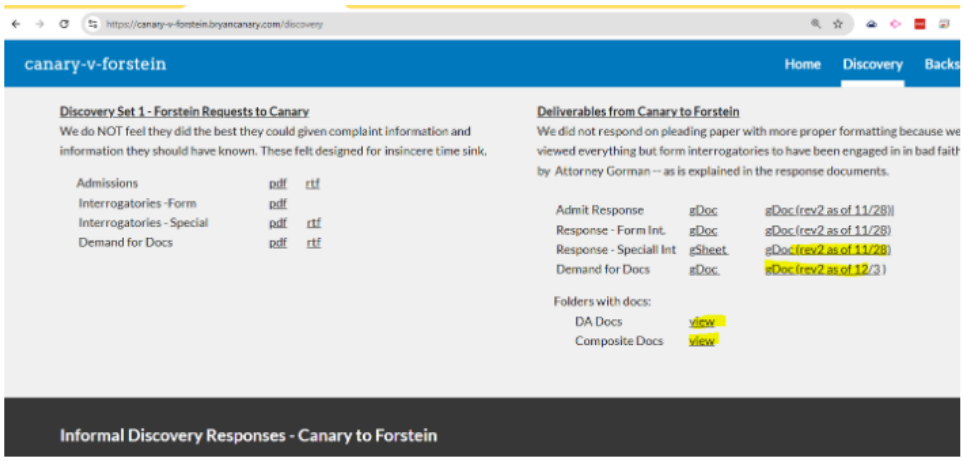
1. DA Docs - this is a compilation of documents that were compiled for the District Attorney and DOJ. The documents are presented generally in the chronological order in which we obtain them or created them. There is a numerical index at the beginning of each file name that we used to help position them in chronological order, but it is not relevant for anything other than creating the chronological order. that is not relevant to relating to your interrogatories or demands.

2. Composite Documents - there will be a folder with composite documents

3. Other - At this time I don't believe there will be other folders needed but if so I will specify what those are...

Draft of our Doc Demand response and access to docs is online now...

A draft of our doc demand response and access to the docs is online at this time
https://canary-v-forstein.bryancanary.com/discovery



Delivery of Composite Docs -- Docs still being built out... with statement of facts at various levels...
The composite docs are googleDocs. You will want/need pdfs with a date code for your documents. Yesterday I wrote a program that allows me to bulk convert google docs into pdfs. Without that I was in trouble as just creating pdf versions of those with a time stamp ione at a time was going to be very time consuming and then doing it again as they get further updated was a problem. With my new software utility, . I can produce an entire set of 30+ docs in 3 minutes with click of a button, so I worked myself out of a corner I had been a bit worried about. When we formally deliver our response to you, inside the composite docs folder will be a subfolder with a static copy of those documents. As our discovery progresses we will be adding uncovered facts to those to continue to document the case for fraud against forstein and many others. At some point, you may want / need more copies and/or we may need to produce final copies for you once we are done iwth our investigations and I will produce another set then. At any time between now and then you can in fact make your own copy one at a time or you can ask me to make subsets or full sets as needed if needed. These don't produce new facts. they simply are guides to explain where all the facts that support fraud are. If this doesn't make sense now, wait until we deliver them and we can discuss. These represent our playbook and tell you exactly which document we will be relying on for what facts. I realize that is foreign to you. Given the volume of frauds forstein and those engaged in, this level of transparency about our case and position is the only way this matter can be managed.

Bryan

12/9/2024 - Canary wrote,

24cv001914 - 36 hour heads up

Summarize this email

Bryan Canary <bryan@bryancanary.... Mon, Dec 9, 2024, 11:14 PM Reply to all
to Micah, Ken, Hillary

Micah (and Ken)

In next 36 hours or so you will be getting some discovery docs. and some other info and options from me/us.

Micah, whatever you do, do NOT allow Ken to start processing the docs he gets right away. Don't waste your money there on that until you get other info from me before or just after those are delivered for your consideration.

You may end up paying him to do that but it may be money better spent elsewhere.

Ken, have you told him what all my options really are yet? If not, you should be honest with him before I am. it would be a damn shame if what I have to share with him has to come from me first and not you.

b

< see dialogue with Ken on 12/11/2024 confronting him with the generic template used for admits with no situational facts properly presented and facts that indicate he never read the complaint, never looked at exhibits and/or he wanted us to feel that way for futility reasons. >

Page 7 - Gorman wrote, “ Further, the details in Plaintiffs’ emails and the reports provided by them show that they were aware of all of the claims they base their lawsuit on more than 3 years before they filed their complaint and hence were beyond the statutes of limitation..”

This statement by Gorman, or whoever is writing his documents, suggests 1) they never read the complaint or 2) they want to mislead the court hoping they have not read the complaint?

Paragraphs 53-56 of the original complaint speak to Plaintiffs exact views on the Torts for fraudulent misrepresentation and their views or three year statutes. (see image below)

STATUTE OF LIMITATIONS

53. This complaint includes causes of action for Fraudulent Misrepresentation, Concealment and others.
54. Fraud is subject to 3 year statutes of limitations based on "Date of Discovery".
55. As mentioned prior, some fraud was discovered during escrow which ran from April 1, 2021 through May 13, 2021. At first glance it may seem there is a need to dissect the dates in escrow for a three year limit on some fraud discoveries, but that is not the case.
    a. First and foremost no damages were incurred until the seller refused to acknowledge or make adjustments for fraud concerns and the transaction closed May 13,2021. That is the date that damages were or should have been realized and the first date a claim for fraud with damages could have been properly declared.
    b. HOWEVER and more importantly, no Real Estate Licensee or Attorney would declare that the discovery of representation fraud could exist during escrow, since the RPA required no representation statements prior to entering an agreement. The case precedent of Jue v Smister 1994, which clarifies they were all acting in bad faith, and one which they should have all known by heart, was not discovered by Plaintiffs until 2/14/2024, just a few months ago.
    c. As such, actual discovery of the ability to declare any fraud found in escrow as actual fraud with collection capabilities did not come until a few months ago, but that

should not be relevant unless this case needs to be refiled at a date that is after May 13, 2021.

56. As for the fraud found after May 13, 2021, that is within the three year statute without having to get into any dialogue about discovery dates of the various frauds and any case precedents and statutes that may push those dates out further.

Later, you will see Gorman state he was going to file a motion for summary judgment for statute of limitations - AFTER running up a $145,000 bill adn with this notice in the complaint? That's terrifying.

Page 7 - Gorman wrote, " Per Civil Code section 1717, a dismissal without prejudice as to an action on a contract does not convey prevailing party status on the dismissed party for the causes of action for breach of the contract. "

Per Civil Code 1717 <u>any voluntary dismissal</u> , without or with prejudice, does not convey prevailing party status (see 1717(b)(2)) ."***Where an action has been voluntarily dismissed or dismissed pursuant to a settlement of the case, there shall be no prevailing party for purposes of this section.***"

This is fraudulent misrepresentation of statute to mislead the court and the plaintiffs

While "with prejudice" is often associated with a non-voluntary dismissal, in this case we voluntarily chose to dismiss some causes of action with prejudice as part of a litigation strategy to show good faith. This was detailed in a prior section. To think that Gorman feels that would subject us to $145,000 in fee shifting goes way beyond kosher.

Page 7 - Gorman wrote, " However, Plaintiffs have not plead any causes of action for a breach of contract, and in fact, per emails and their refusal to respond to Form Interrogatory no. 50.1, they specifically deny that this is an action on the contract.."

This complaint does not arise from the contract. The complaint arises from fraud by the brokers in the TDS and SPQ delivery process that destroyed the consent process related to acceptance and contract formation as well as seller mis-representations and omissions on the TDS and SPQ were made over a week before the buyers first viewed the property.

Torts are subject to the American Rule, but that conclusion is left out

We even told Ken where he could go for education…

CA DRE Reference Book

Summarize this email

Bryan Canary <bryan@bryancanary.com> Tue, Nov 19, 2024, 11:49 PM Reply to all

to Ken, Hillary, Micah

Ken (and Micah) -

This is an extremely serious question and concern related to your inquiry in the Form interrogatories related to regulatory bodies.

Ken

1. Do you know what the CA DRE "reference book" is?
2. Do you have a copy of the CA DRE "reference book"?

When I first went looking for authority resources for CA real estate law -- after finding dozens of case precedents wihch showed in the early 1990s the judges were pushing back on contracts in use -- good resources explaining what had happened were oddly hard to find. the Attorneys had really done a number of confusing things.

Then I found a web page on the CA DRE web site that had the "Reference Book" on it by chapter. In total it's over 500 pages.

Ih that book

1. they explained the tort vs contract dispute.
2. They validated any document that can convey title, not just a deed. (supporting 13B and the contract as the vehicle to transfer title and the assignment of contracts()
3. They explained the requirement for all actions taken on a path towards forming a contract as needing to be in good faith.
4. Constructive Fraud - it states constructive fraud should never exist because "everyone" is supposed to know representation law. (can you imagine that -- that tells you how old it is)
5. The book's origins, seemed to date back 100 years or more and probably back to 1870s when most of CA real estate law and fraud was put on the books.

This is a direct attempt to fraudulently mislead the court.

Page 7 - Gorman wrote, " The bar of Civil Code section 1717 does not affect causes of action that do not sound in contract but the attorneys' fees provision, depending on its wording, may afford the defendant a right to attorney fees incurred litigating those causes of action. Ibid. Here, paragraph

25 of the CAR contract makes it clear that any claims “arising out of this Agreement” entitle the prevailing party to reasonable attorneys’ fees..”

Per Civil Code 1717 <u>any voluntary dismissal</u> , without or with prejudice, does not convey prevailing party status (see 1717(b)(2)) .”***Where an action has been voluntarily dismissed or dismissed pursuant to a settlement of the case, there shall be no prevailing party for purposes of this section.***”

This is a direct attempt to fraudulently mislead the court and the plaintiffs.

Page 7 - Gorman wrote, “All of the causes of action arise from the same alleged facts. Per the titles and content of their causes of action, their discovery responses, and emails, Plaintiffs’ complaint is strictly tort, though also completely arising from the contract. As such, Mr. Forstein is entitled to all attorneys’ fees incurred.”

Per Civil Code 1717 <u>any voluntary dismissal</u> , without or with prejudice, does not convey prevailing party status (see 1717(b)(2)) .”***Where an action has been voluntarily dismissed or dismissed pursuant to a settlement of the case, there shall be no prevailing party for purposes of this section.***”

This is a direct attempt to fraudulently mislead the court and the plaintiffs.

This “demand” for $145,000 in attorney fees for a voluntarily dismissed tort subject to the American Rule is worthy of disbarment because even if it was confused for a contract dispute, CIV 1717(b)(2) would then apply. This is insanity in motion.

Page 7 - Gorman wrote, “Recognizing that Plaintiffs may now try to backtrack on their claims that this was not an action for breach of contract, attorneys’ fees can still be awarded in full if “the claims are so inextricably intertwined that it would be impracticable, if not impossible, to separate the multitude of cojoined activities into compensable or noncompensable time units.” Fed-Mart Corp. v. Pell Enterprises, Inc. (1980) 111 Cal.App.3d 215, 227; Reynolds Metals Co. v. Alperson (1979) 25 Cal.3d 124, 129-130.”

This is an illogical deduction with illogical conclusion.

If we “back track on claims this was not an action for breach” it means we’d claim it was an action for breach. In such a case it would be subject to CIV 1717(b)(2) for voluntary dismissal no matter if with or without prejudice.

Furthermore, the idea that the claims were “so intertwined” is mut as there was nothing to intertwine the torts with.

This is a direct attempt to fraudulently mislead the court and the plaintiffs.

The TDS states explicitly it is not part of the contract for this exact reason

This “demand” for $145,000 in attorney fees for a voluntarily dismissed tort subject to the American Rule is worthy of disbarment because even if it was confused for a contract dispute, CIV 1717(b)(2) would then apply. This is insanity in motion.

Page 7 - Gorman wrote, “In addition, Plaintiffs’ failures to provide substantive, code-compliant responses to Mr. Forstein’s discovery and refusal to meaningfully respond to meet and confer

efforts to obtain acceptable responses and the imminent granting of motions to compel, sanctions, and presumably thereafter evidentiary sanctions which would preclude Plaintiffs from presenting evidence, confirm that Plaintiffs dismissed the case because they knew they would lose. It is clear from the record that Mr. Forstein is the prevailing party."

As documented prior and elsewhere on 12/2/2024, 12/5/2024 and 12/9/2024, plaintiffs provided details about what they would provide, how it would be provided and why the demands were duplicative , due to the use of a defective complaint and no discernment for the nested requests.

As for the idea the Plaintiffs dismissed the case because they knew they would lose",when trying to find questions of fact and law in dispute and the opposing side spends three months avoiding that process, it's difficult to understand how they can surmise a winner and loser given they never established the metric for measure. That aside, the reason for our voluntary dismissal is irrelevant for attorney fee shifting from a legal perspective.

Page 8

Page 8 Gorman states, - "As per his declaration, Gorman has been a litigation and trial attorney for 40 years."

Why has a 40 year attorney failed to respect the American Rule for Tortious actions that transpired weeks and days prior to a destroyed consent process which failed to form a contract properly, with Real Estate Brokers in direct violation of CACI 4107 and 4109, without recognition by Gorman or cross complaints to help both parties recover?

Why has a 40 year attorney directly misrepresented CiV 1717(b)(2) by suggesting it only applies to voluntary dismissals without prejudice when no such qualifiers exist?

Why is a 40 year attorney allowed to terrorize and attempt to financially paralyze a party in Pro Se that sought to use courts to pursue proper remedy for industry wide frauds?

Page 8 Gorman states, - “Plaintiffs’ own litigation tactics and their frequent aggressive emails were the cause of most of the fees: a 56-page verified complaint, long aggressive emails misstating facts and laws and full of personal attacks on Mr. Forstein and Mr. Gorman, refusals to provide proper discovery responses, and poorly drafted discovery.Mr. Canary’s emails confirmed that he was trying to run up defense fees. A fair examination of the Court file and the exhibits accompanying this motion support the number of hours worked to defend against these unfortunate claims.”

On 10/29/2024 Canary wrote, "Ken, please stop with the loose vocabulary -- and please check the case precedents before making up anything else. Ken, if you have any case precedents that support the requirement of a buyer in a residential real estate purchase to mitigate damages related to fraudulent misrepresentation to induce a contract, when fraud was identified in escrow - please provide that to both Micah and myself in the next 5 business days. Such a precedent would generally need to contradict Jue v Smiser."

[8] Effect of Plaintiff’s Discovery of True Facts Before Close of Escrow in Real Property Sale

The plaintiff’s discovery of the true facts after signing a real property purchase agreement but before the close of escrow does not preclude a finding of justifiable reliance with respect to false representations made by the defendant before the purchase agreement was signed. The plaintiff’s reliance at the inception of the agreement is sufficient to support recovery for fraud [Jue v. Smiser (1994) 23 Cal. App. 4th 312, 313, 316–318, 28 Cal. Rptr. 2d 242].

Gorman never responded. This case precedent is presented for this exact purpose in 2011 and 2019 CA Bar presentations. Over 300 pages of emails and a 100 page email log can show Gorman's entire representation of the engagement was generally the opposite of what it was.

The full email is below…

Our Initial RPA Analysis / Case Precedents for Disclosure Reqs / the CA BAR docs / Revocable contracts / Seeking case precedents from Ken

Summarize this email

Bryan Canary <bryan@bry... Tue, Oct 29, 2024, 9:51PM Reply to all

to Ken, Micah

Micah and Ken

Please see attached.

The attached doc details the work I did before making an offer to "understand" the documents we were going to be required to use to make an offer in Monterey County

It also provides the case precedents I took three years to discover and documents that proved the most misleading clauses in that contract were fraudulent - and had been called out in prior case precedents. Understanding the "contract" was/is impossible if you are seeking a legally viable document. Understanding the case precedents that prove it fraudulent are EZ...

Ken, you need to leave off with any and all suggestions that we had an obligation to mitigate damages during escrow when we discovered missing and fraudulent representations (<< there's that key word). . That defense is fully fraudulent from 4 or 5 different angles ranging from foundational contract law , to CA 1102 to Case Precedent to published documents with CA Bar approval. You need to stop misleading Micah with that immediately if you haven't done so already. I am a third party being damaged by that , and as you can see I will sue. and pursue attorneys to the Supreme Court. You have ways you can help Micah -- but lying to him about his options and failing to collect the facts he needs to consider turning on his agent and broker are not good options.

MIcah, you had obligations to be honest.

1. They are spelled out in the SPQ on the last page along with every page in that document.
2. They were also spelled out on the TDS.
3. They were also spelled out on multiple KW disclosure guides he signed.
4. They were also spelled out in the CB disclosures he signed.
5. Micah then had obligations to mitigate his damages with proper price adjustments to the binding contract we had formed weeks prior when presented with those. Indeed we had a "kick out clause" and the contract said would could cancel it or "kickout" -- what he contract did not spell out was that we could also complete our agreement at the terms we had agreed to and sue. It's the simplest concept -- and impossible to understand why Ken and all the others are not respecting it properly.

Jue v Smiser - the only f-king case precedent you need to know is crystal clear.

[8] Effect of Plaintiff's Discovery of True Facts Before Close of Escrow in Real Property Sale

The plaintiff's discovery of the true facts after signing a real property purchase agreement but before the close of escrow does not preclude a finding of justifiable reliance with respect to false representations made by the defendant before the purchase agreement was signed. The plaintiff's reliance at the inception of the agreement is sufficient to support recovery for fraud [Jue v. Smiser (1994) 23 Cal. App. 4th 312, 313, 316–318, 28 Cal. Rptr. 2d 242].

As for "revocable contracts"...

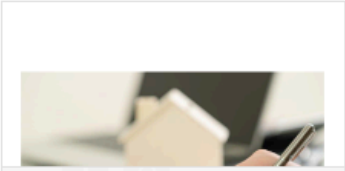
1. Ken has that fully inverted.
2. A "revocable contract" is a contract that the seller can withdraw/revoke unilaterally. It has nothing to do with Buyer cancellation rights on an irrevocable contract.
3. Revocable contracts for real estate are extremely rare. in general as it would be careless to create one. All contracts with an executory period should have an expiration date.
4. Revocable contracts -- For example -- A seller, says "sure, I'll sell you the lot next door if you can figure out how to get the county to approve water " -- and he does that without quoting a time frame -- and 3 years later, no approval was had so he revokes the contract offer from the person he made it with.

Ken, if you have any case precedents that support the requirement of a buyer in a residential real estate purchase to mitigate damages related to fraudulent misrepresentation to induce a contract, when fraud was identified in escrow - please provide that to both Micah and myself in the next 5 business days. Such a precedent would generally need to contradict Jue v Smiser.

b

3 Attachments • Scanned by Gmail

20241029 - toMic...



2019 - BASF-Han...

The Real Property Section of the
Bar Association of San Francisco

presents

BRINGING DOWN THE HOUSE:
ASSESSING DAMAGES IN REAL ESTATE CASES

Speakers

2011 - BRINGING-...

Page 9

Page 9 Gorman states, “Mr. Forstein is the prevailing party per the CAR contract and is entitled to full reimbursement for all attorneys’ fees sought herein.”

Clause 25 of the CAR contract does not stipulate how the prevailing party is determined.

Clause 25 of the car contract suggests attorney fees are due to a prevailing party due to disputes arising from the contract.

CIV 1717(b)(2) governs attorney fee shifting clauses. And it provides for no fees in the event of voluntary dismissals.

This complaint does not arise from the contract. The complaint arises from fraud by the brokers in the TDS and SPQ delivery process that destroyed the consent process related to acceptance and contract formation as well as seller mis-representations and omissions on the TDS and SPQ were made over a week before the buyers first viewed the property.

Torts are subject to the American Rule, but that conclusion is left out and even an errant categorization of this as a contract claim because subject to CIV 1717(b)(2).

Attorney Ken Gorman attempted a “shake down scheme” for $145,000 in legal fees. That is worthy of Disbarment.

Page 10

Page 10 bullet 6 - Gorman wrote, “The challenges presented by Plaintiffs’ conduct in this case were extraordinary beginning with the 56-page verified complaint and its 100 pages of exhibits, through to the recent dismissal and follow up communications.”

Plaintiffs can provide 300 emails and a 100+ page email log that shows this characterization as inaccurate. Many emails have been provided in this document already showing mis-characterization of email dialogue.

Gorman, after $145,000 in billing, has yet to make any position statement about how or why Jue v Smiser is not the controlling precedent as noted by CA Bar Publishing in 2011 and 2019.

As exposed in his first email to plaintiffs, Gorman viewed the complaint as something to demurrer. Gorman was presented with two amended complaint options which removed all story from the document with the second option being only 18 pages long.

Thus, the complexity and confusion was locked in by choice of Gorman and Forstein and when simplicity was requested by Plaintiffs 4 times it was refused.

Page 10 bullet 6 at end - Gorman wrote, “An example is the answer to special interrogatory no. 36, a true and correct copy of which is attached hereto as Exhibit C.”

Exhibit C - Rows 1, 2, 3,and 7 (index 36,37, 38 and 42) are greyed out because they represented paragraphs in the original complaint that were SKIPPED in request for interrogatories by Gorman. This showed Gorman did NOT want to collect more facts and statements about the contractors or the defective contract that would have given facts for cross complaints.

Index	Request #	Info	details	Comments / source for documents
36	xx	Omitted 6b,a,c,d	That created a situation in which the Seller, who paid for and committed a lot of fraud, could also claim he was the victim of fraud. Thus, he may have only been pursuable for "negligence" for some items, where punitive damages clearly needed to be applied to "someone" for each of the acts, and the entire scaffolding for this type of scheme needed to be exposed and dismantled. For example, the two Licensed Contractors were recommended by the Seller's Agent and the Seller's Agent was "in charge of" supervising them and approving completion of work for payment. While it's clear the Licensed Contractors committed gross acts of fraud which would have been known to the seller, it's unclear if he was aware they took shortcuts when concealing mold and structural defects, and it's unclear if the Seller's Agent was or was not aware those shortcuts had been taken. For this reason, the Contractors, the pre-sale inspectors and others are being pursued separately to try to recover some damages for fraud with punitive damages applied to the "doers" of the fraud, to provide proper remedy. With this approach the goal was to stop those "manufacturing the fraud" as well as those "brokering and managing the fraudulent services" in a more definitive manner	Ken, the attorney was not interested in this...
37	xx	Omitted 7	Had this scheme not run its course on the Plaintiffs, other Buyers Agents with other buyers they were not wed to were required to execute the scheme, and no simple path to remedy for any harmed buyer existed, due to the chaotic acts of process and feigned or real ineptitude that functioned as "bear spray" to keep sincere attorneys and oversight agencies away.	Ken, the attorney was not interested in this...
38	xx	Omitted 8a,b,c	This scheme, the damages from it, the damages from trying to obtain remedy for it, and this complaint which details it all, provides a clarifying example of what exploiting "long standing defects" in the RPA looked like. a) The RPA defects, which had no business being in any contract, invited this behavior and they seem to have been in play for decades. b) After the close of escrow when it then became apparent that there was an entire subset of the California Legal Lobby who was prepared to commit fraud to keep the fraudulent document scheme in play, it was easier to see how the scheme remained in play for decades. c) To compound matters, the state oversight agency employees in multiple industries were taking shortcuts that perpetuated the schemes.	Ken, the attorney was not interested in this...
39	33	Facts for 8d	This scheme revealed a multi-decade racketeering mess and made a mockery of the California Real Estate Brokerage System, the California Legal System, and the California Consumer Protection system. This scheme exposed a rot in US Commerce, Professional Ethics, and US Licensed Professional Systems on a massive scale	<website URL hidden for now>
40	34	Witnesses for 8d		<website URL hidden for now>
41	35	Facts for 9 - harmed by over 250k	The Plaintiffs were harmed by over $250,000 in fraudulent misrepresentation and fraudulent concealment that was "non-pursuable" for almost three years	see 15 page supplement you ignored with the verified complaint https://seller-and-agent-conspiracy-2023.bryancanary.com/initial-property-condition https://canary-v-forstein.bryancanary.com/
42	36	Facs for 9 - "non pursuable for almost 3 years"	The Plaintiffs were harmed by over $250,000 in fraudulent misrepresentation and fraudulent concealment that was "non-pursuable" for almost three years	**WE NEEDED 3 YEARS TO BUILD OUT ALL THE WEBSITES WITH ALL THE DOCUMENTS NEEDED TO SATISFY A 30 DAY DISCOVERY REQUEST FROM THE JACKASS ATTORNEY WHO WAS GOING TO TRY TO MILK MICAH OF THE MONEY THAT IS DUE TO US.**
43	37	Witnesses for 9 - non-pursuable for 3 years		You.Attorneys like you.

Exhibit C, Page 1 of 1

That created a situation in which the Seller, who paid for and committed a lot of fraud, could also claim he was the victim of fraud. Thus, he may have only been pursuable for "negligence" for some items, where punitive damages clearly needed to be applied to "someone" for each of the acts, and the entire scaffolding for this type of scheme needed to be exposed and dismantled.

For example, the two Licensed Contractors were recommended by the Seller's Agent and the Seller's Agent was "in charge of" supervising them and approving completion of work for payment. While it's clear the Licensed Contractors committed gross acts of fraud which would have been known to the seller, it's unclear if he was aware they took shortcuts when concealing mold and structural defects, and it's unclear if the Seller's Agent was or was not aware those shortcuts had been taken.

For this reason, the Contractors, the pre-sale inspectors and others are being pursued separately to try to recover some damages for fraud with punitive damages applied to the "doers" of the fraud, to provide proper remedy. With this approach the goal was to stop those "manufacturing the fraud" as well as those "brokering and managing the fraudulent services" in a more definitive manner

Had this scheme not run its course on the Plaintiffs, other Buyers Agents with other buyers they were not wed to were required to execute the scheme, and no simple path to remedy for any harmed buyer existed, due to the chaotic acts of process and feigned or real ineptitude that functioned as “bear spray” to keep sincere attorneys and oversight agencies away.

This scheme, the damages from it, the damages from trying to obtain remedy for it, and this complaint which details it all, provides a clarifying example of what exploiting “long standing defects” in the RPA looked like. a) The RPA defects, which had no business being in any contract, invited this behavior and they seem to have been in play for decades. b) After the close of escrow when it then became apparent that there was an entire subset of the California Legal Lobby who was prepared to commit fraud to keep the fraudulent document scheme in play, it was easier to see how the scheme remained in play for decades. c) To compound matters, the state oversight agency employees in multiple industries were taking shortcuts that perpetuated the schemes.

Page 10 bullet 8 sentence 2 - Gorman wrote, “Perhaps the best example is our decision to answer the verified complaint rather than file a demurrer, though it was demurrable for several reasons. After we answered the complaint, Mr. Canary sent emails threatening to take a default because he did not like the way many of the assertions were answered, then later chastised me several times for answering the complaint that I knew was defective.”

On 8/26/2024, in the very first email between Canay and Gorman Canary wrote, “We are in receipt of the response you labeled as a "Verified Answer to Complaint" 1) The General Denial applied to the 50 acts of fraud disqualifies that as a verified response. He answered the less relevant items and Generally Denied the most relevant. That's not a Verified Answer to our Complaint. 2) As far as we are concerned your client is in default but we didn't file it (yet). 3) Wait until you get our Case Management document until you think more about this. “

Plaintiffs don't believe there are any other emails mentioning filing a default.

Gormen then used the defective complaint to his advantage by ignoring the statements of fact most relevant for his client and making interrogatory demands that were duplicative due to the body of the complaint that was written like a story not non-overlapping allegations.

Our defective complaint was viewed by him as an open door to a futility defense that would eventually run us out of our complaint.

Page 10 bullet 8 last 2 sentences- Gorman wrote, "If I had demurred, the pleadings stage would have gone on for months, discovery would have been delayed, costing several thousand dollars more in attorneys' fees."

Several thousand more on top of $145,000 would be less than 3%, and it would have gotten use to agreed upon and disputed facts for under $10k in attorney fees. .

As soon as we realized the general denial to the verified complaint was not remediable with support of the Judge at the CMC, we provided Gorman with an amended complaint that included the 50 acts of fraud on the body of the complaint to fix the defect. That would have rapidly established fact in dispute for Forstein frauds without loss of focus on conspiracy and personal injury. Gorman and Forstein refused to stipulate 3 times in September 2025.

On 12/2/2025 they were presented with an 18 page amended complaint. With only 1 and 2 line facts about the fraud with damages that were forstein's direct responsibility. Gorman

refused to stipulate. There was nothing to demur and it would have avoided all the admits that were improperly responded to. It would have established facts and conditions in dispute on 50 ats of fraud in the most efficient manner. He refused to stipulate.

Below is the table of contents from the shortest complaint that could be drafted or 50 acts of fraud. (see image below)

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Page 11, bullet 9 - half way into paragraph - Gorman wrote, “My client responded to every reasonably coherent request to admit and every document category and produced over 1,500 pages of documents. It would have taken far more time to demand clarity and code compliance before answering, but Mr. Forstein and I concluded that the more economical path was to object as appropriate and answer where possible.”

The completeness of answers was refuted with screenshots of emails prior. Below is an example of illogical document delivery that made no sense until we see Gorman use his “# of pages produced” to justify proper behavior illogically, when fall facts are known.

1. Forstein was asked to produce utility bills to verify representations made. He only needed to provide 12 pages of bills total for two different utility systems initially to represent a year in billing. He provided complete bills instead of the key pages with relevant facts only, but he left out key months and/or facts suggested some of the months were not representative of use for unknown reasons.

2. Another request was made for the balance of the bills. He provided full documents for months not requested while duplicating other information and voiding delivery of the information that would have revealed different amounts.

3. A third request was made to get proper clarity, and Forstein provided bills for 5 years which were not requested and we’ve yet to check and see if he included the months of most relevance which were specified as we realized the futility of the litigation situation. We knew if we refiled we’d check to see what we got then.

4. Forstein was bloating document count to conceal facts. We didn't suspect it was for any other reason, until we see Gorman's Statement here where document count is used to correspond to compliance, which was not the case.

Page 11, bullet 11 - half way into paragraph - Gorman wrote, "Despite the myriad threats, Plaintiffs never filed a motion to compel and the time expired."

Forcing a motion to compel on someone in Pro Se, knowing no financial penalties would be applied to Forstein or Gorman is a futility strategy to create Pro Se work with no requirement to deliver.

We recognized their behavior as intentional as it played out, and it became a reason to consider dismissal and other options for recovery.

Page 11, bullet 12 - half way into paragraph - Gorman wrote, "Mr. Canary sent 2 "letters" to Mr. Forstein and I. A true copy of pages 1-16 of the first letter is Exhibit D. In addition to calling Mr. Forstein a pathological liar and accusing me of lying and other things, on pages 8 and 9 Mr. Canary discusses the attorney fee clause in the contract. He argues that it should not apply because Plaintiffs' claim is for fraudulent inducement of the contract which should thus nullify the attorneys' fee clause,"

Gorman was educated with the CA DRE reference book on teh tort classification. He ignored it.

Gorman's written characterizations in this motion, compared to true legal facts and complaint facts speak for themselves as to his eagerness and willingness to lie and mislead whenever possible.

Forstein committed over 50 acts of fraud. They are documented online. Forstein has denied neighbors who considered him a friend are being honest. Forstein declared to his wife and agent he properly disclosed cat urine, by checking no to pets on property. Forstein ran a shake down scheme on his neighbors. Forstein's acts speak for themselves. (see image below)

24CV001914 - Neighbor Attestation - Forstein $1200 "water leak" shakedown (ref Micah Forstein Alias email)

Summarize this email

Bryan Canary <bryan@bryancanary.com> Dec 2, 2024, 11:22 AM Reply to all

to Ken, Micah, Hillary

Ken and Micah

Attached is the attestation from [redacted] .

The [redacted] attest to an attempted shake them down" (my phrase not theirs) for $1200 for water in the road.

By all accounts this was just a shakedown by Forstein and I may have found another witness today who had heard about the event as well. He was another neighbor in the area who knew sue at that time and can attest to hearing about this back then.

If you look then at the emails from Kent to Micah as soon as Kent took possession of the property in August 2020, you will see the talks about that water in the road too. This was all around that time.

Micah was asked to produce documents for that road leak and he produced receipt for a 2" ball valve repair that was related to his pump house, not the road. Those are about 60' apart and pump house is down hill from road. Micah knows that...

To be clear, I'm pretty sure I know the broader gist of exactly what was going, but what I need is Micah to admit to his knowledge and that of his dialogue with Weinstein first -- because this adds to the 30+ acts of disclosure fraud in various ways.

Ken, please reply to confirm receipt.

Bryan

One attachment • Scanned by Gmail

PDF 20241105 - SG De...

Page 12

Page 12, bullet 15 - - Gorman wrote, “Plaintiffs’ pleadings and the documents exchanged between the parties in 2021, and the reports provided by and to Plaintiffs before the close of escrow show that Plaintiffs’ claims were subject to summary judgment for missing the statute of limitations, which I was in the process of drafting when the dismissals were filed.”

Can you imagine an Attorney of 40 years stating he ran up a bill for $145,000 , then he illegally sought reimbursement for that while simultaneously claiming he should have filed for a motion for summary judgment for statute of limitations with facts provided in the original complaint on paragraphs 53 through 56 ?	**SUMMARY OF CAUSES OF ACTION** 57. Fraud to Induce Contract - There are over 40 counts of Fraudulent Misrepresentation and/or Fraudulent concealment to induce the contract at a price more than the home was worth. Those frauds were/are Torts to induce a Contract not Breach of Contract a. In total, plaintiffs incurred $250,000 in damages from fraudulent misrepresentation and concealment. The Defendant and those he hired executed the frauds under a protective umbrella of fiduciary fraud provided by all the Real Estate Licensees on both sides of the Transaction b. Some damages are from acts of actual and/or constructive fraud, discovered during Escrow. Those are directly attributable to willful and insincere acts by 1) pre-sale contractors 2) pre-sale inspectors 3) the Seller’s Agent and/or 4) the Seller. c. Far more damage resulted from acts of actual fraud and related insincere acts discovered after the Close of Escrow . Those acts were related to 1) pre-sale contractors 2) the Seller’s Agent and 3) the Seller d. Many fraudulent acts have very identifiable monetary values. Others are over arching misrepresentations. A few of the counts for fraud might be downgradable to “negligent misrepresentation” but not many, when all facts are included in each analysis. NOTE: The Seller and Seller’s Agent clearly understood and understand the use of “feigned incompetence” as a defense. They also knew that telling a few lies might 25 of 56 be problematic, but telling dozens scares off (almost) everyone who might have sought remedy. 58. Breach of Contract - In theory “Breach of Contract” should also apply, but the contract itself does not truly require the "As Is" Condition at time of Agreement Acceptance to then qualify as breach on delivery of the property at close of escrow, as it should, to qualify for that type of Breach of Contract. The defective RPA really convolutes Breach of Contract claims in many ways.

Page 12, bullet 16 - - Gorman wrote, “Mr. Canary seemed intent on driving up my client’s fees. In several emails, he accused me of driving up fees, but in others he threatened to employ litigation tactics to increase my fees.”

We can provide 300 emails and 100+ pages of email logs that expose Gorman’s evasion for 4 months on all basic matters of law and fact.

Please ask him to identify specifically the emails where we threatened to employ litigation tactics to increase fees. Every dollar paid to Gorman was one less for us. We can identify numerous areas where we expressed concern for Forstein’s own acts adding to his fees, and Gorman’s evasive answers to the complaint and discovery adding to his fees.

Page 12, bullet 18 - - Gorman wrote, “Plaintiffs’ aggressive litigiousness; unreasonable demands; excessive, disparaging, and unproductive communications replete with incorrect statements of law and fact, vulgarity, and threats; the excessive and largely incoherent discovery to my client; and blatantly improper responses to discovery necessitated every activity and time entry for myself and Ms. Dickson in the ledger. Had I not been so budget conscious given my client’s financial situation, those fees could easily have increased by 25-50%..”

We can provide 300 emails and 100+ pages of email logs that expose Gorman’s evasion for 4 months on all basic matters of law and fact.

Please ask him to identify specifically the emails where we threatened to employ litigation tactics to increase fees. Every dollar paid to Gorman was one less for us.

Please ask him to identify any references to statutes or case precedents at all. There is not a single reference to statute or case precedent by him in 4 months. Only CCP.

Please ask him to identify specifically where he refuted Jue v Smiser, where he defined what fraudulent representation and when and how it applies.

Please ask him to identify where he corrected his statement that Forstein formed a "revocable contract".

Please ask him to identify any references to CIV 3343 for proper expense recovery from real estate fraud.

Page 12, bullet 19 - - Gorman wrote, "In my opinion, all of the time and hours spent arose from the contract which is the basis for Plaintiffs' complaint."

The basis of the complaint was the TDS and SPQ as conveyed to him clearly.

canary-v-forstein

Forstein, both Agents, both Txn Coordinators, both Brokers, both Brokerages (Part 1)

=== TDS 1 - TDS Fraud (8 pages) ===	**view**	**as of 1**
34.1) Failed to deliver TDS in accordance w/ CA 1102		(Br
34.2) Failed to deliver TDS in accordance w/ Representation Law		(Br
35) Delivered TDS in patently incomplete manner		(Br
36) Delivered TDS with over 50 fraudulent statements		(Se
=== SPQ 1 - SPQ Fraud (13 pages) ===	**view**	**as of 1**
37.1) Failed to deliver SPQ in accordance w/ CA 1102		(Br
37.2) Failed to deliver SPQ in accordance w/ Representation Law		(Br
38) Delivered SPQ in patently incomplete manner		(Br
39) Delivered SPQ with over 50 fraudulent statements		(Se
=== SAVID 1 - Sellers AVID Fraud (6 pages) ===	**view**	**as of 1**
40) Failed to deliver Sellers AVID in accordance w/ Representation Law		(Br
41) Delivered Seller's AVID in patently incomplete manner		(Br
42) Delivered Seller's AVID with over 50 fraudulent statements		(Se

The complaint arises from fraud by the brokers in the TDS and SPQ delivery process that destroyed the consent process related to acceptance and contract formation as well as seller mis-representations and omissions on the TDS and SPQ were made over a week before the buyers first viewed the property.

The TDS itself states it's not to be considered part of the contract.

II. SELLER'S INFORMATION TDS PG 1

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

Seller ☐ is ☒ is not occupying the property.

A. The subject property has the items checked below: *

CACI 4107 and 4109 are very straight forward. The brokers destroyed the consent process. The TDS states it contains representations of the seller and it sates explicitly it is NOT part of a contract between buyer and seller. < see image below >

Gorman deserves to be disbarred for this.

Page 12, bullet 19 - - Gorman wrote, "The dismissal of causes of action 3 through 11 in November minimally reduced the responses to our discovery and the time Ms. Dickson and I needed to decipher and analyze Plaintiffs' highly unusual responses thereto. But the gist of Plaintiffs' allegations and their claims continued to require significant time and work. The motions to compel were only reduced by mooting 11 responses to special interrogatories.."

That dismissal nullified 90% of the body of the original complaint, and it should have resulted in withdrawal of 90% of the request of interrogatories. It left only the 50 acts of fraud Forstein was specifically involved in and responsible for which were originally

documented in 15 pages in exhibit A1,.That document was ignored when we tried to incorporate it by reference into the complaint in CoA 1 and 2.

Gorman's refusal to stipulate to a complaint after that dismissal when presented with an new amended complaint that was only 18 pages speaks for itself.

Page 13

Page 13, bullet 20 - - Gorman wrote, "Plaintiffs made it clear through their discovery responses and emails that they were not alleging a breach of contract even after having ample opportunity to do so. In addition to their non-response to form interrogatory 50.1, Mr. Canary's email on November 19 on the fifth page, the paragraph titled "50.0-Contract," paragraphs 4 and 5, confirm that Plaintiffs do not consider their complaint to be for a breach of contract. A true copy of that is in Exhibit H.."

This complaint does not arise from the contract. The complaint arises from fraud by the brokers in the TDS and SPQ delivery process that destroyed the consent process related to acceptance and contract formation as well as seller mis-representations and omissions on the TDS and SPQ were made over a week before the buyers first viewed the property.

CACI 4107 and 4109 are very straight forward. The brokers destroyed the consent process. The TDS states it contains representations of the seller and it sates explicitly it is NOT part of a contract between buyer and seller.

Gorman deserves to be disbarred for this.

Page 13, bullet 21 - - Gorman wrote, "On the fifth page of his December 11, 2024 email, sent at 12:59 p.m., Mr. Canary writes that he could dismiss his complaint and refile, "As he [Gorman] and

others have insists that this is a contract dispute no matter I didn't include breach of contract as a CoA I can make that work several ways..." A true copy of that email is Exhibit I.."

Plaintiffs had "anti-trust" CoAs possibly available with 4 year statutes. They also felt they could try to refile for Fraud with an extended tolling because at this point, nobody in the legal industry had been able to even define what constituted fraud, contrary to dozens of statutes that say it exists.

Page 13, bullet 22 - Gorman wrote " Thus, I did not consider the dismissal of what they termed the "personal injury" causes of action to make this case a breach of contract case, especially since the remaining causes of action were called "Actual Fraud" and "Constructive Fraud." The only significant activity since the dismissal of causes of action 3 through 11 were the motions to consolidate, which were unaffected by the partial dismissal; and the motions to compel, which were reduced only by about 11 responses to special interrogatories relating to personal injury damages."

This is incoherent and irrelevant by the idea that the personal injury and broker conspiracy dismissal only resulted in the reduction of required response by 11 is farsicle given there was nothing left in the complaint body about Forstein's 50 acts of fraud and that's all we had left to discuss.

Page 13, bullet 24 - Gorman wrote " I have been admitted to practice for 40 years and has been a litigation to trial lawyer the entire time. I enjoy a very good reputation as a trial attorney, particularly in Santa Cruz and Monterey Counties."

If Gorman has been allowed to attempt to manipulate the courts and opposing parties like this for 40 years, how many people have been destroyed by him?

Page 14

Page 14, - - Gorman wrote, “I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.” dated 3/3/2025

This document shows Gorman has no respect for his perjury declaration statement.

We can NOT sue him for perjury. Thus, the only group he has to fear is the Federal Government, the CA State Government and the CA Bar.

1b) The Brokers Fraudulent Process that Disrupted Contract Consent and gives rise to CACI 4107 and 4109 claims

This complaint starts with the irrefutable fact that all Brokers, who were in fact in service to the seller financially, destroyed the contract acceptance and consent process in an intentional manner.

This scenario below explains their fraud and the fraud which Attorney Gorman and his client sought to ignore from day one. These frauds are in fact represented exactly by new jury instructions CACI 4107 and 4109 created in 2008 and 2013 seemingly to try to stop this exact type of fraudulent act.

1. A Seller knows their roof leaks in winter. The seller wants to represent that and does so on disclosure documents he gives to his selling broker for safe keeping and delivery to prospective buyers.

2. Should the buyer get those documents BEFORE they make an offer or AFTER?

3. Before. Of course, everyone can agree on that right?

4. Wrong. According to the California Association of Realtors (CAR), every Real Estate Broker in California, every Real Estate Agent in California, and many Attorneys in California, including Attorney Gorman, California law allows a Real Estate Broker who has those documents to intentionally withhold them from a buyer until AFTER a contract is formed.

   Does that make any sense?

It does NOT make sense, because the “law” , via statute and case precedent, does not allow for that without consequence to the Brokers and the Seller for fraud.

[8] Effect of Plaintiff's Discovery of True Facts Before Close of Escrow in Real Property Sale

The plaintiff's discovery of the true facts after signing a real property purchase agreement but before the close of escrow does not preclude a finding of justifiable reliance with respect to false representations made by the defendant before the purchase agreement was signed. The plaintiff's reliance at the inception of the agreement is sufficient to support recovery for fraud [Jue v. Smiser (1994) 23 Cal. App. 4th 312, 313, 316–318, 28 Cal. Rptr. 2d 242].

How can Jue v Smiser be relevant if the brokers are going to withhold the documents needed for reliance until after signing the contract?

The Contract template created by the Brokers Professional Lobby and provisioned by the brokers suggests withholding disclosure documents is acceptable but that contract itself has a legal disclaimer in the Footer of Page 10 stating it's not warranted for any individual transaction, and that contract is inclusive of numerous clauses that can be deemed unlawful numerous ways, inclusive of this fraudulent suggestion of process.

In 2008 and 2013, the California Courts created CACI 4107 and 4109 (jury instructions) to seemingly address this specifically. CACI 4017 is for complaints by transaction parties against their own agents who intentionally withhold facts and CACI 4109 is specifically for complaints by buyers against a Seller's Broker for intentionally withholding material facts, which is EXACTLY what the Selling Broker did to these plaintiffs/buyers.

With this short introduction we've just shown the case for the cross complaint by Forstein against three brokers in his service could have been made in less than 2 pages with a custom set of Jury

Instructions built solely for that purpose (CACI 4109). Forstein was vicariously responsible for that act and that's why the 7th Cause of action was filed.

Seller Forstein is an intelligent man and his frauds were overwhelming. One explanation for his willingness to engage in them may have been because he realized this confusion with representations was in play at the broker level, it had been for a long time, and it was well protected by California Defense Attorneys for that reason.

Via discovery, Forstein's Attorney, Ken Gorman, refused to acknowledge this at all and in his motion he declared no facts existed for a cross complaint when we just presented the entire case. In discovery, it was revealed that Forstein was NOT following the direction of his own brokers for the disclosures he was making and he made many false statements with knowledge of his Agent in a manner that would have left both of them liable for fraud to his broker.

1c) Questions of Law and Fact that Establish this as a Tort Claim only

1. This complaint does not arise from the contract document. This complaint arises from four or more disclosure documents with representations of the seller and/or seller's agent on them that were filled out week(s) prior to knowing who the buyer was and due to be presented to prospective buyers by the Broker BEFORE a contract was formed. The frauds for the TDS, SPQ and Seller's AVID were detailed by document to Gorman and Forstein.

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Forstein, both Agents, both Txn Coordinators, both Brokers, both Brokerages (Part 1)

=== TDS 1 - TDS Fraud (8 pages) ===	view	**as of 11/24/2024 (summarizes 200k+ acts of fraud)**
34.1) Failed to deliver TDS in accordance w/ CA 1102		(Brokerages, Brokers, Agents, Txn Coordinators, Seller - Deceit)
34.2) Failed to deliver TDS in accordance w/ Representation Law		(Brokerages, Brokers, Agents, Txn Coordinators, Seller - Deceit)
35) Delivered TDS in patently incomplete manner		(Brokerages, Brokers, Agents, Txn Coordinators, Seller - Deceit)
36) Delivered TDS with over 50 fraudulent statements		(Seller Agent and Seller only - Forstein and Weinstein Frauds)
=== SPQ 1 - SPQ Fraud (13 pages) ===	view	**as of 11/25/2024 (summarizes 200k+ acts of fraud)**
37.1) Failed to deliver SPQ in accordance w/ CA 1102		(Brokerages, Brokers, Agents, Txn Coordinators, Seller - Deceit)
37.2) Failed to deliver SPQ in accordance w/ Representation Law		(Brokerages, Brokers, Agents, Txn Coordinators, Seller - Deceit)
38) Delivered SPQ in patently incomplete manner		(Brokerages, Brokers, Agents, Txn Coordinators, Seller - Deceit)
39) Delivered SPQ with over 50 fraudulent statements		(Seller Agent and Seller only - Forstein and Weinstein Frauds)
=== SAVID 1 - Sellers AVID Fraud (6 pages) ===	view	**as of 11/27/2024 (3 acts of fraud to conceal the same material facts**
40) Failed to deliver Sellers AVID in accordance w/ Representation Law		(Brokerages, Brokers, Agents, Txn Coordinators, Seller - Deceit)
41) Delivered Seller's AVID in patently incomplete manner		(Brokerages, Brokers, Agents, Txn Coordinators, Seller - Deceit)
42) Delivered Seller's AVID with over 50 fraudulent statements		(Seller Agent and Seller only - Forstein and Weinstein Frauds)

In the image below, the Transfer Disclosure Document (TDS) explicitly states it is NOT to be treated as part of the contract to dis-able this exact type of legal fee shifting pursuit when a buyer is pursuing fraud to induce a contract.

TDS, PG1

II. SELLER'S INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

Seller ___ is X is not occupying the property.

A. The subject property has the items checked below: *

X Range	Wall/Window Air Conditioning	X Pool:
X Oven	Sprinklers	X Child Resistant Barrier
X Microwave	Public Sewer System	X Pool/Spa Heater:
X Dishwasher	X Septic Tank	X Gas ___ Solar ___ Electric
Trash Compactor	Sump Pump	X Water Heater:
X Garbage Disposal	Water Softener	___ Gas X Solar ___ Electric
X Washer/Dryer Hookups	X Patio/Decking	X Water Supply:

2. This complaint arose from

   a. Procedural fraud by brokers who were paid $55,000 by the Defendant for services that improperly affected the delivery process for the "Transfer Disclosure Statement (TDS) and "Seller Property Questionnaire" (SPQ) in a manner that benefitted the defendant and brokers while destroying the mutual consent process needed for contract formation (best characterized by CACI 4109 and 4107, CIV 1709/1710, CIV 2079, CIV 1667, BPC 10176(i) CIV 1565-1567 and various anti-trust statutes).

   b. Patently incomplete TDS and SPQ that were accepted by the Broker and not rectified over a week before the buyers first viewed the property (CIV 2079, CIV 1572/1573, CIV 1709/1710, Loughgrin v Superior Court, Lingsch v Savage and others)

   c. Misrepresentations by the Seller's Agent and Seller about their pre-sale relationship on their "Broker Duties" disclosure (CIV 1572/1573 , CIV 1709/1710, CIV 2079 and others)

   d. Misrepresentations and concealment of fact by the Seller's Agent and Seller about property conditions and personally property intended to convey. (CIV 1572/1573 ,

CIV 1709/1710, CIV 2079 and others)

On 5/15/2024, Exhibit A1.1 was delivered with the complaint. It included 15 pages of fact statements related to the TDS, SPQ, Seller's AVID and related representation frauds. The Defense Attorney and his client ignored the inclusion of the document by reference in their original response and that led to major delays and confusion in properly pursing agreed upon and disputed facts.

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== Forstein, Weinstein and the Pre-Sale Home Inspector ==

Count 6 - HVAC Explosion Hazard - $8,000 / $40,000

1. Neither Weinstein or Forstein made representations about the fire/explosion hazard related to the Furnace Mounting Configuration prior to Contract Acceptance
2. Weinstein provided a pre-sale Home Inspection report on behalf of his client. The Home Inspection report was from a local home inspector who touts over 10,000 inspections since 1998. He failed to identify the defect, and it's one that all sincere inspectors call out with ease.
3. The defect was first noted by Plaintiffs inspector during escrow.
4. As it turned out,
    a. Forstein was told in 2015 the Furnace represented a fire/explosion hazard on a 2015 home inspection report.
    b. Weinstein and Forstein were told about this problem by the Contractor involved in the fix up scheme to sell the home. .
5. Weinstein and Forstein failed to represent this defect directly and/or via the pre-sale inspection report prior to Contract Acceptance when they both had material knowledge of the defect from multiple parties.
6. Changing out the furnace required reworking the plenum and that part of the duct work.
7. Compensatory - $8,000
8. Punitive - $8,000 x 5x = $40,000

On 11/19/2024 Gorman was provided reference to the CA DRE reference book which explained the logic behind torts for fraud to induce the contract.

CA DRE Reference Book

Summarize this email

Bryan Canary <bryan@bryancanary.com> Nov 19, 2024, 11:49 PM Reply to all

to Ken, Hillary, Micah

Ken (and Micah) -

This is an extremely serious question and concern related to your inquiry in the Form interrogatories related to regulatory bodies.

Ken

1. Do you know what the CA DRE "reference book" is?
2. Do you have a copy of the CA DRE "reference book"?

When I first went looking for authority resources for CA real estate law -- after finding dozens of case precedents wihch showed in the early 1990s the judges were pushing back on contracts in use -- good resources explaining what had happened were oddly hard to find. the Attorneys had really done a number of confusing things.

Then I found a web page on the CA DRE web site that had the "Reference Book" on it by chapter. In total it's over 500 pages.

Ih that book

1. they explained the tort vs contract dispute.
2. They validated any document that can convey title, not just a deed. (supporting 13B and the contract as the vehicle to transfer title and the assignment of contracts()
3. They explained the requirement for all actions taken on a path towards forming a contract as needing to be in good faith.
4. Constructive Fraud - it states constructive fraud should never exist because "everyone" is supposed to know representation law. (can you imagine that -- that tells you how old it is)
5. The book's origins, seemed to date back 100 years or more and probably back to 1870s when most of CA real estate law and fraud was put on the books.

From 11/24/2024-11/27/2024 Gorman and Forstein were delivered three verified documents via website that showed every place in the TDS, SPQ and Seller's AVID where statements were inaccurate or absent in relation to damaging conditions. (See image below).

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Forstein, both Agents, both Txn Coordinators, both Brokers, both Brokerages (Part 1)

=== TDS 1 - TDS Fraud (8 pages) ===	view	**as of 11/24/2024 (summarizes 200k+ acts of fraud)**
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35) Delivered TDS in patently incomplete manner		(Brokerages, Brokers, Agents, Txn Coordinators, Seller - Deceit)
36) Delivered TDS with over 50 fraudulent statements		(Seller Agent and Seller only - Forstein and Weinstein Frauds)
=== SPQ 1 - SPQ Fraud (13 pages) ===	view	**as of 11/25/2024 (summarizes 200k+ acts of fraud)**
37.1) Failed to deliver SPQ in accordance w/ CA 1102		(Brokerages, Brokers, Agents, Txn Coordinators, Seller - Deceit)
37.2) Failed to deliver SPQ in accordance w/ Representation Law		(Brokerages, Brokers, Agents, Txn Coordinators, Seller - Deceit)
38) Delivered SPQ in patently incomplete manner		(Brokerages, Brokers, Agents, Txn Coordinators, Seller - Deceit)
39) Delivered SPQ with over 50 fraudulent statements		(Seller Agent and Seller only - Forstein and Weinstein Frauds)
=== SAVID 1 - Sellers AVID Fraud (6 pages) ===	view	**as of 11/27/2024 (3 acts of fraud to conceal the same material facts**
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42) Delivered Seller's AVID with over 50 fraudulent statements		(Seller Agent and Seller only - Forstein and Weinstein Frauds)

Thus Attorney Gorman and Forstein knew with absolute clarity these complaints were arising from the TDS, SPQ , Seller's AVID and other documents partially and improperly completed by the Defendant and his Agent days before plaintiffs ever looked at the property and they knew the Authorities for these stated they were to be filed as Torts for Fraud.

.

3. The absence of breach of contract causes of action was not an attempt to avoid the attorney fee clause in the contract, as suggested by Gorman. Tort claims are the legally appropriate way to pursue representation fraud because it transpires BEFORE a contract is formed. In this case the TDS itself states it is NOT intended to be thought of as part of the contract, for this exact reason and others.
4. All Brokers involved in the transaction were contractually and financially obligated to the Seller, as was the concerning but customary practice at that time which is no longer legal across the industry
5. On 3/10/2021, at time of Brokerage Agreement, the Seller committed to paying approximately $55,000 for brokerage services for his broker and any brokerage that brought a buyer for his sale.
6. On 3/18/2021, the Seller only partially completed representations about property condition and personal property in his TDS and SPQ with improper Agent oversight. In addition, together the Seller's Agent and seller made false representations to the Agent's brokerage

about their working relationship , property conditions, and the condition of personal property to be conveyed. These torts were executed a week before the plaintiffs ever looked at the property..

7. From 3/18/2021 through 4/1/2021 the Seller's Brokerage apparently did not do quality control on the documents produced by the Seller's agent and Seller to rectify unanswered questions and missing signatures.
8. From 3/26/2021 through 3/30/2021 all brokerages and their agents intentionally withheld the partially completed TDS and SPQ documents from the Buyers along with other disclosure documents with material information. All licensed professionals indicated to buyers via their word or behavior that the buyers needed to "blind bid" if they wanted to engage in a brokered offer and acceptance process for this property.
9. What we have just described is a long standing "commercial hoax" that's been engaged in by Brokers across the state of California for decades. This transaction involved Keller Williams, Coldwell Banker, and another local Broker acting outside of a proper relationship with Keller Williams.
10. **CACI 4109** (Selling Broker intentionally withholds material facts from buyers) and **CACI 4107** (Broker intentionally withholds material facts from client) summarily characterizes the brokers' unlawful acts. The underlying statutes for CACI 4109 are CIV 1710(3) & BPC 10176(i) , with supporting case precedents of Ligsch v Savage, 213 Cal. App 2d 729, 736-37, 29 Cal. Rprtr. 201, 205 (1963); Cooper v Jevne, 56, Cal. App 3d 860, 866, 128 Cal Rptr. 724, 727 (1976) as well as additional causes of action including CIV 2079, CIV 1667 and various anti-trust statutes.
11. On 4/1/2021, after the defective offer / acceptance / consent process was "completed", brokers' presented the partially complete TDS and SPQ documents. The Plaintiffs should not have been forced to make an offer without disclosure documents and they would NOT have made an offer with partially completed documents had they been presented at the proper time. This delivery of partial documents was in violation of a) CIV 2079 for broker

competency and good faith b) Loughrin v. Superior Court (1993) 15 Cal.App.4th 1188, 1195 in regards to providing complete answers to all yes no questions, and numerous other broker competency, and seller disclosure statutes.

12. Downstream Facts Related to the Contract Template provisioned by the Brokers that was unlawful and destroyed the Contract Consent process.
    a. The brokers' provisioned a contract for use by both buyer and seller that was published by a CAR (California Association of Realtors), "Approved By CAR", yet the footer of page 10 states, "***No representation is made as to the legal validity or accuracy of any provision in any specific transaction***" . NOTE: CAR is NOT the CA Department of Real Estate (CA DRE). CAR is NOT a state managed or regulated organization. CAR is the professional lobby for brokers with no state or legal oversight Thus, CAR is not a legal authority and the CAR Contract can NOT be used as a legal authority by default.
    b. Contract Clauses 14A and 10A7 is what the brokers pointed to for their right to withhold Selle Representations from buyer during Consent process. Such claues are unlawful and or incomplete via. CIV 1667 and 1668 and a buyers rights to pursue fraud discovered during escrow as supported by Jue v Smiser (1994) 23 Cal. App. 4th 312-318 and Bagdasarian v. Gragnon (1948) 31 Cal. 2d 744, 750 [192 P.2d 935] with theJue v Smiser precedent referenced for this exact purpose CA Bar Presentation Publishing in 2011 and 2019.
    c. A legal analysis of the Contract Clause 14F suggests a buyer must forgive a seller for non-disclosure at time of condition contingency release to get to close of escrow in violation of CIV 1667 and 1668
    d. .Downstream Facts related to Seller's Agent and Seller misrepresentations and concealment discovered during escrow and after
    e. The Seller's Agent and Seller misrepresented / concealed their working relationship in their "Broker Duties" disclosure as exposed by their own written admissions 3

weeks into escrow in violation of CIV 15721573 and/or 1709/1710. Buyers believed the seller's Agent was separate some seller when voicing initial concerns about Seller fraud in escrow, not knowing they were telling the "fixer" for the transaction about their concerns who then went on to commit "man in the middle" fraud by failing to deliver buyer concerns and documents to seller to sabotage transaction.

f. The Seller's Agent and Seller misrepresented / concealed "as is" conditions in disclosure documents in a manner that gave rise to actual damages, and can currently be proven via verified documents. These failures to represent are in violation of duties to honestly disclose in an "as is" sale supported by Lingsch v. Savage, supra, 213 Cal. App. 2d at 742; and many other statutes and precedents.

13. Downstream facts related to Plaintiffs Complaint format and Pre-Litigation interactions.

a. The Defendant had moved out of state 8 months prior to forming a contract It was unclear how much the Defendant knew about this inverted and incomplete representation process and the damage his brokers did to our mutual consent to contract

b. The Plaintiffs complaint was written "like a book" to try to convey a full and complete notice to Defendant and his Attorney of facts Defendant may not have been aware of due to 1) his absence during the transaction and 2) his lack of professional experience buying homes and 3) the fact his purchase of the home was done from a Trust and thus a different experience that may have confused him.

c. Paragraphs 38 through 48 of the complaint and many exhibits were provided with the original complaint for his education and that of any Attorney who might support him. That provided them with encouragement to turn on the brokers who misled him and procedurally destroyed our consent and transaction process. These same facts were presented in emails over 4 months of dialogue with the Defense Attorney and with this Defendant on the cc . Unfortunately, numerous attempts to get them to properly turn on the brokers was declined. That led to a need to modify the

complaint to focus exclusively on the Defendant's frauds. Attempts to do that were refuted while illogical and unreasonable demands were made on plaintiffs for irrelevant allegations and duplicative discovery for improperly formatted complaint paragraphs while omitting key facts in Causes of Action 1 and 2, and then while eventually conceded they did not dispute conditions presented by Plaintiffs. .

d. Absent any matters of law or fact they could hide behind, the Defendant and his Attorney created and successfully used a "futility defense" to eventually drive us out of this complaint and in search of another avenue for remedy

14. Thus this could not and can not be deemed a "Contract Dispute" or "Breach of Contract" (CIV 1549 - 1550), because, for all reasons stated prior. it's impossible to declare if a contract was ever formed at all, and if so, it's difficult to partition that which was properly formed from that which was not.
15. Thus, this was a Tort only dispute that was properly filed for fraudulent inducement of a contract inclusive of manipulation of the TDS and SPQ delivery process and the delivery of incomplete documents, as well as personal injury due to the extreme nature of the manipulation, all of which were and are properly defined as tort claims and subject to the "American Rule".
16. Thus, the motion for Attorney Fee Shifting should be dismissed with no further consideration.

.

1d) The TDS and SPQ gave rise to Complaint (with images)

The Transfer Disclosure Statement (TDS) and the Seller Property Questionnaire (SPQ) are 3 and 4 page questionnaires intended to assist a real property seller with “representing” all material facts and defects related to their property which might affect a real estate broker and buyer’s perception of value.

The documents “should be” filled out by a seller before entering a Brokerage Agreement to sell, and certainly they must be filled out before the home is listed for sale so the Broker knows what he/she is marketing AND such that the broker is prepared to present the seller representations to the buyer for consideration when they are preparing an offer.

The TDS and SPQ are “statutory” disclosure documents introduced via CIV 1102 in 1985, and in theory, they were designed to reduce misrepresentation and misrepresentation related lawsuits.

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The Transfer Disclosure Statement (TDS)

The TDS states it contains "representations of the seller" on it. The TDS also states this information is a "disclosure and not meant to be a part of a contract between buyer and seller". As you can imagine that later part could be confusing to a non-attorney, when you realize the documents identify what is for sale and if it works, like a "dishwasher" for example (shown in item 1 below).

TDS, PG 1

II. SELLER'S INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

Seller ☐ is ☒ is not occupying the property.

A. The subject property has the items checked below: *

☒ Range	☐ Wall/Window Air Conditioning	☒ Pool:
☒ Oven	☐ Sprinklers	☒ Child Resistant Barrier
☒ Microwave	☐ Public Sewer System	☒ Pool/Spa Heater:
☒ Dishwasher 1	☒ Septic Tank	☒ Gas ☐ Solar ☐ Electric
☐ Trash Compactor	☐ Sump Pump	☒ Water Heater:
☒ Garbage Disposal	☐ Water Softener	☐ Gas ☒ Solar ☐ Electric
☒ Washer/Dryer Hookups	☒ Patio/Decking	☒ Water Supply:

Are there, to the best of your (Seller's) knowledge, any of the above that are not in operating condition? ☐ Yes ☒ No. If yes, then describe. (Attach additional sheets if necessary): Hot Tub might need some work on heating system control.

*for clarification: Spa is on utility gas pool heater is on propane and passive solar

The reference to "not being part of the contract" was intended to properly represent the role which representations play, which is a good faith disclosure system BEFORE a contract is formed and thus misrepresentations are Torts. Because a misrepresentation is not a "breach of contract" by default, a misrepresentation would not give absolute right to rescission of an executed contract. For example, if someone bought a home thinking the roof didn't leak due to representations, and they later found out it leaked, they found out the seller knew, but the remedy was only $5,000, the law did not want the harmed buyer to be able to rescind the entire contract for a $5,000 defect that could be remedied with money and a small civil action.

The Seller Property Questionnaire (SPQ)

The SPQ is the same type of document as the TDS but it has more property specific questions than are found on the TDS.

SPQ PG 1

Docusign Envelope ID: A8098BE4-46B2-4BD6-97B7-1992C61DAF2E

CALIFORNIA ASSOCIATION OF REALTORS®

SELLER PROPERTY QUESTIONNAIRE
(C.A.R. Form SPQ, Revised 6/18)

This form is not a substitute for the Real Estate Transfer Disclosure Statement (TDS). It is used by the Seller to provide additional information when a TDS is completed. If Seller is exempt from completing a TDS, Seller should complete an Exempt Seller Disclosure (C.A.R. Form ESD) or may use this form instead.

Seller makes the following disclosures with regard to the real property or manufactured home described as 12 Bayview Rd, Assessor's Parcel No. 131-092-029, situated in Castroville, County of Monterey California ("Property").

1. **Disclosure Limitation: The following are representations made by the Seller and are not the representations of the Agent(s), if any. This disclosure statement is not a warranty of any kind by the Seller or any agents(s) and is not a substitute for any inspections or warranties the principal(s) may wish to obtain. This disclosure is not intended to be part of the contract between Buyer and Seller. Unless otherwise specified in writing, Broker and any real estate licensee or other person working with or through Broker has not verified information provided by Seller. A real estate broker is qualified to advise on real estate transactions. If Seller or Buyer desires legal advice, they should consult an attorney.**

9. WATER-RELATED AND MOLD ISSUES: ARE YOU (SELLER) AWARE OF...

A. Water intrusion into any part of any physical structure on the Property; leaks from or in any appliance, pipe, slab or roof; standing water, drainage, flooding, underground water, moisture, water-related soil settling or slippage, on or affecting the Property ..... [x] Yes [ ] No

B. Any problem with or infestation of mold, mildew, fungus or spores, past or present, on or affecting the Property ..... [ ] Yes [ ] No

C. Rivers, streams, flood channels, underground springs, high water table, floods, or tides, on or affecting the Property or neighborhood ..... [ ] Yes [ ] No

Explanation: prior fridge icemaker leak caused discoloring in dinning room doorway.

10. PETS, ANIMALS AND PESTS: ARE YOU (SELLER) AWARE OF...

A. Pets on or in the Property ..... [ ] Yes [x] No

B. Problems with livestock, wildlife, insects or pests on or in the Property ..... [x] Yes [ ] No

C. Past or present odors, urine, feces, discoloration, stains, spots or damage in the Property, due to any of the above ..... [x] Yes [ ] No

D. Past or present treatment or eradication of pests or odors, or repair of damage due to any of the above ..... [x] Yes [ ] No

If so, when and by whom See pest control report. past rodent problem. Termite signs in

Explanation: Pool house.

11. BOUNDARIES, ACCESS AND PROPERTY USE BY OTHERS: ARE YOU (SELLER) AWARE OF...

A. Surveys, easements, encroachments or boundary disputes ..... [ ] Yes [x] No

B. Use or access to the Property, or any part of it, by anyone other than you, with or without permission, for any purpose, including but not limited to, using or maintaining roads, driveways or other forms of ingress or egress or other travel or drainage ..... [ ] Yes [x] No

Buyer's Initials (BC) (HB) Seller's Initials (MF) (____)

SPQ REVISED 6/18 (PAGE 2 OF 4)

SELLER PROPERTY QUESTIONNAIRE (SPQ PAGE 2 OF 4)

Produced with Lone Wolf Transactions (zipForm Edition) 231 Shearson Cr. Cambridge, Ontario, Canada N1T 1J5 www.lwolf.com 12 Boardwalk -

Seller represents that Seller has provided the answers and, if any, explanations and comments on this form and any attached addenda and that such information is true and correct to the best of Seller's knowledge as of the date signed by Seller. Seller acknowledges (i) Seller's obligation to disclose information requested by this form is independent from any duty of disclosure that a real estate licensee may have in this transaction; and (ii) nothing that any such real estate licensee does or says to Seller relieves Seller from his/her own duty of disclosure.

Seller Micah A Forstein Micah A Forstein Date 3/18/2021

Seller _____ Date _____

TDS and SPQ Delivery Timing

Any honest person given an understanding of what is contained in the TDS and SPQ should be able to readily and easily admit the TDS and SPQ need to be given from the Selling Broker to a prospective buyer BEFORE a buyer makes an offer on a property. That just makes sense given they define what is being sold.

Any “honest” attorney who is willing to admit publicly to what “representations” are and how they work when entering into any contract with an executory period should be able to readily and easily admit the same, although many have been unable to do that for several decades now, unfortunately.

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An Introduction to Organized Crime -- Coldwell Banker Style…

The following image is of a document that was obtained via Discovery in a dispute with Peter Whyte. Whytes is a 40 year Agent and he's been a Coldwell Banker, Sales Trainer and Mentor for the past two decades or more. Coldwell Banker was the Buyer sBrokerage, but when they engaged "for the buyer" they knew they would be paid "by the seller" (by this Defendant).

PW 000614

Disburse a copy of all fully executed documents as follows:

1 Copy for Buyer
1 Copy for Listing Agent
1 Copy to Peter with copy of My Deal Input Sheet

Buyer's initial deposit:
EFT: Electronic Funds Transfer: Have Escrow Officer provide wire transfer instructions to Buyer.
Make sure Buyer's initial deposit is sent to Title Co. within 3 business days after acceptance of offer.

List all contingency dates in your calendar. You are responsible for the Buyer adhering to those dates!

Ask Buyer who they have chosen as their Lender/Loan Broker. Email copy of the fully executed Purchase Agreement, counteroffer(s) to Lender. Keep in contact with Loan Broker to make sure appraisal and loan will be approved by contingency deadline date. Make sure Lender schedules the appraisal.

Schedule Building Inspection(s):
Ask Buyer to select Building Inspector(s)
Call Listing Agent to set up appointments for all inspection(s) Buyer may require:
ie: sewer, fireplace, geological, roof, mold, termite. (Refer to SBSA)
Meet Buyer at Building Inspections.
Have Buyer sign CAR Form BIE Buyer's Inspection Elections when all inspections completed.

Ask Listing Agent to provide all Seller's Disclosures for Buyer's receipt at inspection, including:

Seller Property Questionnaire 1
Transfer Disclosure Statement 2
Natural Hazards Disclosure Reports and Pamphlets
Natural Hazard Disclosure Statement (NHD)
Square Foot and Lot Size Disclosure Advisory
Home Fire Hardening Disclosure and Advisory
Lead Based Paint Disclosure (pre-1978 property only)
Earthquake Hazards Report (pre-1960 property only)
City/County Required Water Certifications and Minimum Standard Retrofitting Certificates
All Required County, Regional and Local Disclosures
Listing Agent's AVID 3
Complete your AVID. Have buyer sign. Give to Listing Agent for Listing Agent and Seller to sign. 4

The first line of PW000614 states, " **Disburse a copy of all fully executed documents as follows: 1 copy for buyer -- 1 copy for listing Agent - 1 copy for Peter with copy of My Deal Input Sheet**" From that first line, along with a preceding page we are not showing at this time, we KNOW this document contains instructions for those Whyte Mentors and this document tells them how to handle documents AFTER a buyer client of theirs has gotten a contract accepted / ratified.

Further down PW000614 it states, "**<u>Ask Listing Agent to provide all Seller's Disclosure for Buyer's receipt at inspection</u> including Seller Property Questionnaire and Transfer Disclosure Statement**"

This document proves Peter Whyte and Coldwell Banker instruct novice Coldwell Banker Agents to do the OPPOSITE of what any rational person and any "honest" Attorney knows should happen with the TDS and SPQ presentation.

Peter Whyte is an unbelievable "evil" human being in our opinion, although he does not look it.

Peter Whyte, Coldwell Banker, Keller Wiliams and all other California Brokers have been "robbing Buyers" of their rights to Seller Representation Statements prior to bidding on properties and forming contracts, and there's a chance he's been doing this since 1985.

But worse than "just robbing buyers" of their rights, Peter Whyte has been actively engaging in and profiting from a state wide belief manipulation scheme to benefit himself , his corporate Employer , Coldwell Banker, and what is currently believed to be a very large entourage of rogue Agents and Brokers across the state, at the expense of young agent integrity and buyers who needed to trust him, their Agent, Coldwell Banker and the CA Brokerage Industry with one of the largest decisions of a lifetime. One subsequent set of beneficiaries for this crime have been civil attorneys, such as Gorman. They have gotten to make a LOT of money resolving illogical disputes. $145,000 in legal fees in this case is an example of that although it's incomprehensible to understand how those could have gotten so high when the client didn't dispute conditions and we only needed to discuss matters of law that could have been done in under 5 pages and those

which Gorman refused to discuss.

.See Declaration 1 at https://canary-v-forstein.bryancanary.com/fee-shifting for the full history of the hoax.

2) Plaintiffs 4 year experience in 3 page Summary

1. In March 2021, Plaintiffs Holly Bowers and Bryan Canary attempted to engage in the purchase of real estate via brokerage in California
2. Prior to finding a home to purchase they asked their Agent to provide all documents needed to contract AND those the seller would be filling out. A review of documents revealed Clauses 14A, 14F, 10A7 and others seemed to be related to "unlawful contract" clauses with unlawful bias to sellers (who was also the only party paying for brokerage for both buyer and seller services).
    a. Plaintiffs noted the footer of page 10 of the contract indicated it was published and approved by "CAR" but not warranted to be legal for any given translation.
    b. Plaintiffs also recognize CAR , the California Association of Realtors as being the Brokers own professional lobby NOT the California Department of Real Estate (the CA DRE), the state oversight body.
    c. Thus, plaintiffs realized the Brokers had created unlawful and confusing contracts to protect themselves and their paying client. Plaintiffs voiced their concerns to their Coldwell Banker Agents. They were rebuffed while being told this was how business was done in California..
3. Plaintiffs moved forward with their home search knowing if a seller was moral, the faulty contract clauses and the potential for a faulty consent process would be irrelevant.
4. The plaintiffs found a home and sought to bid on it. They asked for all representations ./ disclosure documents the seller wanted to share. Seller's Broker Keller Willams failed to provide seller disclosure documents with representations of the seller on them. Coldwell Banker refused to demand those for plaintiff consideration.
5. The brokers were acting in accord with Clause 14A and 10A7 which suggested the seller had no obligation to represent prior to acceptance of a contract.

a. Clause 14A, 14F and 10A7 were written with faulty legal logic

b. This can be deemed a “commercial hoax” and it seems to have been in play since 1985.with incalculable benefits to Sellers’ Brokerages, Attorneys and Sellers, all at Buyers expense and loss of rights. .

6. Plaintiffs had to “blind bid” on a property for $895,000, obtain acceptance for a contract without any clear understanding of property condition outside their purview OR what personal property conveyed, and pay a deposit for the home BEFORE being provided with seller representations of condition and fact .

a. NOTE: Claims of Cancer Cures written on a box of Cracker Jacks have greater likelihood of being credible than the CAR Contract, California Brokers, California Real Estate Attorneys, and the (horribly) faulty instructions for contract consent.

7. When the Seller’s Disclosure documents with representation were presented,, they were patently incomplete. Ten days prior, the Broker had allowed Forstein to pick and chose what he wanted to answer and what he wanted to sign, contrary to law and case precedent.
    a. The documents were missing yes/no responses for seller knowledge of mold and property flooding.
    b. The documents were missing signatures.
    c. The documents were missing key statements by the Seller’s Agent.
    d. As it turned out, the Seller and his agent lied on a Broker Duties disclosure and there were about 50 other misrepresentations and omissions which gave rise to non-disclosure damages discovered during escrow and after close of escrow.
8. The Plaintiffs would never have submitted an offer with incomplete documents and they could never have imagined a Broker would deliver them incomplete, AFTER having already destroyed he consent process best characterized via CACI 4109 so easily.
9. Plaintiffs were sent a demand from Seller in escrow to remove their condition contingency when his answers to mold and flooding were still blank. The Italian mafia seems far easier to deal with.
10. Plaintiffs closed escrow knowing some fraud had transpired but nobody called it fraud.

11. After close of escrow plaintiffs found concealed structural defects, concealed mold , concealed cat urine and other matters that were NOT discernible via numerous inspections in escrow. It was all professionally concealed by a Licensed Contractor and Licensed Painter.
12. Plaintiffs spent 3 years trying to find an attorney who could explain the CAR Contract or Fraud to induce a Contract in California. Over 80 Attorneys were contacted. None could explain the contract or the broker behavior from a legal perspective but none would take the case.
13. Eventually plaintiffs discovered Jue v Smister in the Salinas law library . They pushed back on the seller's Attorney and he and his firm sought mal practice protection.That gave plaintiffs feeling they should try to file in Pro Se, knowing they were going to get clobbered in legal battles.
14. Plaintiffs filed 6 complaints in Pro Se against various partie that provided services for the Defendant as well as the defendant. They were all filed separate because the acts were separate and keeping them all separate was the only way they could hope to gain information about the attorneys and courts that explained how this transpired for 40 years (or gain any possible recovery).
15. Plaintiffs got destroyed 100 different ways by the Attorneys, the Clerk of court, the legal Examiner, the Judges and even the bailiffs, but they gained an education, they learned how the complaint process worked (kind of), they gained facts to expose Coldwell Banker and Keller Wiliams, and they learned the Defendant was NOT going to turn on the Brokers and he would go to the ends of the earth before being honest.
16. Plaintiffs dismissed the complaint against the Defendant so they could pursue other avenues for recovery based on information obtained in discovery. Plaintiffs were well protected by the American Rule and/or CIV 1717(b)(2) even if gross mistakes were made in miscategorizing Tort Claims for fraud to induce a contract. Plaintiffs were preparing to file new complaints against Keller Williams when Attorney Ken Gorman came headhunting for

them with no legal or factual basis to do so, while misrepresenting CIV 1707(b)(2) and attempting to contort 14 ways just to get Torts to look like a contract dispute to start with.

17. Plaintiffs are done trying to use the courts to recover on this matter by themselves for now. This isn't a viable system for recovery nor safe, given Gorman can act as he has with no oversight and seemingly no concern for discipling by those who should sanction him while considering loss of license.

3) Key email dialogue leading up to Discovery Delivery and false Motions

12/9/2021 - Canary to Forstein & Gorman - Notice of Doc Production Concerns

Re: Document production

Bryan Canary <bryan@bryancanary.com> Mon, Dec 9, 2024, 2:20 PM Reply to all
to Ken, Micah

Ken -

Something is very wrong with our dialogue. As I've spent 10's of hours on admits and requests that were illogical given the complaint and supporting exhibits we filed -- with summary facts and dozens of case precedents at your disposal it finally hit me...

Did you get those exhibits from Forstein when he retained you ?

Did you check court records, realize we had filed exhibits and then obtain those in person, given you've stated you don't subscribe to Monterey county court records?

> If you didn't have Exhibit A1.1 , it would explain why you completed your "verified response" to our complaint in a "non-verified" manner.
>
> If you didn't have Exhibit A1.1 , it would explain why your request for information via Form Interrogatory 7.1 is generic and not specific in ways that would make sense.
>
> If you didn't have Exhibit A4, it would explain why you asked what was missing and how in TDS and SPQ.
>
> If you didn't have Exhibit A5, it would explain why you thought asking about our understanding of "As Is" was okay when it was a horrible idea...
>
> If you didn't have Exhibit A12, it would explant a lot of questions about actual experience that you seemingly were totally unaware of in your Admits.
>
> If you didn't have the Exhibits it explains the chaos you created with demand for documents, which should have been initiated via damage item outlined in Exhibit A1.

Ken, at this time from outside looking in...

1. it's as if you took the case without knowing exhibits were included with the complaint
2. It's as if you subbed out the work to prepare the admits and doc demands to others who had no idea exhibits existed and/or you made egregious mistakes yourself with those given the exhibits that were supposed to be in your possession...
3. it's as if you relied on a template for admit questions with absolutely no clue. 60 pages of exhibits were submitted with our complaint that would make those questions look outrageous and bizarre.

Without Exhibit A1.1, our composite documents would look odd or overwhelming and not straightforward because Exhibit A1.1 is where the short bulleted list of facts and damage amount is for each fraud item that you seem to be asking for in form interrogatory 7.1... while suggesting you have no summary information.. (???)

> Ken if you have Exhibit A1.1 it's going to get awkward now, because that should have stimulated a different approach to discovery requests.
>
> Ken, if you do NOT have Exhibit A1.1 that explains all the confusion we have been trying to work around with your discovery requests...

In summary

1. Ken, did you have knowledge of or possession of the exhibits A1.1 through A13 filed with our complaint when completing Discovery requests for us?

2. Ken , given we filed exhibits A1.1 through A13 with our complaint, and they are on record with the court as part of our complaint, do you feel we are required to provide copies of those to you again now?

Bryan

SELLER FRAUD (Case 24CV001914) - - Canary et al v Forstein

Seeking $250,000 in Compensatory Damages, $1,250,000 in Punitive Damages and other Economic and Non-Economic Damages (NOTE: Compensatory and Punitive overlap with claims against others and will only be collected 1x)

Fraud 50+ counts / Personal Injury
Defendant, Micah Forstein was a Seller of Residential Property in Monterey County CA. Forstein and his Seller's Agent, Kent Weinstein engaged in a fix up and disclosure fraud scheme.. They attempted to take advantage of long standing fraud in state wide contracts and a network of Attorneys willing to protect those who attempted fraud.

Details | Status

Canary v Forstein (Folder public pvt)

- Summons (1 page) view
- Cover Sheet (2 pages) view
- Complaint (56 pages) view

Complaint Exhibits

Group A - Submitted with Complaint

- A1.1) Causes of Action - Fraud- 50+ counts view
- A1.2) Scope of Duty / Selection of Vendors - KW Disclosure Doc (1 page) view
- A2) Disclosure Info Advisory - CAR Disclosure doc (DIA) (3 pages) view
- A3) Seller Advisory regarding TDS - Keller Williams (2 pages) view
- A4) Incomplete SPQ , Sellers AVID , TDS (4 pages) view
- A5) Case Precedents - As Is Sales (11 pages) view
- A6) Visuals - Bayview 14 (12 pages) view
- A7) RPA Clauses 14A and 14F - Fraudulent (6 pages) view
- A8) CA 1102 vs RPA clauses (12 pages) view
- A9) Visual - As Is Sales (2 page) view
- A10) Visual - Jue v Smiser - Representation Stmt Period Diagram (1 page) view
- A11) Visual - Supposed to v Actual - As Is Sale (2 pages) view
- A12) 2011/2019 presentations to CA BAR - Jue v Smiser (5 pages) view
- A13) 8 Tiers of Fraud (2 pages) view

Group B - (to be submitted with request for default judgment)

- C1) Jiminez v Capero (2 pages) view
- C2) Flow Chart - RICO - Cock Fight (1 pages) view
- C3) Flow Chart - RICO - BrokerRiskMgt / Coldwell Banker / Apollo details view

12/9/2024 - Canary to Forstein & Gorman - Notice of Discovery Docs (800+ pages)

24cv001914 - 36 hour heads up

Summarize this email

Bryan Canary <bryan@bryancanary.com> Mon, Dec 9, 2024, 11:14 PM Reply to all

to Micah, Ken, Hillary

Micah (and Ken)

In next 36 hours or so you will be getting some discovery docs. and some other info and options from me/us.

Micah, whatever you do, do NOT allow Ken to start processing the docs he gets right away. Don't waste your money there on that until you get other info from me before or just after those are delivered for your consideration.

You may end up paying him to do that but it may be money better spent elsewhere.

Ken, have you told him what all my options really are yet? If not, you should be honest with him before I am. it would be a damn shame if what I have to share with him has to come from me first and not you.

b

Partial view…

canary-v-forstein

Home | Discovery | Fee Shifting | Emails | Backstory | Other

Current Total Page estimate for the composite documents related to Monetary Damages: 600+ pages via ~ 30 documents.

Forstein Solo and/or possibly with his Agent (45 pages)		
1) Utils 1 - Well Utility Costs (5, $43/mo)	view	as of 11/20/2024 (Forstein Fraud -waiting on additional util bills for final $)
2) Utils 2 - Home Utility Costs (4, $145 to $195/mo)	view	as of 11/21/2024 (Forstein Fraud - waiting on additional util bills for final $)
3) Owner 2 - HVAC Ducts (14, $15k (7k net w HI2))	view	as of 11/20/2024 (Forstein Fraud - Failure to disclose)
4) Owner 1 - Septic Mainline (22, 12k)	view	as of 11/20/2024 (Forstein Fraud - waiting on receipts)
5) Well System Contracts (xx)	view	not relevant for now...
Forstein, his Agent & his Presale Home Inspector (180 pages)		
6) HI 2 - Gas Furnace Combustion Hazard (14, 8k)	view	as of 11/24/2024 (Forstein Fraud - knew from 2015 report)
7) HI 3 - Gas Water Heater Combustion Hazard (15, 2k)	view	as of 11/24/2024 (Forstein Fraud - knew from 2015 report)
8) HI 1- 2nd floor attic defects (33, 10k)	view	as of 11/21/2024 (Forstein Fraud - knew from first hand experience)
9) HI 6 - North Yard Flooding (23, 7k)	view	as of 11/18/2024 (Forstein Fraud - it was visible from front door)
10) HI 4a - Crawl Structural Defects (40, 5k)	view	as of 11/19/2024 (Forstein Fraud - should have known from 1st floor defect)
11) HI 4b - Crawl Insl - upside down/away from heated (40, 2k)		(Forstein Fraud - knew from 2015 report)
12) HI 5 - Drainage Defect - Concrete Seizing (19, 3,5k)	view	as of 11/20/2024 (Forstein Fraud - it was visible from front door)
13) HI 7 - Water supply - No Hot Water (18, 17k)	view	as of 11/20/2024 (Forstein Fraud - knew from 2015 report)
14) HI 9 - Moss and Paint Overspray On Roof(17,2k)	view	as of 11/19/2024 (Forstein Fraud - did or should have known / 2015 ref too)
Forstein, his Agent, & his Presale Termite Inspector (29 pages)		
15) TI 1- Crawl structural (16, 5k) (same as HI 4)	view	as of 11/27/2024 (Forstein Fraud - should have known from 1st floor defect)
16) TI 2 - 2nd floor attic (15, 10k) (same as HI 1)	view	as of 11/27/2024 (Forstein Fraud - knew from first hand experience)
17) TI 3 - Fascia (16, 8k) (same as Painter 1)	view	as of 11/27/2024 (Forstein Fraud - it was visible to him before concealment)

12/10/2024 - Plaintiffs Deliver 800+ pages of docs via website

Verified Discovery Answers

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Discovery - Round 1

Key Docs in the order obtained by Plaintiff / Buyer : mls <2 in person showings> Vierra report Wheeler Report util disclosure <offer> <counteroffer> <contract formed> TDS , SPQ, Seller's AVID, KW List of disclosure docs, KW DIA, KW TDS completion advisory, KW Scope of Duty, KW Coastal Estates Advisory, Murrer Report, 2015 Report, Email 20210420 // Complete DA Docs Folder(pvt for now) Big Claims (pvt)

Key Docs in the order obtained / created / signed/ executed by Seller : 2015 Report Vierra report, Wheeler Report, mls , TDS , SPQ, Seller's AVID, KW List of disclosure docs, KW DIA, KW TDS completion advisory, KW Scope of Duty, KW Coastal Estates Advisory util disclosure <counteroffer> <contract formed> Email 20210420 // Complete DA Docs Folder(pvt for now) Big Claims (pvt)

Discovery - Set 1 - Canary Requests to Forstein

They may not have been formatted quite right, but we did best we could without legal support and on a budget...

Cover Letter (12 pages)	gDoc	pdf
Spreadsheet with 50 acts of fraud (14 pages)	gSheet	pdf
Admit Document - 1st Request (26 pages)	gDoc	pdf
Request for Documents - 1st Request (15 pages)	gDoc	pdf

Deliverables from Forstein to Canary

There was a lot of information that was clearly missing. When notified Gorman acknowledge that and more was coming. What was delivered was also incomplete based on facts known to Canary et al.

Response to Admit	pdf	analysis
Response to Production of Docs	pdf	
Response to Doc Demand , set 1	pdf	
Production of Documents (folder)	view	
Canary response to Forstein Discovery (34 pages)	gDoc	

Discovery Set 1 - Forstein Requests to Canary

We do NOT feel they did the best they could given complaint information and information they should have known. These felt designed for insincere time sink.

Admissions	pdf	rtf
Interrogatories -Form	pdf	
Interrogatories - Special	pdf	rtf
Demand for Docs	pdf	rtf

Deliverables from Canary to Forstein

We did not respond on pleading paper with more proper formatting because we viewed everything but form interrogatories to have been engaged in in bad faith by Attorney Gorman -- as is explained in the response documents.

Admit Response	gDoc	r2 - 11/28	r3- 12/10
Response - Form Int.	gDoc	r2 - 11/28	r3 - 12/10
Response - Speciall Int	gSheet	r2 -11/28	r3 - 12/10
Demand for Docs	gDoc	r2 - 12/3	r3 - 12/10

Folders with docs:

DA Docs	view
Composite Docs	view

30+ Composite Documents (Comprehensive Damage Reports) - 600+ pages

https://canary-v-forstein.bryancanary.com/home

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Current Total Page estimate for the composite documents related to Monetary Damages: 525 pages via ~ 30 documents.

Forstein Solo and/or possibly with his Agent (45 pages)

1) Utils 1 - Well Utility Costs (5, $43/mo) view as of 11/20/2024 (Forstein Fraud -waiting on additional util bills for final $)
2) Utils 2 - Home Utility Costs (4, $145 to $195/mo) view as of 11/21/2024 (Forstein Fraud - waiting on additional util bills for final $)
3) Owner 2 - HVAC Ducts (14, $15k (7k net w HI2)) view as of 11/20/2024 (Forstein Fraud - Failure to disclose)
4) Owner 1 - Septic Mainline (22, 12k) view as of 11/20/2024 (Forstein Fraud - waiting on receipts)
5) Well System Contracts (xx) view not relevant for now...

Forstein, his Agent & his Presale Home Inspector (180 pages)

6) HI 2 - Gas Furnace Combustion Hazard (14, 8k) view as of 11/24/2024 (Forstein Fraud - knew from 2015 report)
7) HI 3 - Gas Water Heater Combustion Hazard (15, 2k) view as of 11/24/2024 (Forstein Fraud - knew from 2015 report)
8) HI 1- 2nd floor attic defects (33, 10k) view as of 11/21/2024 (Forstein Fraud - knew from first hand experience)
9) HI 6 - North Yard Flooding (23, 7k) view as of 11/18/2024 (Forstein Fraud - it was visible from front door)
10) HI 4a - Crawl Structural Defects (40, 5k) view as of 11/19/2024 (Forstein Fraud - should have known from 1st floor defect)
11) HI 4b - Crawl Insl - upside down/away from heated (40, 2k) (Forstein Fraud - knew from 2015 report)
12) HI 5 - Drainage Defect - Concrete Seizing (19, 3,5k) view as of 11/20/2024 (Forstein Fraud - it was visible from front door)
13) HI 7 - Water supply - No Hot Water (18, 17k) view as of 11/20/2024 (Forstein Fraud - knew from 2015 report)
14) HI 9 - Moss and Paint Overspray On Roof(17,2k) view as of 11/19/2024 (Forstein Fraud - did or should have known / 2015 ref too)

Forstein, his Agent, & his Presale Termite Inspector (29 pages)

15) TI 1- Crawl structural (16, 5k) (same as HI 4) view as of 11/27/2024 (Forstein Fraud - should have known from 1st floor defect)
16) TI 2 - 2nd floor attic (15, 10k) (same as HI 1) view as of 11/27/2024 (Forstein Fraud - knew from first hand experience)
17) TI 3 - Fascia (16, 8k) (same as Painter 1) view as of 11/27/2024 (Forstein Fraud - it was visible to him before concealment)
18) void
19) void

Forstein, his Agent and his General Contractor (148 pages)

20) GC 1- Concealed Structural Defects (43,10k) view as of 11/21/2024 (Forstein Fraud - knew from 2015 report & photo/email in 2021)
21) GC 2 - Structural work w/o Permits or Disclosure (8, 0k) view as of 11/24/2024 (Forstein Fraud - failed to disclose structural work)
22) GC 3 - Concealed Mold in Util / Bathroom (33, 15k) view as of 11/21/2024 (Forstein Fraud - knew from invasive repairs during occupancy)
23) GC 4 - 2nd floor attic Rodent Poo and Pee! (10, 10k) view as of 11/21/2024 (Forstein Fraud - he was there...) (allocated via HI1 and TI 2)
24) GC 5 - Concealed 2nd floor bath subfloor Defect (20, 3k) view as of 11/21/2024 (Forstein Fraud - failed to disclose structural integrity concern)
25) GC 6 - Concealed Cat Urine (42, 28k) view as of 11/22/2024 (Forstein Fraud - he was there....)
26) GC 7 - Work Quoted/Paid for but not done (13, 1k) view as of 11/24/2024 (Forstein Negligence unless new facts exposed)

Forstein, his Agent and his Painter (127 pages)

27) Painter1 - Concealed Fascia (23, 8k) view as of 11/26/2024 (Forstein Fraud - it was visible to him before concealment)
28) Painter 2 - Painted ext w int paint (16, 15k) view as of 11/26/2024 (Forstein Negligence unless new facts exposed)
29) Painter 3 - Concealed siding beyond useful life (21,15k) view as of 11/26/2024 (Forstein Fraud - it was visible to him before concealment)
30) Painter 4 - Concealed rodent urine in ceilings (19, 2k) view as of 11/27/2024 (Forstein Fraud - it was visible to him before concealment)
31) Painter 5 - Concealed water damage in garage drywall (19, 6k) view as of 11/27/2024 (Forstein Fraud - it was visible to him before concealment)
32) Painter 6 - Oversprayed on Roof and Cedar Closets (16,4k) view as of 11/27/2024 (Forstein Negligence unless new facts exposed)
33) Painter 7 - Charged for work not done (12,3k) view as of 11/27/2024 (Misleading but no negligence or fraud, unless new facts exposed)

Misrepresentation by TDS, SPQ, Seller's AVID and other Frauds - 50+ pages

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Forstein, both Agents, both Txn Coordinators, both Brokers, both Brokerages (Part 1)

=== TDS 1 - TDS Fraud (8 pages) ===	view	**as of 11/24/2024 (summarizes 200k+ acts of fraud)**
34.1) Failed to deliver TDS in accordance w/ CA 1102		(Brokerages, Brokers, Agents, Txn Coordinators, Seller - Deceit)
34.2) Failed to deliver TDS in accordance w/ Representation Law		(Brokerages, Brokers, Agents, Txn Coordinators, Seller - Deceit)
35) Delivered TDS in patently incomplete manner		(Brokerages, Brokers, Agents, Txn Coordinators, Seller - Deceit)
36) Delivered TDS with over 50 fraudulent statements		(Seller Agent and Seller only - Forstein and Weinstein Frauds)
=== SPQ 1 - SPQ Fraud (13 pages) ===	view	**as of 11/25/2024 (summarizes 200k+ acts of fraud)**
37.1) Failed to deliver SPQ in accordance w/ CA 1102		(Brokerages, Brokers, Agents, Txn Coordinators, Seller - Deceit)
37.2) Failed to deliver SPQ in accordance w/ Representation Law		(Brokerages, Brokers, Agents, Txn Coordinators, Seller - Deceit)
38) Delivered SPQ in patently incomplete manner		(Brokerages, Brokers, Agents, Txn Coordinators, Seller - Deceit)
39) Delivered SPQ with over 50 fraudulent statements		(Seller Agent and Seller only - Forstein and Weinstein Frauds)
=== SAVID 1 - Sellers AVID Fraud (6 pages) ===	view	**as of 11/27/2024 (3 acts of fraud to conceal the same material facts)**
40) Failed to deliver Sellers AVID in accordance w/ Representation Law		(Brokerages, Brokers, Agents, Txn Coordinators, Seller - Deceit)
41) Delivered Seller's AVID in patently incomplete manner		(Brokerages, Brokers, Agents, Txn Coordinators, Seller - Deceit)
42) Delivered Seller's AVID with over 50 fraudulent statements		(Seller Agent and Seller only - Forstein and Weinstein Frauds)

Forstein, both Agents, both Txn Coordinators, both Brokers, both Brokerages (Part 2)

43) Owner 6 - MLS False Advertising, post sale manipulation of photos (5 pages)	view	as of 12/1/2024
44) Owner 7 - MLS Listing - Listed prior to signing disclosures (6 pages)	view	as of 12/1/2024
45) Owner 8 - Sellers Agency Agreement CIV 2079 (3 pages)	view	as of 12/1/2024
46) Owner 9 - CAR Disclosure Info Advisory (4 pages)	view	as of 12/1/2024
47) Owner 10 - KW TDS completion advisory (3 pages)	view	as of 12/1/2024
48) Owner 11 - KW Scope of Broker Duty (2 pages)	view	as of 12/1/2024
49) Owner 12 - KW Coastal Estates Advisory (3 pages)	view	as of 12/1/2024

other...

50) Owner 13 - KW bulk email seeking houses with mold -- to flip and sell...	view	as of 12/1/2024

Folder - DA Docs

0_LegalClaim > 0_DA_docs

Ask Gemini

Type | People | Modified | Source

Name	Owner	Last mo...	File size
0_ preTxn Docs	me	Dec 11, 2024	—
1_ txnDocs	me	Dec 7, 2024	—
2_ email_1_bc2Pamela_0406-0503	me	Dec 11, 2024	—
2_ email_2_whyte	me	Dec 11, 2024	—
2_ email_3_bc_to_weinstein	me	Dec 11, 2024	—
3_ compositeDocs	me	Dec 11, 2024	—
4_ quotes_estimates	me	Dec 11, 2024	—
5_ attestations	me	Dec 11, 2024	—
5_ other	me	Dec 11, 2024	—
5_ statutes	me	Dec 11, 2024	—
9_ exhibits_originalComplaint	me	Dec 11, 2024	—
!! 50Acts as gSheet - VERIFIED 20241210.pdf	me	Dec 10, 2024	168 KB
!!- Canary v Forstein _ Master Doc_20241210_...	me	Dec 10, 2024	766 KB

Folder - Quotes/Estimates

0_DA_docs > 4_ quotes_estimates

Ask Gemini

Type | People | Modified | Source

Name	Owner	Last mo...	File size
90 quote_c1_GCdefects.pdf	me	Dec 5, 2024	2.3 MB
90 quote_c1_painterDefects.pdf	me	Dec 5, 2024	2.6 MB
90 quote_c1_termiteInspectorDefects.pdf	me	Dec 5, 2024	1.5 MB
90 quote_c2_GCDefects.pdf	me	Dec 5, 2024	2.5 MB
90 quote_c2_painterDefects.pdf	me	Dec 5, 2024	2.7 MB
90 quote_c2_termiteInspectorDefects.pdf	me	Dec 5, 2024	1.5 MB
90 quote_c3_c4_ HomeInspectorDefects.pdf	me	Dec 5, 2024	4.8 MB
90 quote_c3_ownerDefects.pdf	me	Dec 5, 2024	1.2 MB

Folder - 30+ Composite Docs Folder - as PDF with date/time stamps

··· > 3_ compositeDocs > 20241209

> Ask Gemini

Type | People | Modified | Source

Name	Owner	Last mo...	File size
_GC1 - Concealed Rotten Floor Joists_20241209.pdf	me	Dec 9, 2024	32.6 MB
_GC2 - Deck Build without Permit_20241209.pdf	me	Dec 9, 2024	15.4 MB
_GC3 - Concealment of Mold_20241209.pdf	me	Dec 9, 2024	18 MB
_GC4 - Closed in 2nd floor Attic. Conceal Rodent Damage. _20241209.pdf	me	Dec 9, 2024	5.9 MB
_GC5 - 2nd floor Bathroom floor defects_20241209.pdf	me	Dec 9, 2024	8.7 MB
_GC6 - Concealed Cat Urine_20241209.pdf	me	Dec 9, 2024	35 MB
_GC7 - Work Summary - Work Quoted but not done per Quote_2024120...	me	Dec 9, 2024	4.7 MB
_HI 1 - 2nd floor Attic - Rodent Invasion_20241209.pdf	me	Dec 9, 2024	16.1 MB
_HI 2 - Gas Furnace - Combustion Hazard_20241209.pdf	me	Dec 9, 2024	7.9 MB
_HI 3 - Gas Water Heater - Explosion Hazard_20241209.pdf	me	Dec 9, 2024	7 MB
_HI 4 - Crawl Space Omissions_20241209.pdf	me	Dec 9, 2024	21.1 MB
_HI 5 - Drainage Defect - Concrete Seizing_20241209.pdf	me	Dec 9, 2024	12.5 MB
_HI 6 - North Yard Grade - East French Drain_20241209.pdf	me	Dec 9, 2024	49.9 MB
_HI 7 - Water Supply - No Hot Water_20241209.pdf	me	Dec 9, 2024	6.1 MB
_HI 8 - Other Plumbing Deceit_20241209.pdf	me	Dec 9, 2024	786 KB
_HI 9 - Moss & Paint overspray on Roof _20241209.pdf	me	Dec 9, 2024	13.7 MB
_Owner 1 - Septic - Mainline_20241209.pdf	me	Dec 9, 2024	31.6 MB
_Owner 2 - Ductwork Defects and Imbalance_20241209.pdf	me	Dec 9, 2024	5.9 MB
_Owner 3 - TDS Fraud_20241209.pdf	me	Dec 9, 2024	852 KB
_Owner 4 - SPQ Fraud_20241209.pdf	me	Dec 9, 2024	1.3 MB
_Owner 5 - Sellers AVID_20241209.pdf	me	Dec 9, 2024	2.4 MB
_Owner 6 - MLS False Advertsing_20241209.pdf	me	Dec 9, 2024	3 MB
_Owner 7 - MLS listed prior to disclosure doc compeltion_20241209.pdf	me	Dec 9, 2024	2.7 MB
_Owner 8 - Seller's Agency Agreement absent CIV 2079_20241209.pdf	me	Dec 9, 2024	1.8 MB
_Owner 9 - CAR Disclosure Info Advisory_20241209.pdf	me	Dec 9, 2024	1.3 MB
_Owner 10 - KW TDS Completion Advisory_20241209.pdf	me	Dec 9, 2024	648 KB
_Owner 11 - KW Scope of Broker Duty_20241209.pdf	me	Dec 9, 2024	511 KB
_Owner 12 - KW Coastal Estates Advisory_20241209.pdf	me	Dec 9, 2024	664 KB
_Owner 13 - KW Moldy Home email Solicitation_20241209.pdf	me	Dec 9, 2024	428 KB
_Painter1 - Fascia - Concealed Dryrot and Pest Damage_20241209.pdf	me	Dec 9, 2024	7 MB
_Painter2 - Exterior Siding - Interior Paint_20241209.pdf	me	Dec 9, 2024	12.4 MB
_Painter3 - Exterior Siding Beyond Useful Life_20241209.pdf	me	Dec 9, 2024	12.4 MB
_Painter4 - Concealed Rodent Urine in Drywall Ceilings_20241209.pdf	me	Dec 9, 2024	10.6 MB
_Painter5 - Garage Paint Job_20241209.pdf	me	Dec 9, 2024	7 MB
_Painter6 - Overspray - Roof and Cedar Closets_20241209.pdf	me	Dec 9, 2024	11.3 MB
_Painter7 - Pool House Work Disclosed but not Done_20241209.pdf	me	Dec 9, 2024	3 MB
_Termite Inspector 1 - Crawl Space - Structural Omissions_20241209.pdf	me	Dec 9, 2024	10.7 MB
_Termite Inspector 2 - 2nd Floor Attic - Extreme Damage Omissionsal O...	me	Dec 9, 2024	11.9 MB
_Termite Inspector 3 - Fascia - Damage Scope Omissions_20241209.pdf	me	Dec 9, 2024	3.5 MB
_Termite Inspector 4 - Report Marked as Complete_20241209.pdf	me	Dec 9, 2024	5.9 MB
_Termite Inspector 99a - Exec Summary and Licensing info_20241209.pdf	me	Dec 9, 2024	407 KB
_TI 1 - Fraud and Conspiracy to Commit Fraud_20241209.pdf	me	Dec 9, 2024	6 MB
_Utils 1 - Well utility Costs_20241209.pdf	me	Dec 9, 2024	956 KB
_Utils 2 - Home Utility Costs_20241209.pdf	me	Dec 9, 2024	640 KB

12/10/2024 - Canary to Gorman - Notice of Admit Reqs w/o Case Specific Facts

Re: Document production

Bryan Canary <bryan@bryancanary.com> Wed, Dec 11, 2024, 12:59 PM Reply

to Ken

Ken

In your response below you stated "I drafted the discovery myself". At this time, I assume that applies to 1) Request for Admissions 2) Special Interrogatories, and 3) Demand for Documents. You also signed a Form interrogatory request. If that assumption is wrong, please advise.

In your response below you stated, "My declaration was truthful." The only document with a formal declaration was the Special Interrogatories. I must assume that applies to that but your signature on the others has an implied act of truthfulness per Attorney Code of Conduct and/or CCP. If that assumption is wrong, please advise.

In your response below you stated, "Our discovery was directed to specific allegations in your complaint. " while suggesting "exhibits" attached to the complaint are not evidence that would be admissible at trial" -- but given the attached exhibits contained our statements of fact, and our complaint was without a statement of facts, and in fact no statement of facts for a Cause of Action for fraud existed at at all in the complaint, what information were you in fact pursuing?

Ken, you should know exactly where this is leading to. If you don't you've made a gross mistake and I'll make it clear either way below...

1. Admit items 24, 38, 39, and 41 would indicate the author of these admits, presumably Attorney Ken Gorman, had not read the complaint . The admits omit key facts in complaint paragraphs 43, 44, 45, 46, 68, 69. In a courtesy email related to the fact omissions, Gorman admitted to being confused about facts, but these were not facts that would have been easy to confuse.

2. Admit items 11, 12 and 13 ask for admits to possession of reports prior to removing contingencies which are irrelevant requests in context of a fraudulent misrepresentation dispute involving brokers, given it's what is testified to by a seller to a Broker prior to contract formation that is relevant.

   The author of these admits., presumably Attorney Ken Gorman, has suggested pre-sale home inspection reports with material facts (CIV 7195) and statutory disclosure documents (CIV 1102) that wee in fact presented to buyers BEFORE contract formation for reliance are irrelevant. Such a suggestion violates the foundations required to have a contract law system at all.

   For this gross request, it's clear Gorman did not review exhibit A11 with a timeline of events nor A10 or A12, with publishings from the CA BAR about reliance and representation requirements.

3. Admit 18 suggests payment for a home is to obtain the deed, as opposed to satisfying contractual obligations established weeks prior. that is tantamount to saying "Admit you paid $22 at the grocery store in exchange for a receipt for groceries on May 13, 2021"

4. Admit 20 and 22 misuses “realtor” in a manner that indicates no industry knowledge of licensing. When proper education was provided to and including references to CA statutes, Gorman refused to accept it.

5. Admit 24 suggests if we didn't ask for more time on contingencies that might have been relevant to excusing fraudulent misrepresentation to induce a contract, an act which transpired in representation fraud to the Broker of Record on 3/18/2021, before the seller knew we existd.

   For this gross request, it’s clear Gorman did not review exhibit A10 or A12 with publishings from the CA BAR about reliance and representation requirements.

6. Admit 25 and 26 suggests buyers are to spend infinite time doing inspections as if it’s supposed to be a “what you find is what you buy” scenario and/or that CA is a Caveat Emptor state, when no such situations are supported by statute or case precedent.

   For this gross request, it’s clear Gorman did not read the complaint or review exhibit A5, A10, A11or A12. A5 includes a dozen cases precedents related to requirement to disclose facts known even in "as is" sales and sales subject to inspections. Exhibit A1.1 shows none of the 30 acts of fraud being pursued were disclosed in the TDS or SPQ or any of sellers reports properly.

7. Admit 27 asks if we understood “As Is”, Gorman’s admit request suggests no knowledge that the term "as is" has no meaning without further contest such sa the word "sale" or "condition", , nor that there are dozens of case precedents of As Is case precedents.

   For this gross request, it’s clear Gorman did not read the complaint or review exhibit A5, a list of a dozen CA case precedents which define As Is Sales and a sellers requirement to disclose known facts with no excuses granted for sales subject to inspections.

8. Admits 28 and 29 ask for admit to "understanding" pre-sale inspection reports. Reports such as those are never “understood”. This question as a blanket question, without specific details referenced, represents a gross attempt to shift liabilities and responsibilities in a manner not supported by law or case precedent.

   For this gross request, it’s clear Gorman did not read the complaint or review exhibit A1.1, A11 A12.

9. Admits 31 , x, and 32 ask to admit we received completed TDS, SPQ and Seller’s AVID, seemingly without knowing all were originally produced by Forstein in a patently incomplete manner on 3/18/2021, before he knew we existed and in violation of case precedent.

   For this gross request, it’s clear Gorman did not read the complaint or review exhibit A1.1, A4 , A5, A10, A11

10. Admit 33 and 34 suggest because we had an option to kick out of the contract, we had an obligation to mitigate damages for fraud and/or that we had to accept all defects known and unknown because we proceeded..

11. Admit 36 and 37 asked to admit we were informed of work by chatters and woodbury before removing contingencies as if that information is not required as representations prior to forming a contract -- in this situation specifically, Gorman also ignored the fact that their work was NOT represented in the TDS or SPQ accurately either even though he supported those false claims in Forstein's Admit documents. On day 17 our condition contingency was due to be released and we refused realizing we had not been told the truth about many things. On day 20 we got some quotes and invoices, but they did not reflect the concealment acts nor full description of work. And Gorman is suggesting because we got those by force, and demand, they might relieve his client from fraud.

    For this gross request, it's clear Gorman did not read the complaint or review exhibit A4 A11 and others.

12. Admit 38 asks for admission to making an offer before we saw the home, indicating the Author of the admits 1) had not read the complaint and 2) that viewing the home would have helped any buyer of this property, when in fact all the material misrepresentations were out of the purview of any buyers casually walking through the property.

    For this gross request, it's clear Gorman did not read the complaint or review exhibit A11. .

13. Admit 39 asks for admission that we did not ask for disclosures before we formed a contract when in fact we asked for them 4 times, even though asking for them is NOT a requirement for the buyer. Gorman is constantly trying to inappropriately shift responsibilities and liabilities with no legal basis to do so, given the facts in our complaint.

    For this gross request, it's clear Gorman did not read the complaint or review exhibit A11.

14. Admit 40 asks for admission that we did not ask to inspect the property before making an offer, as if that should be legally relevant when it's not (and by coincidence, we actually did and we did in writing, which is extremely rare).

    For this gross request, Gorman was unaware we had in fact done something very out of the ordinary and it was documented in email. .

15. Admit 41 asks for admission that we didn't ask for reports before signing an offer, when in fact that is NOT buyers job -- and we did ask for all "disclosures" 4x before making an offer, and that is inclusive of reports. NOTE: We also got 2 reports before making an offer, and we relied on those -- and Gorman mis-stated that in his response for Forstein admits.

    For this gross request, it's clear Gorman did not review exhibit A11. . .

16. Admit 42 asks for an admission that no statute in CA requires residential home sellers in CA to provide disclosures to potential buyers until AFTER an offer has been signed by the buyers as if they want people to believe no laws for fraud exist and as if CA 1102 combined with RPA 13B doesn't state exactly that.

    For this gross request, it's clear Gorman did not review exhibits A7, A8,.A10 or A12, cover sheets to CA Bar seminars discussing these exact requirements. .

17. Admit 43 asks to admit we received all statutory disclosures before we removed contingencies, inconsistent with the instructions for TDS and SPQ Delivery in CA 1102 when compbined with RPA 13b, and with no regard for the fact that we did not receive completed TDS or SPQ prior to escrow close either, with the omissions left being identified directly in Loughgrin v Superior Court as fraud with damages due.

    For this gross request, it's clear Gorman did not review exhibits A4 and A5. ,. .

A review of these Admit requests reveals a startling disregard for 1) foundational representation and contract formation law 2) violation of CA 1102.3 in concert with RPA 13b and 3) contradictions to position of equitable law represented in the CA DRE Reference book.

A review of the admit response to Canary's interrogatories shows Gorman relied on the excuse of "vague" when applied to concepts of "representation" and "contract formation" for a contract used statewide to create real estate transactions, which was paid for provisingoing by his client, Forstein.

A review of the admit responses to Canary's interogatorie shows Gorman relied on teh the excuse of "vague" when applied to concepts of "contract formation" for a contract used statewide to create real estate transactions, which was paid for provisingoing by his client, Forstein.

A review of these Admit requests reveals an almost item by item alignment with "defective" clauses in the contract docuemnt paid for provisioning by Forstein that is subjected to a contract review board that includes attorneys at "Broker Risk Management", defense attorneys for Brokers and sellers.

A review of these Admit requests reveals a "template for admits" was used that played to defective clauses in a defective contract provisioned by his client. , as opposed to creating original and releant requests considerate of actual facts known to Gorman via the complaint, exhibit A1.1, exhibit A11 and case law that governs real estate disclosure.

At this point in time it's presumed the "admit document template" is something Gorman would have purchased or been given via seminars and/or networking amount fellow professionals with direct or indirect influence from Broker Risk Management Attorneys or others engaged in simular consulting services.

There is no Attorney, working from scratch with the facts in our complaint, exhibit A1.1, and exhibit A11 and many others could have combined those facts with relevant CA Real Estate Case Precedents for As Is Sales, representation law, and contract law and come up with admits that were so contrary to law.

A review of his full behavior reveals Attorney Gorman used a "template" for his admits that was geared or suggesting shifting of liability and responsibility not inline with CA Law. This is a violation of the Attorney Code of Conduct.

A review of his full behavior reveals Attorney Gorman did not create "special interrogatories" in a manner appropriate for a complaint involving over 50 acts of fraud. This is a violation of the Attorney Code of Conduct.

A review of his full behavior reveals Attorney Gorman did not create "document demands" in a manner appropriate for a complaint involving over 50 acts of fraud. This is a violation of the Attorney Code of Conduct.

==========
--- Summary w. Options ----
==========

Ken and Micah --

I suggest you all do nothing for a few days. Just let this sit while I contemplate a few options and you all do the same. Some soul searching might be a good idea, if you can still locate the string...

Dismiss and refile - As Ken should be aware and should have told Micah, I do have an option for dismissing and refiling this complaint. As he and others have insisted this is a contract dispute no matter I didn't include breach of contract as a CoA I can make that work one of several ways. and for point of clarification, if a reboot on this doesn' fly well, I will likely have time to do that a 2nd time before my time to file expires. so this could get very expensive and daunting for forstein. IF I'm forced to do this, imagine how organized and fast hitting our complaint and discovery will be - and it will be far, far more detailed and in depth than anything you all have seen to date. It may also include 100's if not 1000's of photos for processing along with demands for text history, google drive history, Icloud history and others -- given Kent used those to communicate with me and thus it's reasonable to assume he may have used all those with micah.

- Furthermore, Micah, there are some real loopholes in the complaint filing system we did not exploit on your first lawsuit out of courtesy that we will use to maximize the pressure next time.
- 10 days after you are served you will get full discovery demands from us.
- Even if Ken maintains representation for you, you will need to hope he has a wide open caleadar, and this is your notice of what may transpire, so declaring "surprise" to extend a response period will be frowned upon.

Ken's continued representation - Micah, now is the time to ask Ken if I were to dismiss and refile if he would take you on again as a client. I don't believe he has an obligation to. Since this has started, he has discovered you ran a shake down scheme, you ignored instructions from Kent about disclosure, you gas lit Kent and your wife and you and Kent got a chuckle when the luan was installed to conceal massive health and safetd defects that were going to affect someone you never met. While most attorneys are just in it for the $$$, I don't sense that is as hi on Ken's list as others and at this point he made some serious mis steps in our complaint which may expose him to claims from you or I. If I was him I'd want to cut my losses and exposure, but you'll need to discuss that with him.

Settlement Idea for 220k - Here's one settlement idea that is coming to mind. Ken, you credit Micah back the fees paid to you and your firm. You do not want that money in your account. Returning it closes out damages for malpractice. Micah, take the money back from Ken that you paid, and round it up to $220,000, and the three of us can settle this matter. In such a settlement I will also waive your inclusion in any pending complaints for racketeering, which in fact is what micah funded, and Ken and his firm just attempted to profit from. Even if Ken doesn't want to get the blood money out of his account, Micah, 220k buys your way out of this complaint and future complaints for racketeering. if you haven't already, put your small business hat on and think about future attorney fees alone. . Also imagine, I now have my complaint and this litigation system now far more understood than when we started this 6 months ago. What I can unleash next will make this all look tiny. The work needed for me for that is minimal given it's mostly done, and I'll have little reason to settle low if you make me refile.

Motion to Compel - Ken, you are free to burn up Micah's money writing a notification letter of non compliance with discovery and/or start the documents for a motion to compel. That is Micah's rights as I understand them. From my perspective that is "pissing money away", as I have no need to stick around for that. I'll be far better served by dismissing and refiling -- and that will just add to my complaint against you and your firm for coercive behavior but that's between you and Fortein to discuss.

If you haven't reached out to me to express interest in settlement or I haven't reached out with a formal Settlement Demand by Friday afternoon I'll send an email with an update and I'd imagine i'll draft such a document over the weekend. That Settlement Demand will need to be done formally before I decide on dismissing and refiling.

1. I will also likely wait to dismiss and refile until the Form Interrogatories are returned or Ken want's to state those were not delivered in an acceptable manner to him.
2. I need to know your answer to mental health issues, albeit I can wait until i refile if I have to, as those won't affect my complaint against you, it would simply be nice to know how you intend on answering...

If you alll like the settlement offer, send me a notice advising as much. otherwise I'll sit on it, let's take a few days to see if Micah can make that make sense and we'll touch base Friday otherwise. Or you all can do as you wish and I'll respond as needed.

Bryan

12/11/2024 - Canary to Gorman - Notice of RICO Flow Charts

24CV001914 - RICO Flow Charts x2 - I thought I had...

Bryan Canary <bryan@bryancanary.com> Wed, Dec 11, 2024, 4:26 PM Reply to all

to Ken, Micah, Hillary

Ken and Micah

I had two exhibits lined up for submission for a Forstein default but Ken's response arrived just prior to putting that on record.

Then, I could have sworn I shared these with you all but I'm not seeing it. If I did, this is then just a reminder. if not, you should pay attention to these in detail.

Ken - in the RICO cockfight diagram you are operating in Box 6. This diagram starts with Apollo Mgt Group, flows through coldwell banker to Broker Risk Management. From their it gets to Teir 1 real estate attorneys that are involved in contract review -- including Vickie Naidorf of Broker Risk Mgt and ex CB in house attorney. From there you can see how the frauds flow down --- and Ken, you are operating at Tier 6 - and that templated response for admits you used, that was totally voide of admits with relevant questions inclusive of facts from our complaint is the EXACT type of scenario we had projected would be transpiring for the Attys operating at Tier 6.

Ken, you've been on the radar for Tier 6 investigations since the day I got your faux verified response for Forstein, but it really popped up when you issued me those admits without any reference to case specific facts. No matter how hard you want to wish it, you didn't write that collection of admits from scratch nor custom for our case. To be clear, there is nothing wrong with using templates for admits -- the entire legal system is based on templates -- but when using 1 that is associated iwth an 8 tier RICO scheme, it would have been better to customize it a bit to hide the deceit. Just some food for thought for next time, if there is a next time. The next question you may want to ask is "how many ppl have seen that chart" and "how many ppl have been following along since you issued that admit document"?

As for the RICO BRM visual

that was created before you appeared for Forstein -- I need to update it to include your work. Taking on 6-7 predatory Attorneys at one time wasn't something I considered lightly and i've far surpassed that now. You were just the latest in being exposed for associations far too close to the racket for comfort...

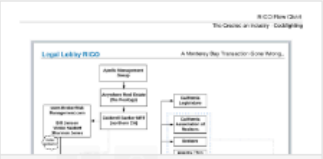
1. Paul Kibel, water and power law group, exposed
2. David Madariaga and Fowler law group, exposed
3. B. James Fitzpatrick , Fitzpatrick and Swanson, exposed
4. Will Fiske, Anywhere real Estate, exposed
5. Henry Huff, Lagasse Branch Bell Kinkead, exposed
6. multiple attorneys, Edlin Gallagher Huie Blum, exposed
7. Ashlee Gustafson, Walker Reed PC, exposed
8. Leo b. Seigel, Stone Siegel Law, exposed.... (your friend?)
9. Mike Masuda, Noland Hamerly Etienne and Hoss, exposed
10. 80 monterey county attorneys, exposed
11. Ken Gorman, Penrose, Chun and Gorman, exposed

You all have no idea the coverage this is getting out the back door. I don't either, as I have no way to track it, but if I had to take a shot in the dark, I'd say it's turning heads for sure.

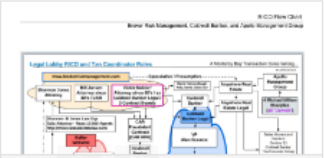
If/when I add Penrose, Chun and Gorman to that flow chart, I'll try to remember to send you an update for your scrapbook.

b

2 Attachments • Scanned by Gmail

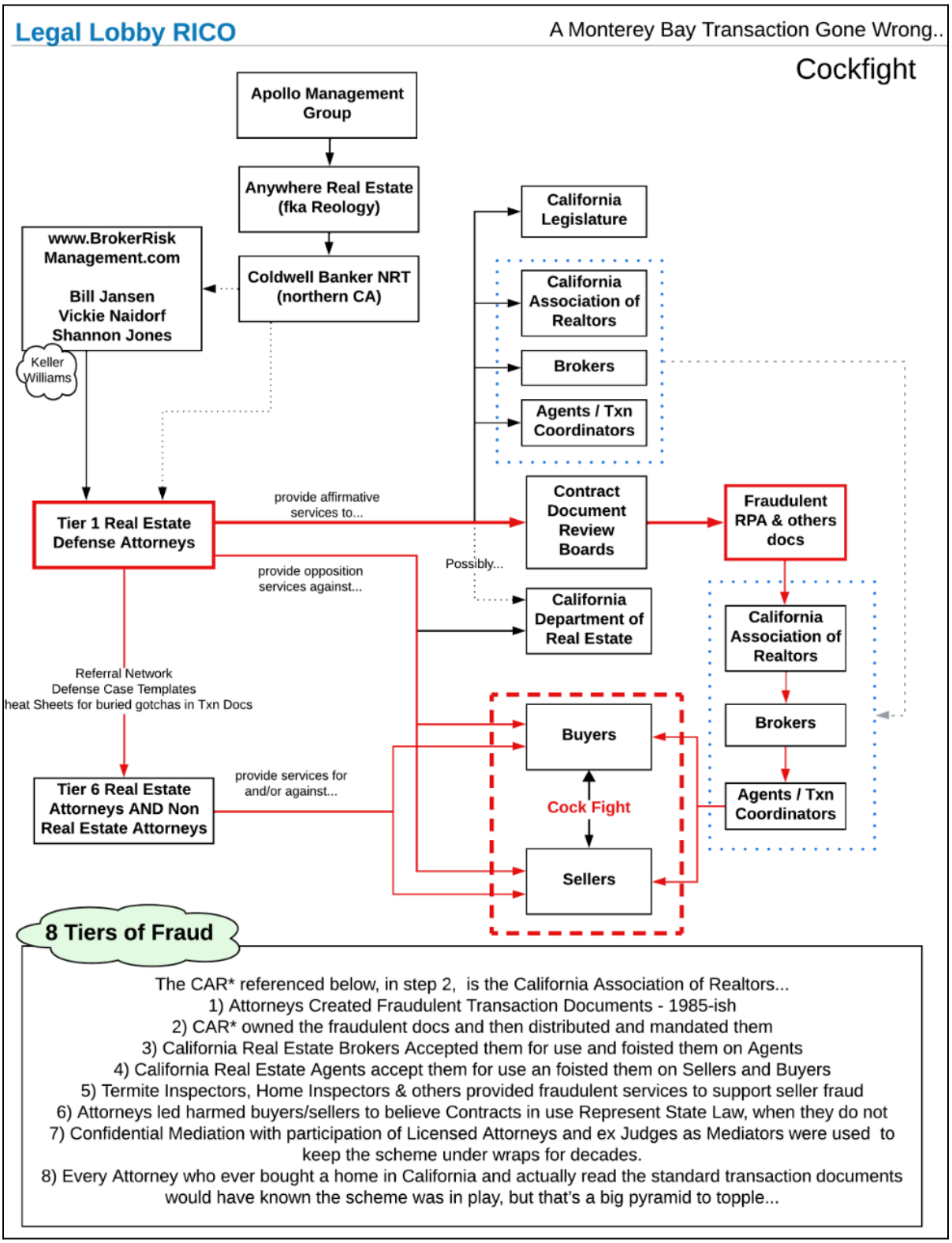


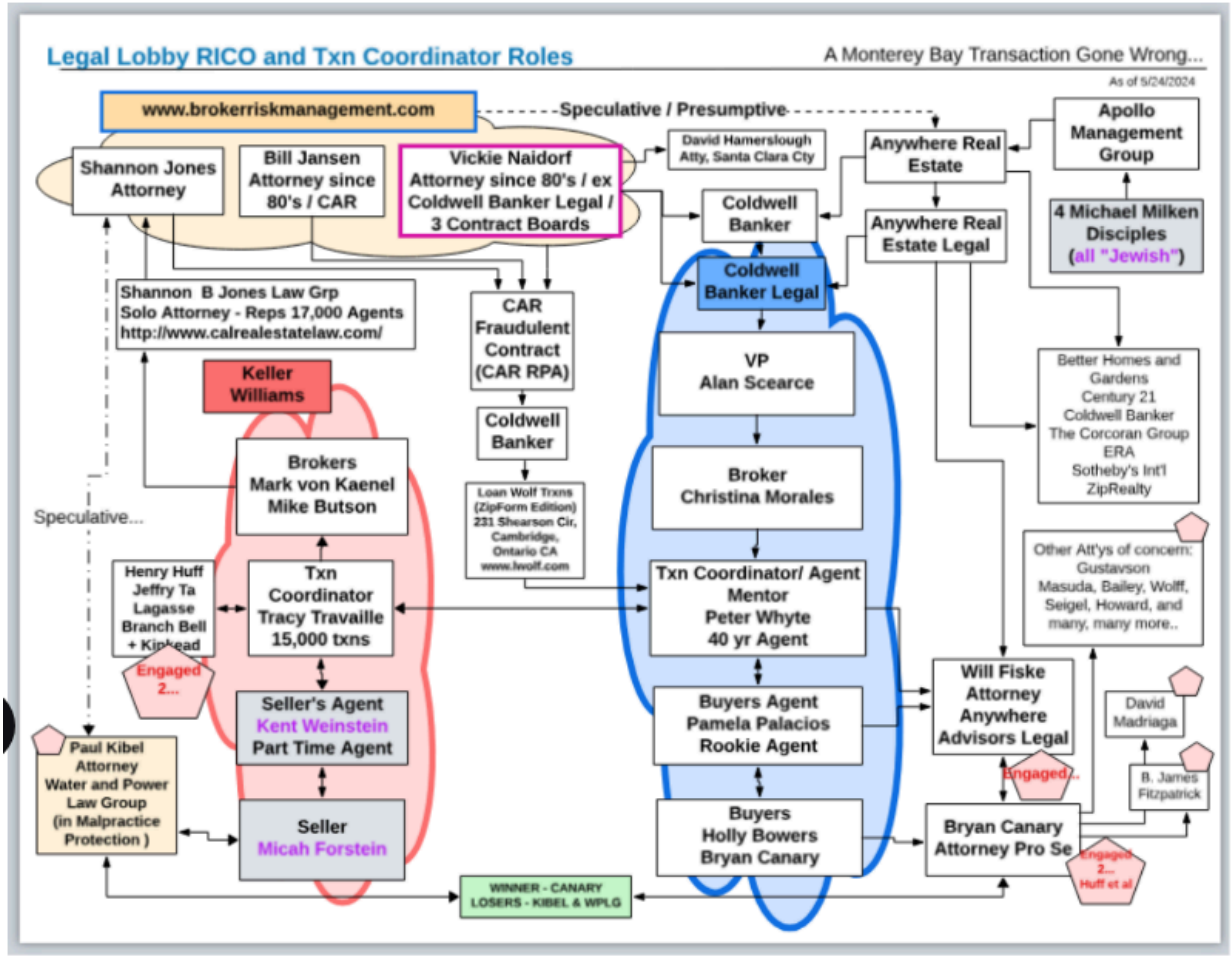
b2_ flowchart - RI...



b3_ flowchart - RI...

Gorman and Kibel profiting at Tier 6 in the scheme




Legal Lobby RICO and Txn Coordinator Roles
A Monterey Bay Transaction Gone Wrong...
As of 5/24/2024
www.brokerriskmanagement.com
Speculative / Presumptive
Shannon Jones Attorney
Bill Jansen Attorney since 80's / CAR
Vickie Naidorf Attorney since 80's / ex Coldwell Banker Legal / 3 Contract Boards
David Hamerslough Atty, Santa Clara Cty
Anywhere Real Estate
Apollo Management Group
Coldwell Banker
Anywhere Real Estate Legal
4 Michael Milken Disciples (all "Jewish")
Coldwell Banker Legal
Shannon B Jones Law Grp Solo Attorney - Reps 17,000 Agents http://www.calrealestatelaw.com/
CAR Fraudulent Contract (CAR RPA)
VP Alan Scearce
Better Homes and Gardens Century 21 Coldwell Banker The Corcoran Group ERA Sotheby's Int'l ZipRealty
Keller Williams
Coldwell Banker
Brokers Mark von Kaenel Mike Butson
Loan Wolf Trxns (ZipForm Edition) 231 Shearson Cir, Cambridge, Ontario CA www.lwolf.com
Broker Christina Morales
Speculative...
Other Att'ys of concern: Gustavson Masuda, Bailey, Wolff, Seigel, Howard, and many, many more..
Henry Huff Jeffry Ta Lagasse Branch Bell + Kinkead
Txn Coordinator Tracy Travaille 15,000 txns
Txn Coordinator/ Agent Mentor Peter Whyte 40 yr Agent
Engaged 2...
Seller's Agent Kent Weinstein Part Time Agent
Buyers Agent Pamela Palacios Rookie Agent
Will Fiske Attorney Anywhere Advisors Legal
David Madriaga
Paul Kibel Attorney Water and Power Law Group (in Malpractice Protection)
Engaged...
B. James Fitzpatrick
Seller Micah Forstein
Buyers Holly Bowers Bryan Canary
Bryan Canary Attorney Pro Se
Engaged 2... Huff et al
WINNER - CANARY LOSERS - KIBEL & WPLG

12/18/2024 - Gorman to Canary - Gives until 1/3/2025 to comply w/ new complaints

Special interrogatory responses

Ken Gorman <kgorman@pcg-llp.com> Wed, Dec 18, 2024, 2:50 PM Reply
to me

Mr. Canary:

The form interrogatory responses that you provided do not comply with the requirements of the Code of Civil Procedure ("CCP") in form or content.

CCP sec. 2030.210(b) requires the responses to designate the identities of the propounding and responding party in the "first paragraph of the response immediately below the title of the case." That was not done. We sent the special interrogatories to you in Word format so you could respond properly. There is no provision for a spreadsheet response. Also, the responses do not state if they are from only you or, like the responses to form interrogatories, from you and Ms. Bowers.

<Content omitted>

The claims of "irrelevant-dropping personal injury" to 97 and 98 are incorrect- those issues remain part of your complaint and are discoverable.

If you disagree with the foregoing please provide legal and factual authority and we may further meet and confer.

Otherwise, please provide complete, verified, amended responses in the proper form on or before 4 pm on January 3, 2025. Otherwise I will bring a motion to compel.

Ken Gorman

Comment: Gorman gave us until 1/3/2025 to try to figure out if what he was complaining about now was proper and relevant, but then just 5 days later he filed the motion to compel?

12/19/2024 - Gorman office to Canary - delivers Form Interrogatories - Forstein does NOT contest property conditions (!?)

Canary v. Forstein - Discovery Responses !!!efile ×

Summarize this email

Hillary Dickson <hdickson@pcg-llp.com> Thu, Dec 19, 2024, 3:35 PM Reply to all

to me, holly11bowers@gmail.com, Ken

Dear Mr. Canary and Ms. Bowers:

Below is a Dropbox link with the Response to Form Interrogatories and Second Supplemental Production of Documents.

https://www.dropbox.com/scl/fo/scnqouv5nwtbpdai6oiqb/AOteC1FwHFgwJGGIGTsLU7k?rlkey=y7pciujzl58e67ozbq220b6of&st=3snr4zvj&dl=0

Very truly yours,

Hillary Dickson,
Paralegal
she/her/hers

Penrose Chun & Gorman LLP
1200 Pacific Avenue, Suite 260
Santa Cruz, CA 95060

In these, Forstein admits to conditions. He simply refutes the representation process he engaged in was insufficient and suggest an As Is sale protects him.

These responses contradict Gorman's month's long attempt to force facts related to discovery of conditions and existence of them that were duplicative because of his approach to his requests, via the use of the defective complaint he refused to allow to amend.

12/23/2024 - Gorman office to Canary - Motion to Compel, contrary to 12/18/2024 email indicating 1/3/2025 was "next due date" for docs

Canary v. Forstein - Motions to Compel !!!efile ×

Hillary Dickson <hdickson@... Mon, Dec 23, 2024, 3:23 PM Reply to all

to me, holly11bowers@gmail.com, Ken

Dear Mr. Canary and Ms. Bowers:

Attached are the following:

1. Notice of Motion and Motion for an Order Compelling Further Responses to Demand for Identification, Production and Inspection of Documents and Other Tangible Things; and Imposing Monetary Sanctions; Memorandum of Points and Authorities in Support of Motion; and Supporting Declaration of J. Kenneth Gorman;
2. Separate Statement in Support of Motion for an Order Compelling Further Responses to Demand for Identification, Production and Inspection of Documents and Other Tangible Things; and Imposing Monetary Sanctions;
3. Notice of Motion and Motion for an Order Compelling Further Responses to Form Interrogatories; and Imposing Monetary Sanctions; Memorandum of Points and Authorities in Support of Motion; and Supporting Declaration of J. Kenneth Gorman; and
4. Separate Statement in Support of Motion for an Order Compelling Further Responses to Form Interrogatories; and Imposing Monetary Sanctions.

Very truly yours,

Hillary Dickson,
Paralegal
she/her/hers

4) Attorney Gorman's Motion to Compel - an insincere motion for insincere purposes

On 12/10/2024 plaintiffs delivered an updated version of their discovery responses via website with over 800 pages of verified document, estimates for damages, and images. The responses were updated to attempt to satisfy Gorman, who was using our improperly formatted complaint to make what he knew to be irrelevant and duplicative discovery requests as part of a futility defense.

On 12/10/2024 and 12/11/2024 Canary started to reveal to Gorman the facts he had collected from the Admit requested and the RICO Schematics he had established prior to and during teh engagement with Gorman.

On or around 12/19/2024 Gorman indicated he was still not pleased with plaintiffs response to discovery, and he provided them until 1/3/2025 to further comply.

On 12/19/2024 Gorman's office delivered defendant's response to form interrogatories.

1. It's believed at this time Gorman had another person supporting Forstein's response and he may have been surprised by the concession to conditions that undermined his futility strategy.
2. On Page 17, paragraph 55, Forstein conceded all conditions plaintiffs were complaining about and he was simply going to rely on the contract's stated options for disclosure to protect him.
3. With this response, Gorman and Forstein exposed months of wasted dialogue between Plaintiffs and Gorman discussing how to properly prepare documents to prove conditions existed, and to explain discovery of those facts for over 30 defects and to document who was present for discovery and repairs, which are not needed for damage justification for misrepresentation per 3343. .

4. Thus, Months of time were wasted for nothing.

On 12/23/2024 just 4 days after Forstein conceded to all conditions AND after Gorman had set a new date of 1/3/2025 to meet his (unnecessary and unreasonable) requests, Gorman filed a massive Motion to Compel with 100's and 100's of pages of documents to attempt to divert from what was transpiring.

GC 1
Concealed Rotten Floor Joists

When Seller Micah Forstein moved out of his home, there was an old deck on the home that was structurally unsound. Seller's Agent Kent Weinstein of Keller Williams Coastal Estates in Pacific Grove CA suggested Forstein engage with General Contractor John Chatters to work on the home. They agreed to that and they agreed to remove the rotten deck and build a new smaller deck just on the rear without permits. According to his bio, GC Chatters started out doing work for Clint Eastwood.

Home with the defective deck during preparation for sale in September 2020.	Home without defective Deck and a new rear deck (and new fence) in October 2020 and prior to sale.

GC Chatters, seemingly with full knowledge of Seller Micah Forstein and Seller's Agent Kent Weinstein decided to bury structural defects in the process, as a "gift" to the new owners. In addition to being part of our legal complaint, this is a scrap book to remember them by...

5) Attorney Gorman's Motion for Legal Fees - Misrepresentation of Law and Fact

Page 7, Line 14 - Misrepresentation of Law related to CIV 1717(b)(2)

On page 7 Line 14 of this Motion Defense Attorney Gorman patently misrepresents CIV 1717 by stating,

> *"Per Civil Code section 1717, a dismissal without prejudice as to an action on a contract does not convey prevailing party status on the dismissed party for the causes of action for breach of contract."*

Here, Gorman was referring to CIV 1717(b)(2) which he should have referenced specifically, and it is NOT limited to "without prejudice dismissals". CIV 1717(b)(2) ACTUALLY READS…

> "*Where an action has been voluntarily dismissed or dismissed pursuant to a settlement of the case, there shall be no prevailing party for purposes of this section*."

Attorney Ken Gorman intentionally attempted to blur "voluntary" into "without prejudice" to mislead the court.

Page 7, Line 7 - Misrepresentation of Facts related to Motion to Compel and our Voluntary Dismissal

On page 7, Line 7 of this Motion Defense Attorney Gorman patently misrepresented facts related to our Dismissal reasoning and purpose by stating,

> "*Plaintiffs made it clear in communications surrounding the recent dismissals that they*

were dismissing the case to moot the pending motions to compel and requests for sanctions and the recently filed motions for consolidation. They had not filed a substantive response to the motions to compel."

On 12/10/2021 Gorman and his client had been provided responses to discovery that included over 600 pages of fact statements and explicit identification of the location of partial or absent representations in the SPQ, along with sufficient responses to the requests.

On 12/18/2024 Gorman indicated he was still not pleased with plaintiffs' response to discovery and he provided them until 1/3/2025 to further comply. He had nothing else to do but try to use CCP to get us out of the complaint.

On 12/19/2021 as Gorman was trying to conjure up problems with our documents to create more delay and confusion, a response from his client to form interrogatories was delivered that stated his client didn't refute any conditions we had declared were defective, thus rendering 90% of the discovery issues and problems they had created mute as the only thing they were then disputed were facs of law.

At this time it's believed someone other than Gorman was helping Forstein with his response to interrogatories and Gorman was not aware he was going to admit to no continents with contention, which was all Gorman was focused on.

Gorman was well aware we were dismissing this complaint with the intentions of refiling against his client and others, given neither he nor his client were willing to turn on the Brokers and CAR, the parties that created this problem for both of us.

This motion to compel was to distract and paralyze us during the time window we had to refile complaints

<u>Page 12, bullet 15 - Motion for Statute Limits vs $145,000 in billing ?</u>

In this motion for Attorney Fees, on page 12, bullet 15, Gorman wrote,

> *"Plaintiffs' pleadings and the documents exchanged between the parties in 2021, and the reports provided by and to Plaintiffs before the close of escrow show that Plaintiffs' claims were subject to summary judgment for missing the statute of limitations, which I was in the process of drafting when the dismissals were filed."*

QUESTION: How did Gorman run up a $145,000 legal bill without first attempting a dismissal for statute concerns that were pointed out in the original complaint in Paragraphs 53 - 56 and why would he mention that now given it exposes his own potential fraud and/or incompetence?

5) Attorney Gorman and Kibel - Examples of "IN-CONCERT FRAUD"

<u>Page 8 Para 9 - TDS/SPQ completed in good fath vs Mold & Flooding unAnswered</u>

Gorman allowed Forstein to respond to Form Interrogatories in the following manner while he was in possession of numerous facts that patently refute his clients statement.

Page 8, in paragraph 9, Forstain with Gorman support and approval states, "completed the SPQ … in good faith disclosing everything known to him "

> (a) **Para 9**
>
> (b) Mr. Forstein is unaware of any damages as claimed by Plaintiffs, did not omit or conceal or misrepresent anything, completed the TDS, SPQ and RPA in good faith disclosing everything known to him, provided the Wheeler and WIN reports and the 2015 report and allowed inspections. "Non-pursuable" is unintelligible.

The SPQ was delivered with no answers for mold and flooding.

> **9. WATER-RELATED AND MOLD ISSUES:** **ARE YOU (SELLER) AWARE OF...**
>
> A. Water intrusion into any part of any physical structure on the Property; leaks from or in any appliance, pipe, slab or roof; standing water, drainage, flooding, underground water, moisture, water-related soil settling or slippage, on or affecting the Property ..... [x] Yes [ ] No
>
> B. Any problem with or infestation of mold, mildew, fungus or spores, past or present, on or affecting the Property ..... [ ] Yes [ ] No
>
> C. Rivers, streams, flood channels, underground springs, high water table, floods, or tides, on or affecting the Property or neighborhood ..... [ ] Yes [ ] No
>
> Explanation: prior fridge icemaker leak caused discoloring in dinning room doorway.

On 4/28/2021 a demand was sent for a completed SPQ, and it was ignored. None was ever delivered.

CALIFORNIA ASSOCIATION OF REALTORS®

NOTICE TO SELLER TO PERFORM
No. 1
(C.A.R. Form NSP, Revised 04/10)

In accordance with the terms and conditions of the ☑ California Residential Purchase Agreement (C.A.R. Form RPA) or ☐ Residential Income Property Purchase Agreement (C.A.R. Form RIPA), or ☐ Commercial Property Purchase Agreement (C.A.R. Form CPA), or ☐ Vacant Land Purchase Agreement (C.A.R. Form VLPA), or ☐ Other _____ ("Agreement"), dated 3/27/21, on property known as 12 Bayview Road Castroville California 95012 ("Property"), between Bryan Canary & Holly Bowers ("Buyer"), and Micah Forstein ("Seller").

Buyer hereby gives Seller notice that Buyer has not yet received from Seller the items checked below. If Seller does not provide Buyer with these items, Buyer may be entitled to cancel the Agreement or delay removing an applicable contingency:

Contractual Action

A. ☐ Delivery of Wood Destroying Pest Inspection (Paragraph 4A)
B. ☐ Delivery of the following Inspection or Report (Paragraph 4 _____): _____
C. ☐ Delivery of Lead Disclosures (Paragraph 6A)
D. ☑ Delivery of the following Statutory Disclosures (Paragraph 6A): a completed SPQ (see attached)
E. ☐ Delivery of the following booklets/guides (Paragraph 6B): _____
F. ☐ Disclosure of Property in Condominium/Planned Development (Paragraph 7A)
G. ☐ Delivery of Condominium/Planned Development (HOA or OA) Disclosures (Paragraph 7B)
H. ☐ Disclosure of Known Property Insurance Claims (Paragraph 9A)
I. ☐ Delivery of Preliminary Title Report (Paragraph 12A)
J. ☐ Approval of verification of down payment and closing costs (Paragraph 14C(2))
K. ☐ Approval of verification of cash (Paragraph 14C(2))
L. ☐ Removal of contingency for Seller's Purchase of Replacement Property (C.A.R. Form COP, Paragraph B)
M. ☑ Other Disclosures and Deliveries: explanation for 5 month listing delay (see attached)
N. ☐ _____
O. ☐ _____
P. ☐ _____

NOTE: Paragraph numbers refer to the California Residential Purchase Agreement (C.A.R. Form RPA-CA). Applicable paragraph numbers for each contingency or contractual action in other C.A.R. contracts are found in Contract Paragraph Matrix (C.A.R. Form CPM).

SELLER: If you do not take the specified contractual action indicated above, Buyer may cancel the Agreement.

Buyer _____ **Date** 4/28/21

Buyer Holly A Bowers **Date** 4/28/21

Two Neighbors attested to unmitigated water damage from a flooded ceiling

Upon finding mold in the Laundry room, concealed behind new remodeling work, Plaintiffs asked neighbors who had been in property of knowledge of flooding and mold in that area….

Two attestations from neighbors

4) **"First Floor Ceiling Damage" -** The Seller's Agent indicated when he took over management of the home the ceilings in the first floor bathroom and/or laundry room had come down/fallen down. The problems had resulted from a water leak that then was not mitigated for a year or more prior to his involvement in taking over management of the home. He indicated it was all quite a mess.

Did you see this damage ? Yes / No

Does this sound like an accurate description of what you saw?

Fully Disagree Partially Disagree Neutral Agree Fully Agree

Attestation Questions: This is how I expected you to respond to questions based on verbal dialogue.

1. Hoarders Home - You indicated that description fit.
2. Consumer Goods - You indicated you saw this in their home when you pet sat and the description fit.
3. Debris Removal from Home - You indicated you were NOT a witness to those details, but it would be reasonable to imagine that.
4. First Floor Ceiling Damage - You indicated it was there when you pet sat, a long time before they decided to sell the home and it was significant.
5. Pet Urine - You indicated you had cleaned up significant urine in the dining room during your pet sitting services. You indicated there was also urine problems in the area on the first floor where the hallway, 1st floor bath and utility room is. You indicated you recalled that to be a vinyl flooring, not ceramic?

And Attorney Ken Gorman signed off on this Form Interrogatories answer with all facts presented here also in his possession at that time via verified documents. This is in concert fraud.

Page 8 Para 9 && Page 10 Para 17c - "Pet Urine was Disclosed in the SPQ"

Page 8, in paragraph 9, Forstain with Gorman support and approval states, "completed the SPQ … in good faith disclosing everything known to him "

> (a) **Para 9**
> (b) Mr. Forstein is unaware of any damages as claimed by Plaintiffs, did not omit or conceal or misrepresent anything, completed the TDS, SPQ and RPA in good faith disclosing everything known to him, provided the Wheeler and WIN reports and the 2015 report and allowed inspections. "Non-pursuable" is unintelligible.

On page 10, in paragraph 17c, Forstein stated, "pet urine was disclosed in the SPQ"

> (a) **Para 17 c**
> (b) No locations identified, but pet urine was disclosed in the SPQ, not noted in the Wheeler, WIN, Murrer, or Jack's Termite reports, Mr. Forstein was not aware of any damage from pet urine.

According to Gorman and Forstein it is possible to disclose pet urine while selection "NO" to Pets on or in the property.

> **10. PETS, ANIMALS AND PESTS:** ARE YOU (SELLER) AWARE OF...
> A. Pets on or in the Property ☐ Yes ☒ No
> B. Problems with livestock, wildlife, insects or pests on or in the Property ☒ Yes ☐ No
> C. Past or present odors, urine, feces, discoloration, stains, spots or damage in the Property, due to any of the above ☒ Yes ☐ No
> D. Past or present treatment or eradication of pests or odors, or repair of damage due to any of the above ☒ Yes ☐ No
> If so, when and by whom See pest control report. past rodent problem. Termite signs in
> Explanation: Pool house.

This was also true via "Paul Kibel", Forstein's first attorney.

> Mr. Forstein's Disclosure of Pet Damage
>
> In his disclosure responses to you Mr. Forstein indicated that while there were not any pets (cats) presently on the premises that there was some damage to the property related to previous pets/cats. So contrary to the allegations in your January 17, 2022 letter you were in fact provided with notice that pets/cats had resided in the premises and that there was some known damage related to such pets/cats. At the time of the sale Mr. Forstein was not aware of any cat urine-related damage to the subfloors as the subfloors were covered with flooring/carpets and had not been examined.

Two Neighbors attested to Cat Urine

5) "Pet Urine" - The Disclosure Documents we were provided indicated there were no pets at the property. We found massive amounts of urine damage just after the close of escrow in the Dining Room, edge of Kitchen and the first floor bathroom/utility room area that had seemingly been masked with enzyme cleaner. Upon conversations with all of you, it sounds like all of you were aware of numerous pets int he property during their entire occupancy and several of you pet sat for them and witness a need to clean up urine in these areas.

One neighbor has indicated they may have had as many as 9 cats and a dog when they moved in. Others are only aware of 3-4 cats and the dog, later in their occupancy.

Did you ever pet sit for them in a manner that required caring for the animals inside the home? Yes or No
What's the highest number of cats you believe were at the property at any given time? 8 or 9? when they 1st came

They lost 3 or 4 in First 2 years

www.bryancanary.com 3 of 6

Bryan P. Canary
12 Bayview Road -- Property Condition Survey

What's the highest number of cats you believe were at the property at any given time? _____

Did you witness urine problems that needed cleaning in the Dining room? Yes / No

Did you witness urine problems that needed cleaning in the Kitchen? Yes / No

Did you witness urine problems that needed cleaning in the 1st floor Bath/Utility room area? Yes / No

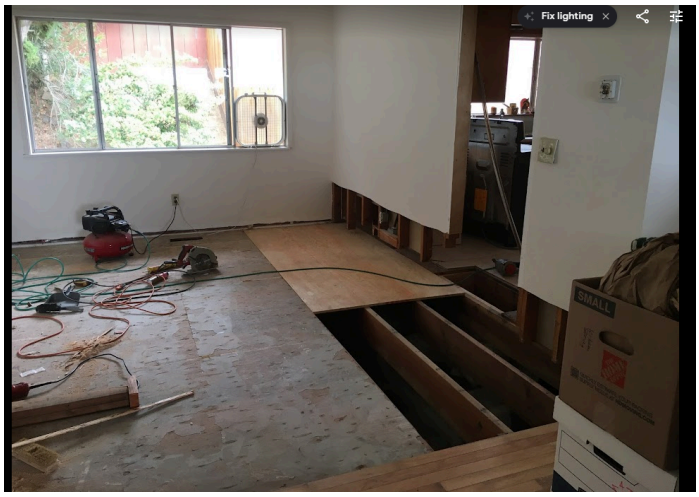
Any other Relevant Comments?

I took care of pets many time always had to clean in hall

Attestation Questions: This is how I expected you to respond to questions based on verbal dialogue.

1. Hoarders Home - You indicated that description fit.
2. Consumer Goods - You indicated you saw this in their home when you pet sat and the description fit.
3. Debris Removal from Home - You indicated you were NOT a witness to those details, but it would be reasonable to imagine that.
4. First Floor Ceiling Damage - You indicated it was there when you pet sat, a long time before they decided to sell the home and it was significant.
5. Pet Urine - You indicated you had cleaned up significant urine in the dining room during your pet sitting services. You indicated there was also urine problems in the area on the first floor where the hallway, 1st floor bath and utility room is. You indicated you recalled that to be a vinyl flooring, not ceramic?

The Concealed Cat Urine was discovred 2 weeks after purchase when they couldn't mitigate a "minor odor" prior to moving in and then discovered/ figured out that gallons upon gallons of enzyme cleaner had been used to flood the floor when they had to remove the hardwoods to remove the soaked subflor.



And Attorney Ken Gorman signed off on this Form Interrogatories answer with all facts presented here also in his possession at that time via verified documents. This is in concert fraud.

The following document was obtained via Attorney Ken Gorman and Discovery for Forstein.

Forstein sent this to his wife and agent , when litigation concerns arose.

[redacted]

From: Micah Forstein <mforstein@thinksurgical.com>
Sent: Friday, January 21, 2022 5:34 PM
To: 'Erin Forstein'
Cc: 'Kent Weinstein'
Subject: Disclosure listing

Hi Erin and Kent,
At the time we filled this out we had be out of the house for 9 months. The Question does not say were there pets on the property, it asks if there are Pets on or in the Property, which at that time there were none. We do disclose that there was Past odors urine and feces damage. This is pretty clear.

10. PETS, ANIMALS AND PESTS: **ARE YOU (SELLER) AWARE OF..**

A. Pets on or in the Property ..... ☐ Yes ☒ N
B. Problems with livestock, wildlife, insects or pests on or in the Property ..... ☒ Yes ☐ N
C. Past or present odors, urine, feces, discoloration, stains, spots or damage in the Property, due to any of the above ..... ☒ Yes ☐ N
D. Past or present treatment or eradication of pests or odors, or repair of damage due to any of the above ..... ☒ Yes ☐ N
If so, when and by whom See pest control report. past rodent problem. Termite signs in

Explanation: Pool house.

Let me know if you have any questions.
Sincerely,

Micah Forstein MS
Manager, Implant Device

THINK SURGICAL

THINK Surgical, Inc.
47201 Lakeview Blvd.
Fremont, CA 94538

No rational person would come to the conclusion Forsteint properly disclosed Cat Urine.

And Attorney Ken Gorman signed off on his Form Interrogatories answer stating he properly disclosed cat urine. This is in concert fraud.

6) Attorney Gorman and Kibel - Example of use of Contract to try to Define Law

Attorneys Ken Gorman and Paul Kibel have consistently attempted to use the CAR Contract to define law and process instead of using Statutes, Case precedents to show its unlawful clauses. That IS the scheme in play by the Attorneys.

On 4/22/2022, Forstein's first Attorney Paul Kibel wrote:

> Fourth, Paragraph 14(F) of the Purchase Agreement is titled "Effect of Buyer's Removal of Contingencies" and provides: "If Buyer removes…any contingency or cancellation rights, unless otherwise specified in writing, Buyer **shall conclusively be deemed** to have: (i) completed all Buyer investigations, and reviewed the reports and other applicable information and disclosures pertaining to that contingency or cancellation rights; (ii) **elected to proceed with the transaction**; and (iii) **assumed all liability, responsibility and expense for repairs or corrections pertaining to the contingency or cancellation right**." (bold added.) If you were not satisfied with the condition of the Property (or of repairs made to the Property) based on your inspections made prior to the sale, your recourse under the Purchase Agreement was to then cancel the sale or request (prior to the sale) that such repairs be redone/completed. The Purchase Agreement does not provide you with a right to proceed with the sale (aware of such conditions or of alleged problems with the repairs performed) and to then seek nine months later (post-sale) to impose liability on the seller for such conditions or alleged inadequate repairs. It is my understanding that (based on your pre-sale investigations during escrow) you requested that Mr. Forstein either agree to further discount the sale price for the Property or that Mr. Forstein agree
>
> 2
>
> [redacted]
>
> to perform additional repairs/improvements and that Mr. Forstein was unwilling to do this and that you then decided to nonetheless proceed with the purchase of the Property.

Claus 14F is an "unlawful clause" because no contract clause can dismiss actions for fraud to induce a contract, per CIV 1669 , CIV 1668, Loughgrin v Superior Court and manny others.

Kibel went on to state, " The Purchase Agreement does NOT provide you with a right to proceed with the sale (aware of such conditions or alleged problems with repairs performed) and then to seek nine months later (post-sale) to impose liability on the seller for such conditions or alleged inadequate repairs."

Kibel is correct by stating "the Purchase Agreement does NOT provide you with a right" --- but when Jue v Smiser, Bagdasarian v Gragnon and the CA State Bar support it (see exhibit A5 and A12 filed with original complaint). Does that qualify as fraud by an Officer of the Court or not?

Can an Officer of the Court make such a statement that might induce their client to believe he has a legal defense when none is present? Is that "mal-practice" on his client with 3rd party effects? Is that misleading the public about foundational contract law ethos that undermines the credibility of the entire legal system ?

case-tracker

Complaint Exhibits

Group A - Submitted with Complaint

A1.1) Causes of Action - Fraud- 50+ counts	view	
A1.2) Scope of Duty / Selection of Vendors - KW Disclosure Doc (1 page)		view
A2) Disclosure Info Advisory - CAR Disclosure doc (DIA) (3 pages)	view	
A3) Seller Advisory regarding TDS - Keller Williams (2 pages)	view	
A4) Incomplete SPQ , Sellers AVID , TDS (4 pages)	view	
A5) Case Precedents - As Is Sales (11 pages)	view	
A6) Visuals - Bayview 14 (12 pages)	view	
A7) RPA Clauses 14A and 14F - Fraudulent (6 pages)	view	
A8) CA 1102 vs RPA clauses (12 pages)	view	
A9) Visual - As Is Sales (2 page)	view	
A10) Visual - Jue v Smiser - Representation Stmt Period Diagram (1 page)		view
A11) Visual - Supposed to v Actual - As Is Sale (2 pages)	view	
A12) 2011/2019 presentations to CA BAR - Jue v Smiser (5 pages)	view	
A13) 8 Tiers of Fraud (2 pages)	view	

Group B - (to be submitted with request for default judgment)

C1) Jiminez v Capero (2 pages)	view
C2) Flow Chart - RICO - Cock Fight (1 pages)	view
C3) Flow Chart - RICO - BrokerRiskMgt / Coldwell Banker / Apollo details	view

Attorney Gorman himself then admits to taking over the case when Paul Kibel "chose" to turn it over to him, with the same defenses.

7) Internet review reveals other Billing Deceit and abuse by Gorman

https://www.lawyers.com/santa-cruz/california/j-kenneth-gorman-168925254-a/

★☆☆☆☆

Posted By Anonymous

February 01, 2024

Civil Litigation

Hired Attorney J. Kenneth Gorman

I am a lawyer who was sued by her old boss. The case was pure harassment and I needed help with the case. He associated in and was instructed to discuss work before performing it. As an attorney, I am very clear how legal fees can get expensive. He charged almost 23,000 and did NOTHING of substance except micromanage, criticize, and demean me. 23,000 for ONE motion! He jumped in a venue motion last minute and kept the fees I won. He worked on a discovery motion then DUMPED me before the hearing causing me to have to drop the motion. I then SETTLED the case for less than half of what he charged me. Then for FOUR YEARS he harassed me by suing me for 5,000 lousy dollars. He thinks he is the best lawyer but bedside manner and demeanor in stressful litigation are a key component. As a lawyer since 2007, I would NEVER treat a client the way he treated me. TOXIC man - stay away.

Hide Review ^

Ken Gorman, Atty

== SUMMARY ==

The motion should be dismissed.

The Defense Attorney should be sanctioned for this motion and arguably for his motion to compel if all facts are taken into consideration.

Gorman has over 40 years experience and there were no legal or factual points to warrant this motion and his process for compelling admits and documents was done without sincerity.

This motion was an abuse of process for intimidation and paralyzation purposes. Allowing a seasoned attorney to do this to community members in Pro Se who entered into litigation with a sincere desire for equitable remedy and termination of predatory professional practices that were funded by the seller and for his benefit, is like allowing someone to take a free “head shot” from 50 yards away that could maim someone for life, or worse, with no legal or factual basis. Many rules of war are safer than this.

The Plaintiffs declare under penalty of perjury under the Laws of California that they believe the forgoing is true and correct as of 3/23/2024.

Respectfully Submitted,

Bryan Canary - Co Buyer
12 Bayview Road
Castroville CA 95012
bryan@bryancanary.com
443-831-2978
Pro-Se Representation by Requirement

Holly Bowers - Co Buyer
12 Bayview Road
Castroville CA 95012
Pro-Se Representation by Requirement