
DISCLAIMER:

This was done by someone without a legal degree.

Our ability to attract legal support was thwarted by the "pseudo legal documents provided by Brokers for use. .

It's being prepared to attempt to communicate in legal ease with the Monterey County District Attorney
and any Civil Attorneys she may be able to attract for support.

If filed Pro-se, it may need to be modified.

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Complaint

Complaint Summary - Fraud and Conspiracy to Commit Fraud

This Complaint is being made by a Plaintiff who was the Buyer of a used home via a Brokered Real Estate Transaction in Monterey County CA in 2021.

Buyer / Plaintiff was provided a pre-sale inspection report prepared by defendants Robert and Brannon Vierra.

Robert and Brannon Vierra had prepared the report for the Seller's Agent, not the seller, with full understanding the report would be used as part of representation statements on behalf of the seller.

The report was a "non-bonafide" report

The report contained full omissions and vague references to over \$50,000 in defects that are basic defects any sincere inspector would have called out with ease.

Some of the major omissions aligned with a pre-sale home inspectors report which was done on another day.

Both of those inspectors were known to, scheduled by, met by and paid by the Seller's Agent, not the seller.

During escrow it became apparent both the Seller's Agent and Seller were fully aware of some of the omissions as well.

This is indicative of Coordination by the Seller's Agent with Report content.

Website

The following website details information related to this matter.

- <https://inspector-complaints-2023.bryancanary.com/bond-claims>

Primary Causes of Action for Fraud via Tort

The primary basis for Fraud for each Cause of Action is:

1. CA Civil Code 1572 (Actual Fraud)
2. CA Civil Code 1573 (Constructive Fraud).
3. CA Civil Code 1578 (Misapprehension of Law)
4. CA 1102 - Obligation to Disclose in a Real Estate Transaction - applies to anyone with knowledge of material facts, not just real estate contract participants.

Available List of Causes of Action

Civil Codes for Negligence and Fraud

The following represent Civil Codes that can give rise to Causes of Action for Relief from Damages

Civil Code (CIV)

1572 - Actual Fraud*	view
1573 - Constructive Fraud	view
1575 - Undue Influence	view
1576 - Mistake of Fact or Law	view
1578 - Misapprehension of Law	view
Xxxx - Tortious Interference	view
1714 - Negligence	view
3294 - punitive damages for oppression, fraud, malice	

* - 1572 does NOT require privity of Contract

Lingsch v. Savage - indicates no privity of contract is required for fraud via 1572. In that case it applies to the Broker who is not party to a real estate contract. In this case it applies to a harmed party not involved in a Construction Contract.

Other: NOTES

1710 defines four types of fraud

1711 deceit with intent to defraud public or class of persons

1712 may be conversion

1714.10 conspiracy related to attorneys - conspiracy not a cause of action but a doctrine

<https://www.justia.com/trials-litigation/docs/caci/3600/3600/>

Administrative Codes

None. Home Inspectors are not a regulated profession in CA

Causes of Action - Opening Paragraphs

The goal is to simply list them all first...

Ref: <https://www.justia.com/trials-litigation/docs/caci/4100/4101/>

Opening Paragraph - Actual Fraud - 1572

The Plaintiff, Bryan Canary, alleges that Defendants, Robert and Brannon Vierra, were the legal (proximate) cause for damages to Plaintiff. By the following acts or omissions to act, defendant intentionally caused the damage to the plaintiff via fraudulent misrepresentations and/or concealments that affected the future purchaser of 12 Bayview Road, which was Canary.

Opening Paragraph - Constructive Fraud - 1573

The Plaintiff, Bryan Canary, alleges that he was harmed by Robert and Brannon Vierra because they failed to perform his duties as part of the creation of representation documents. To Establish this Claim Bryan Canary must prove the following:

1. That Robert and Brannon Vierra owed Canary a responsibility for honest dealings (see appendix)
2. That Robert and Brannon Vierra knew or should have known the facts he presented were incomplete and/or false
3. That Robert and Brannon Vierra misled Canary by Failing to disclose this information/ providing Canary with information that as inaccurate or incomplete
4. That Robert and Brannon Vierra was harmed
5. That Robert and Brannon Vierra Conduct was a substantial factor in causing Canary's harm.

Statement of Facts

1. Win Home Inspections advertises Home Inspection services in Monterey County CA.
2. Win Home Inspections advertising indicates they've done over 11,000 inspections since the late 1990s.
3. Robert Vierra owns Win Home Inspections Monterey
4. Brannon Vierra is Robert's son and he works for Robert and Win Home Inspections
5. A home inspection for 12 Bayview Road was ordered and coordinated by a Seller's Agent, Kent Weinstein
6. Robert and Brannon performed a home inspection at 12 Bayview Road , while it was empty in January 2021. The seller was living out of state and was not present for the inspection.
7. Robert and Brannon produced a "non-bonafide" inspection report. The report contained numerous omissions, false statements of fact, and contradictory statements of fact and that any novice home inspector would have called out and reported on with ease.
8. Robert and Brannon delivered that report to the Seller's Agent or Seller.
9. That report was provided to the Buyer/Plaintiff during negotiation processes for 12 Bayview Road.
10. The buyer relied on the contents of the report for consideration for property condition.
11. The buyer/plaintiff was the winning bidder and took title to the home at time of Agreement Acceptance
12. During escrow , the buyer/plaintiffs did their own inspections to confirm As Is representation statements made in the Win Home Inspection report. They found the egregious omissions and false statements of fact at levels that should never transpire with experienced home inspectors.
13. The nature of the material omissions and false statements of fact aligned with reporting omissions from the Termite Inspection report procured by the same Real Estate Agent.
14. The nature of the material omissions and false statements of fact aligned with disclosure omissions from the Real Estate Agent and seller themselves.
15. The similarities in omissions of the Seller, Seller's Agent, Robert Vierra, Brannon Vierra and a Termite inspector indicate coordination to conceal defects among all parties.

Cause of Action - Constructive Fraud and Conspiracy

Count 1 - \$10,000 - 2nd Floor Attic Racoon Invasion - 900sf

1. The report summary had no comments about issues or defects in the 2nd floor attic, a 900sf space with 6' peak AND it had no comments that the 2nd floor attic had not been inspected. Anyone reviewing the summary would have presumed the 2nd floor attic had been inspected and it was free of defects or matters worthy of commentary.
2. The report details suggested the 2nd floor attic had been inspected on the page allocated for those details and the results were satisfactory. Photos of an attic space were associated with the minor comments.
3. The buyer gave no consideration for 2nd floor attic defects, as there was nothing in the summary or body of the report in the related area that suggested there may be any issues.
- 4.
5. In escrow, the buyer sought to inspect the 2nd floor attic. That required the removal of a closet shelf, a 6' step ladder and a drill to remove screws holding up a small access panel.
6. Buyer removed screws and access panel, and a horrid odor rolled out .
7. The Seller's agent was present at that time and standing at the bottom of the ladder.

8. The Seller's Agent was able to provide full details related to the odor and the damage.
9. The Seller's Agent's knowledge of defect details, which he shared when we found them, constituted "fraud" by Seller's Agent and Seller and suggests a conspiracy between seller's agent, seller, and inspectors.
10. Weeks later, upon additional review of the report, buyer found an additional comment about 2nd floor attic access, on a following page, that indicated the attic access was too small for humans and the home needed to be modified for attic access. Brannon is thinner than those who went through the Access Opening. Stating it needed to be modified for access was a full fabrication or they had used a report template from another report and failed to remove irrelevant statements.
11. The total damages related to this inspection omission were \$8,000 in attic damage and \$2000 in defective drywall
12. See closing comments to understand their willingness and desire to attempt to execute a thinly veiled fraud.

Count 2 - \$10,000 - Gas Furnace Explosion Hazard

1. The furnace was located in the garage.
2. The furnace was a down draft gas furnace with a pilot light that was within 18" of the floor.
3. All gas appliances in a garage must be mounted with pilot lights more than 18" above the floor to avoid explosion and fire from accumulated exhaust fumes.
4. This safety rule has been a standard building code since 2002
5. This safety rule is the most critical rule for gas appliance installations in garages for health and safety.
6. This safety rule is one that is called out easily due to the ease of evaluation of pilot light height.
7. This safety rule was actually called out in the sellers 2015 report, which was not delivered to us in a time for offer consideration but was delivered to us 3 weeks into escrow as part of a document demand.
8. Repositioning the furnace was a major job as it required the insertion of a down draft stand between the floor and the furnace and there was not enough room on the plenum above to avoid entirely re-working the ducts.
9. The total damages related to this inspection omission were \$10,000

Count 3 - \$2,000 - Gas Furnace Explosion Hazard

1. The hot water heater was located in the garage.
2. The hot water heater was a gas heater with a pilot light that was within 18" of the floor.
3. All gas appliances in a garage must be mounted with pilot lights more than 18" above the floor to avoid explosion and fire from accumulated exhaust fumes.
4. This safety rule has been a standard building code since 2002
5. This safety rule is the most critical rule for gas appliance installations in garages for health and safety.
6. This safety rule is one that is called out easily due to the ease of evaluation of pilot light height.
7. This safety rule was actually called out in the sellers 2015 report, which was not delivered to us in a time for offer consideration but was delivered to us 3 weeks into escrow as part of a document demand.
8. The total damages related to this inspection omission were \$2,000

Count 4 - \$7,000 Crawl Space Defect Omissions -and material fact omissions

1. The home contained a 30' x 30' crawl space that was 36" high
2. The crawl space height made it easy to navigate.

3. Before stating details related to Brannon and Roberts report, it's best to establish what was found during an escrow inspection and then convey what they had reported.

--- From our own investigations ---

4. From the opening of the crawl it was easy to see a 12" high water mark on the foundation wall indicative of MAJOR prior flooding and standing water. This mark was around the entire foundation wall.
5. A crawl around the entire perimeter of the crawl space was doable. We did it and we confirmed all the sill bolts but one were in perfect condition . One bolt showed a concrete stress area but no major deflection and that was logical given the full configuration of the foundation and the evidence of prior water issues.
6. During a crawl around the perimeter, one has to crawl OVER a 4" gravity drain pipe. This pipe provides drainage in the event of flooding. It was either their originally and had gotten clogged, and led to flooding or it had been installed after flooding had transpired. Keeping the outlet of this pipe clear would be critical if there were still subterranean flooding issues.
7. During that crawl 2 areas below the front foundation were identified as having been areas where water had worked it's way out from under the home during a prior flooding experience.
8. During that crawl major dry rot and pest damage to main structural support columns was noted (**\$5000** in damage)
9. During that crawl 30% of the insulation in the joists had fallen for no easily explainable reason, and the other 70% had been installed upside down and was not pressed against the heated surface as it should have been (**\$2000**)

--- From Rober and Brannon -----

10. The report produced by Robert and Brannon indicated the sill bolts had been checked indicative they crawled the entire perimeter.
11. The report produced by Robert and Brannon indicate omitted 1) about 12" of prior flooding 2) notes about the 4" drain pipe 3) notes about areas below foundation that had been flooded out 4) notes about damage to structural posts (**\$5,000**) 5) notes about insulation installed upside down and away from heated surfaces (**\$2000**)
12. The report produced by Robert and Brannon suggested there were some moisture issues and the owner should be consulted when the moisture issues were in fact their issues to call out.
13. The report then contained additional omissions related to exterior defects directly above one of the foundation outlets that may have been caused by the foundation flooding or another water mater that may have contributed to it.
14. The total damages related to these inspection omission were \$7,000

Count 5 - \$3,500 - Concreted defect indicative of subterranean water issues

1. The report indicted the splash blocks for downspouts were all functional
2. The report indicated there was no exterior concrete related to the home or foundation that had seized.
3. The report indicated no trip hazards from concrete.
4. One of the downspouts was without a splash block.

5. That downspout dumped a 25x25 sf area of roof water into the front right next to a concrete slab that was close to the foundation that had water intrusion / extrusion signs. .
6. A 5' x 10' section of slab had broken off from the rest of the porch and sunk by 3" creating a trip hazard as well as indicative of subterranean water issues and ALL OF THIS had been omitted from the report.
7. The relevance of this omission is material, but it becomes far more relevant when combined with the crawl space flooding omissions are taken in context. The desire was to provide no information that would suggest flooding
8. The total damages related to these inspection omission were \$3,500

Count 6 - \$6,500 - North side Yard Grade omission and relevance to crawl space flooding

1. The report failed to note a small retaining wall in the north side yard was defective and indicative of water movement.
2. The report failed to note entire north yard below that defect subtly slopes towards the home and leads to a low spot in the exact same area where the downspout was without a splash block and the concrete had seized.
3. No one looking at this from outside would have seen all the potential for problems until such time as problems were known in the crawl space, and the contributing factors were sought out, at which point in time all these issues as well as selective omissions stand out easily.
4. The total damages related to these inspection omission were \$6,500

Count 7 - \$17,000 - No functional hot water

1. Page 38 item 11 of report indicates "interior water flow" as "functional"
2. The report fails to make any notes as to hot water functionality.
3. During our inspection we could not get any hot water from the fixtures. Our inspector suggested it was due to a possible water heater defect.
4. After close of escrow, we cut the water pipes connected to the hot water heater , so we could put it on a stand. The pipes were 80% corroded shut. Based on that finding, we do not believe there was ever reasonable levels of hot water in the home during the seller's occupancy.

Count 8 - \$0 - Other deceitful plumbing reporting

1. On page 38, item 6, under plumbing, "Evidence of Leaks" - "No"
2. On that page he goes on to write..."An inspection of the readily accessible sections of the plumbing water supply, waste pipes, faucets and fixtures identified no visible leaks at the time of the inspection, unless noted in a specific section of the report. We recommend all visible pipes, fixtures, and plumbing systems be re-examined prior to close of transaction for any changes. A program of regular inspection by the homeowner should be considered in order to identify any visible leaks prior to causing any substantial damage".
3. Anyone who reads to page 38 would feel there were no leaks.
4. On page 47, 9 pages later, he details SIX plumbing related water leaks.

Count 9 - \$2,000 - Moss on Roof

1. Page 33, item 14 - "Roof evaluated from roof edge and walked lower roof"
2. Page 32, item 3 - "Moss/Mildew" - "none"
3. The front roof faces west.

4. Our initial insurance policy was canceled after a post purchase insurance inspector who did not go on the roof was able to identify the roof moss as a concern.

Count 10 - \$0 - Other deceitful reporting issues.

1. Typical home inspection reports have the details in the front and the summary in the rear. The details are filled with photos and the summary is just a list of the most relevant items in text with reference to the pages for details. Any areas omitted in the inspection are BOLDLY NOTED in the summary.
2. This report was the EXACT OPPOSITE of that. It had the summary in the front with photos and the photos selected were some of the lesser problems. They were also visually disorienting. The details in the back included critical items, but with no photos for reference and areas fully omitted were only listed in the written details. The report was also filled with the use of "confusion" in a way that seems very intentional.

Opening or closing comments -- The frauds discovered by buyer/plaintiff were "thinly veiled frauds" and it seems clear they were attempted due to the vague and confusing prose in the CAR Contract which does not align with state statutes, case precedents and the very foundations of Contract Law Ethos.

It's presumed the initial strategy they were relying on for completing the frauds included 1) a buyer trusting the pre-sale reports and/or 2) a buyer calling up the company that did the reports and simply asking for a review of the report.

The strategies they were relying on in the event a buyer hired their own inspector who did in fact call out the defects could have been one of several. 1) It's possible they were aware the Pest Control Board Complaint process handling had been manipulated to avoid affirmative findings for fraud and/or 2) they were aware Civil Attorneys would not pursue claims of fraud for one of several strategic reasons that became apparent and/or 3) they were not aware of ***Jue vs Smiser (1994)*** and/or 4) they were aware of ***Jue vs Smiser (1994)***, but they assumed the average buyer would never find it.

Fraud Claims in CA

Fraudulent / Intentional Misrepresentation Claims in California

"**Fraudulent misrepresentation**" refers to a statement, which can be verbal, written, or implied through actions, that is made **recklessly and without concern for its truthfulness**; or a **false promise** that is made without any intention of actually carrying out the promised action.

To bring a successful claim of **fraudulent or intentional misrepresentation** in California, a plaintiff would have to prove the following:

1. the defendant **represented** to another that a fact was true;
2. the representation was **actually false**;
3. the defendant **knew** the representation was false (or was reckless about its truth);
4. the defendant **intended the other person to rely** on the statement;
5. the other person **did rely** on the statement;
6. the other person was **harm**ed by the reliance; or
7. the plaintiff's reliance on the defendant's representation was a **substantial factor** in causing the harm suffered.

Different Types of Misrepresentation Claims

[California's Civil Code section 1710](#) identifies four kinds of **fraud**:

1. intentional misrepresentation;
2. concealment;
3. false promise; and
4. negligent misrepresentation.

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<https://www.courts.ca.gov/documents/pldc0013.pdf>

PLD-C-001(3)

SHORT TITLE:

CASE NUMBER:

CAUSE OF ACTION—Fraud

(number)

ATTACHMENT TO ☐ Complaint ☐ Cross-Complaint

(Use a separate cause of action form for each cause of action.)

FR- 1. Plaintiff (name):

alleges that defendant (name):

on or about (date): defrauded plaintiff as follows:

FR-2. ☐ **Intentional or Negligent Misrepresentation**a. Defendant made representations of material fact ☐ as stated in Attachment FR-2.a ☐ as follows:b. These representations were in fact false. The truth was ☐ as stated in Attachment FR-2.b ☐ as follows:

c. When defendant made the representations,

☐ defendant knew they were false, or☐ defendant had no reasonable ground for believing the representations were true.

d. Defendant made the representations with the intent to defraud and induce plaintiff to act as described in item FR-5. At the time plaintiff acted, plaintiff did not know the representations were false and believed they were true. Plaintiff acted in justifiable reliance upon the truth of the representations.

FR-3. ☐ **Concealment**a. Defendant concealed or suppressed material facts ☐ as stated in Attachment FR-3.a ☐ as follows:

b. Defendant concealed or suppressed material facts

☐ defendant was bound to disclose.☐ by telling plaintiff other facts to mislead plaintiff and prevent plaintiff from discovering the concealed or suppressed facts.

c. Defendant concealed or suppressed these facts with the intent to defraud and induce plaintiff to act as described in item IFIR-5. At the time plaintiff acted, plaintiff was unaware of the concealed or suppressed facts and would not have taken the action if plaintiff had known the facts.

Page

PLD-C-001(3)

SHORT TITLE:	CASE NUMBER:

CAUSE OF ACTION—Fraud

(number)

FR-4. ☐ **Promise Without Intent to Perform**

a. Defendant made a promise about a material matter without any intention of performing it ☐ as stated in Attachment FR-4.a ☐ as follows:

b. Defendant's promise without any intention of performance was made with the intent to defraud and induce plaintiff to rely upon it and to act as described in item FR-5. At the time plaintiff acted, plaintiff was unaware of defendant's intention not to perform the promise. Plaintiff acted in justifiable reliance upon the promise.

FR-5. In justifiable reliance upon defendant's conduct, plaintiff was induced to act ☐ as stated in Attachment FR-5 ☐ as follows:

FR-6. Because of plaintiff's reliance upon defendant's conduct, plaintiff has been damaged ☐ as stated in Attachment FR- 6 ☐ as follows:

FIR - 7. Other:

Page

Negligence

People also ask :

What is the cause of action for negligence in California?



California negligence claims have four elements that must be proven: 1) The defendant owed you a duty of care; 2) The defendant breached it; 3) This breach caused your injury; and 4) You suffered damages.

<https://selfhelp.courts.ca.gov/jcc-form/PLD-PI-001%282%29>

PLD-PI-001(2)

SHORT TITLE: 	CASE NUMBER:
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CAUSE OF ACTION—General Negligence

Page

(number)

ATTACHMENT TO ☐ Complaint ☐ Cross - Complaint

(Use a separate cause of action form for each cause of action.)

GN-1. Plaintiff (name):

alleges that defendant (name):

☐ Does to

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant negligently caused the damage to plaintiff

on (date):

at (place):

(description of reasons for liability):

Constructive Fraud

<https://bc-llp.com/constructive-fraud-in-california/>

Constructive Fraud In California

Definition of Constructive Fraud in California

"Constructive fraud comprises *any act, omission or concealment involving a breach of legal or equitable duty, trust or confidence* which results in damage to another, *even though the conduct is not otherwise fraudulent.*" *Salahutdin v. Valley of California, Inc.* (1994) 24 Cal.App.4th 555, 562; 2 Miller & Starr, Cal. Real Estate (2d ed. 1989), §3:20, p. 120-121; Civ. Code §1573(1). *If a fiduciary relationship exists, any concealment of material fact is fraud.* *Byrum v. Brand* (1990) 219 Cal.App.3d 926, 937-938; *Main v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1997) 67 Cal.App.3d 19, 32.

Unlike actual fraud, *constructive fraud does not require an intentional deception*, an "intent to deceive" being implied from the failure to disclose. *Mary Pickford Co. v. Bayly Bros., Inc.* (1939) 12 Cal.2d 501, 525. Further, *reasonable reliance is presumed upon a nondisclosure of the fiduciary*, absent direct evidence of lack of reliance. *Estate of Gump* (1991) 1 Cal.App.4th 582, 601.

In *Salahutdin* case, plaintiffs brought an action for negligent misrepresentation against defendant realtor. The trial court found that defendant's employee breached his fiduciary duty and committed constructive fraud by making false representations to plaintiffs about the property. The Court of Appeal affirmed, finding that the agent knew the size of the property and its ability to be subdivided was critical to plaintiffs' decision to purchase it, yet he misrepresented that it was more than an acre and could therefore be subdivided and failed to disclose that he had not independently confirmed the accuracy of this information, the Court stating: "*The failure of the fiduciary to disclose a material fact to his principal which might affect the fiduciary's motives or the principal's decision, which is known (or should be known) to the fiduciary, may constitute constructive fraud.*" *Salahutdin v. Valley of California, Inc.* (1994) 24 Cal.App.4th 555

If you need assistance with a Constructive Fraud case, or in any area of Business Law and Litigation, call the experts at Brown & Charbonneau, LLP for a consultation today. 714-505-3000

<https://www.fraudlawalert.com/entry/the-curious-case-of-constructive-fraud>

The Curious Case of Constructive Fraud

We've blogged before about three common types of *fraud* (1) deceit/affirmative misrepresentation, (2) concealment/nondisclosure, and (3) false promise/promissory fraud. These common types of fraud usually require that the alleged victim prove intent to deceive or a reckless disregard for the truth.

But another type of "fraud" also exists that doesn't require proof of fraudulent intent at all. It's technically one way a fiduciary duty can be breached that's treated like fraud—hence the name, *constructive fraud*. Constructive fraud can come into play whenever a special or fiduciary relationship exists under the law—that is, a relationship where one party places trust or confidence in another (fiduciary). Some classic fiduciary relationships include those between clients and their attorneys, stockbrokers, and real estate brokers (or agents). Corporate officers and partners also come to mind.

Whenever a fiduciary engages in conduct that misleads someone to whom he or she owes a duty and that conduct is a substantial factor in causing harm, a claim for constructive fraud can be found, even if the fiduciary never intended to mislead or deceive anyone. Constructive fraud provides for the same remedies as traditional fraud but is much easier to prove because no fraudulent intent is required.

If you're a fiduciary, avoid giving rise to constructive fraud by disclosing the truth, the whole truth, and nothing but the truth to those to whom you owe a disclosure obligation. It generally is better to do so in writing too. And if you're in a relationship with a fiduciary, exercise reasonable diligence when you receive and act on information. And no matter where you fall, get needed legal guidance before it's too late.