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SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY

Bryan Canary

Case No.: 24CV001706

Holly Bowers

Plaintiffs/Petitioners,

V.

**DRAFT - First Amended complaint for
Fraud, Breach of Fiduciary Duty and
Intentional Infliction of Emotional Distress**

~~Pamela Palacios~~

Peter Whyte

Defendants/Respondents

Unlimited Civil Case - Amount demanded exceeds \$35,000

Canary and Bowers (Home Buyers) / Palacios and Whyte (Buyers Agents)

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NOTICE OF PRO SE FILING AGAINST OUR DESIRES AND HIGHEST INTERESTS

1. The Buyers / Plaintiffs ask for the Court's utmost flexibility and consideration with the formatting of this Complaint and our attempted compliance with all aspects of procedure. Our preference was to pursue this matter with legal representation, but there are facts and case precedent related to this matter which exposed the Real Estate Brokerage Industry and a portion of the California Legal Lobby in multi-decade, industry wide frauds. That exposure prevented transparent dialogue and support for representation or consultation for this matter.

INTRODUCTION TO PLAINTIFFS AND COMPLAINT

1. The Plaintiffs, Holly Bowers and Bryan Canary, purchased a home in Monterey County for \$895,000 in the spring of 2021
2. Unbeknownst to Plaintiffs at time of Bid Consideration, Bid Creation, and Agreement Acceptance, all California Brokerages, Brokers and Agents had been forced to participate in a Legal Lobby Driven "Contract Document Fraud Scheme"
 - a. Plaintiffs developed the "8 Tiers of Fraud" model for scheme representation.
 - i. Tier 1 - Attorneys created fraudulent purchase agreement documents
 - ii. Tier 2 - California Association of Realtors distributed them
 - iii. Tier 3 - Brokers accepted them for use
 - iv. Tier 4 - Agents/Transaction Coordinators presented them for use
 - v. Tier 5 - Brokers, Agents, Contractors & inspectors ran side schemes
 - vi. Tier 6 - Attorneys covered up Document Fraud and side schemes
 - vii. Tier 7 - Mediation Companies covered up Doc Fraud and side schemes
 - viii. Tier 8 - the entire legal lobby knew about it for one of several reasons
 - b. The Scheme, in current form dates to 1985 and document modifications that were required for the origination of CA 1102..
 - c. It's currently estimated that over \$1 TRILLION in transactions were fraudulently handled since 1985 by Brokers and Agents while under the control of this Legal

Lobby scheme

3. Also unbeknownst to Plaintiffs at time of Bid Consideration, Bid Creation, and Agreement Acceptance, the home had been subjected to a broker involved fixup and disclosure fraud scheme that had been invited into play as a result of the overarching legal lobby fraudulent document scheme.

- a. This is referred to as a “side scheme” in the 8 Tiers of Fraud model above, and as a “transaction level scheme” below.

4. The transaction level scheme was executed by the Seller and Seller’s Agent with direct and indirect support for the scheme via additional fraudulent acts from 12 others.

5. Collectively plaintiffs refer to the 14 individuals who contributed to the fraud as the “Bayview 14”. The list of players involved as identified by role include:

- a. The Seller
- b. The Seller’s Agent
- c. A general contractor
- d. A painter
- e. A Home inspector and his son
- f. A Termite inspector
- g. A third party Broker who acted as a transaction coordinator for the seller
- h. Two Brokers for Keller Williams Coastal Estates
- i. Two Agents, a Broker and a VP from Coldwell Banker

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6. This transaction level fix up and disclosure fraud scheme has resulted in 6 complaints against 9 of the Bayview 14 co-conspirators at this time.
 7. This complaint is against one member of the Bayview 14, Real Estate Agent Peter Whyte.
 - a. Whyte was employed by Coldwell Banker.
 - b. Whyte was the Plaintiffs Transaction Coordinator and Senior Buyers Agent
 - c. The complaint is for fraud and breach of fiduciary duties
 - d. This complaint identifies Whyte as the most responsible Coldwell Banker Licensee who did or should have known the documents he was providing for use were fraudulent with foreseeable exposure to fraudulent schemes and foreseeable problems with remedy recovery from those schemes.
 - e. The complaint is important because it exposes Whyte was an “insider lynchpin” that is required to execute this type of scheme by a Seller and/or Seller’s Agent.
 8. The Plaintiffs were damaged by \$250,000 in misrepresentation fraud
 9. Misrepresentation fraud is described in layman's terms as “bait and switch” fraud.
 - a. Prior to entering any contract, real estate or otherwise, “representation statements” about material fact that may affect a buyer's perception of value must be made by sellers so buyers can make informed offers in good faith.
 - i. The “8 oz” stamp on a bag of potato chips is a “representation statement” about what a consumer is going to buy.
 - ii. If a consumer purchases that bag and discovers only 7 oz of chips were present , misrepresentation fraud transpired.

1 iii. In a civil court, the consumer is due a rebate of 1/8 the value of the
2 purchase. These are referred to as “compensatory damages”. They are to
3 “compensate” for overpayment.

4 1. If the plaintiff can show the vendor knew about the
5 misrepresentation before the transaction transpired, punitive
6 damages may be levied to “punish” the vendor and to deter future
7 behavior. In CA these are often 3 to 10 times compensatory
8 damages, with no fixed statute that specifies multiplier.

9 10. A seller’s failure to make complete and accurate statements of material fact prior to
10 entering into any contract gives rise to complaints for “fraud” for “bait and switch” tactics
11 via CA 1572 and 1573.

- 12 a. It’s “negligent misrepresentation” if deemed by accident
13 b. It’s “fraudulent misrepresentation” if deemed intentional
14 c. It’s referred to as Negligent or fraudulent “concealment” if nothing was said at all,
15 and they defects or problems had been buried.
16 d. Misrepresentation fraud when pursued in civil court is a tort for fraud as opposed
17 to a contract dispute.
18 i. A tortious act transpired to induce a contract at a value higher than it
19 would have been created otherwise.
20 ii. It is not a contract dispute because the contract did not exist at the time of
21 the fraud.
22 iii. With properly written purchase agreements, there would be an “additional
23 cause of action” for breach of contract, because the As Is condition
24 represented at time of Agreement Acceptance (Agreement formation)
25 was not present at time of property possession
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1. However, that cause of action doesn't exist in this case because the document fraud itself revolves around the false suggestion that representation statements were not due prior to forming a contract.
2. This is comparable to a "who's on first" skit by the Three Stooges, with the exception that it has damaged millions silently on scale in the Billions of dollars.

11. At this time, \$60,000 of \$250,000 in damages is allocated to property condition related misrepresentations found during escrow, \$140,000 of the \$250,000 is related to property condition related concealment found after close of escrow and \$50,000 of the \$250,000 is allocated to false representations of utility costs.

- a. The condition related frauds involved fraudulent actions by the seller, seller's agent, two contractors, and two inspectors, but the playing field to encourage and support the fraud had been laid by all the Agents, Brokers and Transaction Coordinators engaged in the transaction with the fraudulent contract documents.

INTRODUCTION TO DEFENDANT

12. The Defendant, Peter Whyte, is a licensed real estate agent with Coldwell Banker

- a. Whyte has been a licensed agent since the 1980s
- b. Whyte has worked for over 40 years as a full time as an agent.
- c. Whyte has been with coldwell banker since the 1990s
- d. Whyte setup the Coldwell Banker Agent training program in Beverly Hills CA in the 2000s
- e. Whyte relocated to Monterey County CA in the 2010s
- f. Whyte is in his 70's.

- 1 g. Whyte currently offers mentorship and/or coaching services to Monterey County
2 Coldwell Banker Agents on a contract basis
- 3 h. Whyte uses his age and experience to entice inexperienced Agents into
4 mentorships.
- 5 i. Whyte uses contracts with mentees to obtain commitments from them for his
6 coaching.
- 7 i. The contract for coaching is for a fixed number of transactions in
8 exchange for fees paid from completed transactions.
- 9 j. Whyte engages as the transaction coordinator in transactions for those he's
10 coaching / mentoring.
- 11 k. Whyte engages as a transaction coordinator and a senior agent for the clients of
12 those he is coaching / mentoring, if needed and as needed.
- 13 l. Whyte does or should represent the one of the most legally educated Agents for
14 Coldwell Banker given the length of his full time experience , his prior role in
15 corporate education, and his current roles in mentoring and transaction
16 coordination.
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18 **INTRODUCTION TO DUTIES OWED TO BUYERS BY BUYERS AGENTS/BROKERS**

19 13. CA Civ 2079 - 2079.24 defines Agent duties to a Buyer. This is critical since Buyers do
20 NOT pay for their own services. Those include

- 21 a. " a fiduciary duty of utmost care, integrity, honesty and loyalty in dealings with the
22 buyer".
- 23 b. " Diligent exercise of reasonable skill and care in performance of agent's duties"
- 24 c. "A duty of honest and fair dealing and good faith"
- 25 d. "A duty to disclose all facts known ot the agent materially affecting the value or
26 desirability of the property".
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14. Relevant Case Precedents related to Agent Duties and Responsibilities

- a. "Real estate agents hold themselves out to the public as professionals, and, as such, are required to make reasonable use of their superior knowledge, skills and experience within the area of their expertise. [Citation.] Because such agents are expected to make use of their superior knowledge and skills, which is the reason they are engaged" -- Robinson v. Grossman, supra, 57 Cal. App. 4th at 640. -
- b. "The fact that the tortious act arises during the performance of a duty created by contract does not negate the agent's liability " -- Mechem, Outlines of the Law of Agency (4th ed.) §§ 343, 346, pp. 232, 234.) Bayuk v. Edson, supra, 236 Cal. App. 2d at 320. -.
- c. "In other words, when the agent commits a tort, such as ... fraud..., then ... the agent [is] subject to liability in a civil suit for such wrongful conduct." --Mottola v. R.L. Kautz & Co. (1988) 199 Cal. App. 3d 98, 108 [244 Cal. Rptr. 737]; accord, Crawford v. Nastos (1960) 182 Cal. App. 2d 659, 664-665 [6 Cal. Rptr. 425] --
- d. The disclosures and acts required by the statutes "shall be made in good faith," which means "honesty in fact in the conduct of the transaction." -- Civil Code § 1102.7. See, Robinson v. Grossman supra 57 Cal. App. 4th at 641-642
- e. "Aiding and abetting liability may:"be imposed on one who aids and abets the commission of an intentional tort if the person (a) knows the other's conduct constitutes a breach of duty and gives substantial assistance or encouragement to the other to so act or (b) gives substantial assistance to the other in accomplishing a tortious result and the person's own conduct, separately considered, constitutes a breach of duty to the third person.' " -- Casey v. U.S.

Bank Nat. Assn. (2005) 127 Cal.App.4th 1138, 1145. // Richard B. LeVine, Inc. v. Higashi (2005) 131 Cal.App.4th 566, 579.

- f. "A broker has a fiduciary duty to its client. (Civ. Code, § 2079.24; Field, supra, 63 Cal.App.4th at p. 25 ["a broker's fiduciary duty to his client requires the highest good faith and undivided service and loyalty"].) The fiduciary duty is greater than the negligence standard of due care under section 2079. (Civ. Code, § 2079.2 [standard of care is of a "reasonably prudent real estate licensee"].) Thus a broker can be professionally competent under section 2079 without satisfying the greater duty of a trusted fiduciary. As Field, explained, "the [***11] fiduciary duty owed by brokers to their own clients is substantially more extensive than the non fiduciary duty codified in section 2079." (Field, at p. 25.)" -- Civ. Code, § 2079.24; Field, supra, 63 Cal.App.4th at p. 25

15. Whyte engaged as the transaction coordinator in the Plaintiffs Transaction.

16. Whyte engaged as a/the senior real estate agent in plaintiffs transaction

INTRODUCTION TO THE PURCHASE AGREEMENT / DOCUMENT FRAUD

Clauses 10A, 14A, 11, 12, 14F are the most relevant Clauses in the Fraud

17. Whyte, directly, and/or in support of Mentee Palacios, provided plaintiffs with a 10 page Residential Purchase Agreement Template (the RPA) for purposes of making an offer.

18. The RPA template had the California Association of Realtors logo on it and the Coldwell Banker Realty Logo on it.

1 19. Contract Clauses 10A, 14A, 14F, 11 and 12 separately and together misrepresent
2 Buyers Rights to representation statements and buyers rights to protection from
3 fraudulent misrepresentation in California
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- 5 a. The misrepresentation of Buyers Rights to representation statements and pursuit
6 of liability for misrepresentation are obtuse.
7 b. All Attorneys should have been able to identify the fraud from lessons learned on
8 Day 1 in their law school contract law class.
9 c. All CA Brokerage Licensees should have been able to identify the fraud from
10 lessons learned on Day 1 in Licensing Training and/or Broker Training class.
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Clause 10A specifies TDS / SPQ as relevant documents with representation statements

20. Contract Clause 10A indicates statutory disclosure documents are due to a Buyer in the time specified in 14A.

- a. Contract Clause 10A makes reference to the Transfer Disclosure Statement (the TDS) and the Seller's Property Questionnaire (the SPQ).
- b. The TDS is a statutory disclosure document brought into being via CA 1102 in 1985. The SPQ is a supplement to the TDS
 - i. The TDS and SPQ asks questions about property conditions and requires disclosure of those by Sellers.
 - ii. If the seller knew the "Roof Leaked in Winter", the TDS and SPQ would contain reference to that fact
 - iii. The TDS and SPQ should be filled out BEFORE a Seller enters into a Brokerage Agreement to Sell a home
 - iv. The Broker needs to have those filled out in order to have understood home condition, in order to have suggested and asking price for the home and in order to have agreed on an asking price prior to entering a Brokerage Agreement.
 - v. At the time of Brokerage Agreement creation, if the roof leaked in winter, it should have been documented on both the TDS and the SPQ and the Seller, the Agent who handled the brokerage agreement and any other Agents or Brokers who looked at the TDS and SPQ should have known the "roof leaked in winter".
- c. At this point in the explanation process, no Coldwell Banker Related Contract fraud has transpired but a comment about TDS propriety is needed. .

- i. The TDS contains an odd and confusing statement on the first page
- ii. The confusing statement suggests it contains representation statements for the Seller and that the document is a disclosure document but that those are NOT part of any contract.
- iii. The utterly confusing prose on the government document suggests those who were manipulating the RPA prose had also infiltrated the legislative process.
- iv. This document content is NOT shown in the LegInfo website. They suggest one needs to view the paper documents to see it. One reason for that "problem" is likely due to the ease with which the public would question the prose in the document mandated by the Government.
- v. This is not overly relevant now but it is a fact to review later.

Clause 14A is Fraudulent - Specifies Delivery of TDS / SPQ AFTER Agreement Acceptance

21. Contract Clause 14A states the TDS and SPQ are due to a buyer within 7 Days AFTER Agreement Acceptance.

a. This is a fraudulent suggestion of process.

i. This clause suggests a Buyer is to fully ratify a binding contract on a home BEFORE they are told “the roof leaks in winter”, even if that fact was documented by the Seller on the TDS and SPQ and shared with his Agent before they entered a Brokerage Agreement.

1. The absurdity in this false suggestion of process is outrageous, an integral part of a hoax, and the reason that every legally educated person in California with exposure to this document knew this scheme was in play.

2. The absurdity in declaring this to be a legitimate clause inline with California Law from Coldwell Banker Counsel is fraudulent at a minimum if not treasonous, given the full scope of damages caused by this singular fraud perpetrated on the California society.

ii. Via analogy, 14A suggests you should buy a bag of potato chips with a peel off sticker over top of the number of OZs , and only AFTER

PURCHASE are you allowed to remove the sticker to see the weight of the potato chips purchased.

b. Clause 14A is fraudulent and it can be proven so 7 different ways

- i. The RPA presents itself as a “contract” in two places. If it’s a contract it is subject to representation statements at time of Agreement Acceptance,
- ii. Case Precedent -- Jue v Smiser (1994) 23 Cal. App. 4th 312-318 indicates its fraudulent
- iii. Case Precedent -- Bagdasarian v. Gragnon (1948) 31 Cal. 2d 744, 750 [192 P.2d 935] indicates its fraudulent
- iv. Case Precedent -- Loughrin v. Superior Court (1993) 15 Cal.App.4th 1188, 1195 indicates its fraudulent
- v. CA 1102.3 combined with RPA clause 13B indicates its fraudulent
- vi. CA 1102.7 and the concept of good faith dealing indicates its fraudulent
- vii. The fact that there is such a thing as “specific performance lawsuits” in California supports the existence of a contract at some point in escrow and indicates its fraudulent
- viii. Foundational misrepresentation ethos indicates its fraudulent, assuming a contract was formed at time of Agreement acceptance as was declared in the Jue v Smiser and other precedents.

1 c. The only way this suggestion of process may be deemed “legal” is if the
2 RPA does NOT represent a “contract” at time of Agreement Acceptance.

3 i. This is not a viable argument:

- 4 1. The RPA refers to itself as a contract in at least 2 locations.
5 2. In one of the two locations it states it is a contract within 3 days of
6 Agreement Acceptance
7 3. All the case precedents refer to a “purchase agreement” as being
8 the contract they relied upon for their precedents
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10 d. The Case Precedent of Jue v Smiser (1994) 23 Cal. App. 4th 312-318
11 states:
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14 i. *"The plaintiffs discovery of the true facts after signing a real property
15 purchase agreement but before the close of escrow does not preclude a
16 finding of justifiable reliance with respect to false representations made by
17 the defendant before the purchase agreement was signed. The plaintiffs
18 reliance at the inception of the agreement is sufficient to support recovery
19 for fraud".*

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21 ii. This case precedent unambiguously establishes the fact that contract
22 creation, subject to representation statements, transpires at time of
23 “signing a real property purchase agreement”. It further references that as
24 being “the inception of the agreement”.
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1 iii. The Defense Attorney for the Defendant has claimed that the timing of the
2 discovery of the fraud in Jue v Smiser played a role in the precedent
3 when nothing in the decisions states or supports that. That is an
4 attempted manipulation of case precedent and an attempted manipulation
5 of the court. .

6
7 iv. The Defense Attorney for the Defendant has suggested that if the fraud
8 had been discovered earlier in escrow, it's possible there would have
9 been a need to mitigate damages.

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11 1. This is not only an insincere argument, this is engaging in the
12 fraudulent practice of law, in protection of a RICO Enterprise that
13 can be tracked to his very office and to a person who was in that
14 office when he first was employed there.

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16 2. It is NOT reasonable to ask someone in Pro Se to engage in legal
17 dialogue with someone who is not mentally stable or operating in a
18 mentally irrational manner.
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21 e. CA 1102.3 states, the TDS is “due to a buyer at a time practicable and
22 prior to transfer of title and RPA Clause 13B states the buyer “takes title”
23 at time of agreement acceptance.
24

25 i. Thus when CA 1102.3 is combined with RPA Clause 13B the TDS is due
26 to a buyer BEFORE Agreement Acceptance

27 1. This set of instructions is logical
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2. This set of instructions indicates a buyer would be told he roof leaks in winter before making an offer.

3. This set of instructions complies with the good faith requirements of CA 1102.7

4. This set of instructions is "juxtaposition" to RPA Clause 14A and thus only one can be correct and it's not 14A.

ii. The Defense Attorney for the Defendant has ignored clause 13B.

iii. The Defense Attorney for the Defendant claimed transfer of title happens at "close of escrow" with no case precedents or references in the CA DRE reference book or any other legitimate legal reference to support his position. .

iv. For the Defense Attorney to make his case,

1. He would need to declare the word "taken" is not synonymous with "transfer".

2. He would need to explain how or why changes in property value after agreement acceptance fall into the buyers domain not the sellers's domain.

3. He would need to explain why a title is clouded if a Contract to purchase exists and who it's actually clouded by and for. NOTE: At that point, title belongs to the buyer and it is the seller who is clouding the title, not the reverse.

4. He would have to deny the fact that the signing and recording of a deed at the end of escrow is the act of creating and publishing a "formal receipt" for a transfer of title that transpired at time of

agreement acceptance per 13B and all other facts presented
above.

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Clause 11 is Fraudulent - Condition / As Is Sale refers to 14A to and fraudulent process

22. Contract Clause 11 is related to "CONDITION OF PROPERTY" and "As Is Sale"

- a. The same fraud related to 10A and 14A is duplicated here with 11A and 14A
- b. Contract Clause 11a states the seller shall DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS within the time specified in 14A.
- c. The TDS and SPQ referenced in 10A are the documents that trigger the disclosure of known material facts.
- d. There is other manipulative prose in here that suggests "investigations" are to be done inside of "inspections" and that it is a time to "discover facts" as opposed to "confirming facts" that would have been presented as representation statements BEFORE Agreement acceptance.
- e. The same Case Precedents as presented for 14A can be used to prove fraud here as well.
 - i. Case Precedent of Jue v Smiser (1994) 23 Cal. App. 4th 312-318 indicates its fraudulent
 - ii. Case Precedent of Bagdasarian v. Gragnon (1948) 31 Cal. 2d 744, 750 [192 P.2d 935] indicates its fraudulent
 - iii. Case Precedent Loughrin v. Superior Court (1993) 15 Cal.App.4th 1188, 1195 indicates its fraudulent

f. In addition, from **1 Miller & Starr, California Real Estate supra, §1:154**

- i. Neither an "as is" sale nor the buyer's independent inspection exonerates a seller or the seller's agent from fraudulent misrepresentations concerning known defects not otherwise visible or observable to the buyer.

Clause 12 is Fraudulent - Investigations refers to 14F and absolute liability release--

fraudulent suggestion

23. Contract Clause 12 "BUYERS INVESTIGATION OF PROPERTY AND MATTERS
AFFECTING PROPERTY"

- a. The prose in the paragraphs details a buyer's rights to inspect.
- b. Nothing in this paragraph can override a Sellers Requirement to disclose
BEFORE entering into the contract.
- c. The reference from **1 Miller & Starr, California Real Estate supra, §1:154** is
relevant here again.
- i. Neither an "as is" sale nor the buyer's independent inspection exonerates
a seller or the seller's agent from fraudulent misrepresentations
concerning known defects not otherwise visible or observable to the
buyer.
- d. Loughrin v. Superior Court (1993) 15 Cal.App.4th 1188, 1195 is also relevant
 - i. "The purchase contract was not intended to insulate Seller from Liability
for misrepresentation in the preparation of the statutory disclosure form. "
 - ii. "Contrary to the apparent assumption of many people dealing in real
estate (including some brokers), a sale "as is" is not the equivalent of a
waiver of potential claims for misrepresentation".
 - iii. "Sale of real property "as is" is not equivalent of waiver of potential claims
of common-law misrepresentations. ' as is' sale simply means that
purchaser accepts property in condition visible or observable by him."

Clause 14F is Fraudulent - suggests release of liability req'd for non-disclosed defects

24. Contract Clause 14F "EFFECT OF BUYERS REMOVAL OF CONTINGENCIES" "

- a. This fraud is very subtle.
- b. The suggestion here is via omission.
- c. The suggestion here is that any and all defects and conditions known at time of Condition Contingency release must be accepted by the Buyer to get to close to escrow.
- d. In context, if the Buyer didn't know the roof leaked in winter and was told that AFTER a Binding Contract was formed, but with no mandatory adjustment to binding price, the buyer would need to pay the binding price agreed upon prior to knowing the roof leaked in winter to get to close of escrow.
- e. This is a looney tunes cartoon and not fit for court dialogue.
- f. The same case precedents presented prior as well as the Miller Star Refernde apply.
 - i. Jue v Smiser (1994) 23 Cal. App. 4th 312-318
 - ii. Bagdasarian v. Gragnon (1948) 31 Cal. 2d 744, 750 [192 P.2d 935]
 - iii. 1 Miller & Starr, California Real Estate supra, §1:154
 - iv. Loughrin v. Superior Court (1993) 15 Cal.App.4th 1188, 1195

STATEMENT OF FACTS

25. Pamela Palacios was an Agent for Coldwell Banker

- a. Pamela Palacios engaged as Plaintiffs Agent for Coldwell Banker
- b. Pamela Palacios was an inexperienced agent and admitted she would need and seek professional assistance to handle the transaction
- c. Pamela Palacios entered into a mentorship contract with Peter Whyte and introduced Whyte to Plaintiffs as her mentor, their transactions coordinator and the senior agent / licensee who would be supporting all aspects of their transaction
- d. The plaintiffs did and should have been able to rely on Whyte, Palacios, other Coldwell Banker Licensees and the Coldwell Banker Brokerage to provide them with transaction guidance and a purchase agreement template that represented their rights properly in a California real estate transaction.

26. Whyte in support of and/or in conjunction with Palacios provided Plaintiffs a Purchase Agreement template for purposes of making an offer.

- a. The purchase Agreement Template provided to plaintiffs included Clauses labeled 10A, 14A, 11, 12, and 14F.
- b. Clauses 10A, 14A, 11, 12, and 14F separately and/or together do NOT properly represent a buyer's rights to representation statements in California and they identify and absolute release of liability for defects known at time of condition contingency release that is excessive under California law. .
- c. The provision of a purchase agreement template with the defects contained in clauses 10A, 14A, 11, 12, and 14F gives rise to causes of action for Fraud, Fraud, Breach of Fiduciary Duty and infliction of Emotional Distress.

1 27. The Plaintiffs specifically asked Whyte, Palacous and two other Coldwell Banker

2 Licensees about the clauses that proved to be fraudulent prior to using the document to
3 make an offer.

4 a. Plaintiffs were told the documents were long standing and the documents that
5 were approved and accepted for use in Monterey County.

6 b. Questions about the "inverted" representation statement process were dismissed
7 as simply being "different in California".

8 28. The Plaintiffs used the Purchase Agreement Template provided by Whyte , in the form
9 presented to them, with no material changes, to make an offer

10 a. At the time of making an offer, they had been provided an email with a photo, and
11 email with representation statement about utilities, a pre sale home inspection
12 and a pre sale termite inspection.

13 b. The Seller's Agent and/or Seller held back the TDS , SPQ and Seller's Avid until
14 after Agreement Acceptance, as was suggested to be legal via 10A and 14F.

15 i. This indicates they were familiar with the process defined by 10A and 14F

16 ii. This indicates they were familiar with a representation statement delivery
17 process that are illogical to laymen and anyone thinking logically

18 iii. This indicates they were familiar with a representation statement delivery
19 process that is illegal, as identified in numerous ways.
20

21 29. A Binding Purchase Agreement was Formed via "Agreement Acceptance"

22 a. The Binding Agreement had no releases for the Seller, unless a buyer failed to
23 perform a required act.

24 b. The Binding Agreement had a condition contingency release and a financing
25 contingency release for the buyers / Plaintiffs
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30. The Day after Agreement Acceptance, the TDS, SPQ and Seller's Avid were all delivered in a patently incomplete manner.

- 3 a. The TDS and SPQ also had statements of fact in them that were identifiable as
4 fraudulent to the Plaintiffs and Palacios and the Seller's Agent. .
5 b. Plaintiffs discovered the patent omissions and fraudulent statements while
6 looking through 300 pages of disclosure documents
7 c. Plaintiffs asked Whyte if he had seen the omission and he said yes.
8 d. Plaintiffs asked why he had not mentioned them and he failed to answer directly.
9 e. Whyte told Plaintiffs they should do their inspections on the home and take
10 advantage of the ability to exit the transaction via the Condition Contingency if
11 needed.
12 i. The Condition Contingency in a contract is not a Buyers only remedy if
13 representation fraud is discovered but the contract made it seem that was
14 the only remedy and Whyte reinforced that idea in a fraudulent manner as
15 well.
16 f. When Whyte was asked when the Sellers Broker would be engaged given the
17 incomplete and fraudulent documents, Whyte suggested against pushing for that
18 involvement. Whyte indicated Plaintiffs might lose the opportunity to finish the
19 transaction without explaining how that would transpire given a Purchase
20 Agreement had been accepted with no releases for the Seller.
21

22 31. As of Day 1 in escrow, Whyte, Palacios, the Sellers Agent, the Seller's Broker and the
23 Seller's Brokerage were all engaged in Fiduciary Fraud.

- 24 a. State statutes are clear that all questions must be answered on statutory
25 disclosure documents or fraud has transpired and damages were due for any
26 related defects
27
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- 1 32. From Day 2 through Day 30 in escrow, numerous acts of condition related
2 misrepresentation fraud, as defined by false suggestion, incomplete statements of fact,
3 false statements of fact and omissions. were documented and presented to Whyte for
4 discussion.
- 5 a. Whyte maintained the position that all mis statements, errors, omissions and
6 misrepresentations that transpired before and during escrow were without
7 remedy for damages to buyers, inline with the fraudulent contract clauses.
- 8 b. Whyte maintained the position that misrepresentation fraud in California only
9 applies to defects found after close of escrow.
- 10 c. The problems with Whytes position on that was the fact that misrepresentation
11 fraud is specific to representations made BEFORE entering an agreement and
12 that was totally unrelated to close of escrow as a threshold for misrepresentation
13 fraud.
- 14 d. Whytes positions on all these legal matters was illogical before and during
15 escrow, but given he ahd been doing this for 40 years for corporate brokerages,
16 Plaintiffs had to rely on the idea that he and/or his attorneys could provide legal
17 basis for the position if / when forced to do so.
- 18
- 19 33. Plaintiffs engaged with two Attorneys during escrow.
- 20 a. Neither attorney would confirm plaintiffs beliefs that clause 14A was fraudulent
- 21 b. Neither attorney could explain how or why the process defined in 14A qualified as
- 22 good faith negotiations but neither conceited there were any legal concerns with
- 23 the documents.
- 24
- 25 34. Plaintiffs demanded a completed SPQ with answers for Mold and property flooding in
- 26 response to a demand for condition contingency removal.
- 27 a. There request was denied.
- 28

1 35. Plaintiffs removed their condition contingency and financing contingency under duress
2 while making their concerns known about the process they were forced to engage in and
3 their opinions that fraud had transpired, even though that ran contra to the documents in
4 use.

5 36. Plaintiffs closed escrow May 13, 2021

- 6 a. Plaintiffs completed the transaction for many reasons
7 b. Plaintiffs were in stressful situation which required a new place to live and the
8 rental market and purchase market were seller's markets
9 c. If the illogical process, as defined, was legal, there was no reason to expect any
10 other transaction to have been better
11 d. If the illogical process, as defined, was illegal, Plaintiffs felt they would figure out
12 a way to obtain remedy.
13 e. At time of close of escrow plaintiffs accepted approximately \$60,000 in condition
14 related defects that were not known to them at time of Agreement Formation.
15 f. At that time, Plaintiffs viewed that as "misrepresentation fraud", but Whyte,
16 Palacios, Christina Morales (Coldwell Banker Broker), two Attorneys and all
17 others declared it was not representation fraud in California.
18

19 37. From May 13,2021 through January 2022, plaintiffs discovered concealed defects valued
20 at approximately \$140,000

21 38. From May 13,2021 through January 2022, plaintiffs discovered the home and well
22 utilities bills to be significantly more than expected based on representation statements
23 made BEFORE Agreement Acceptance.

24 39. From January 2022 through March 2024
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- a. Plaintiffs read CA 1102 and identified CA 1102.3 in conjunction with RPA Clause 13B as defining proper process for TDS Delivery that contradicted Clause 14A, showing 14A was fraudulent.
- b. Plaintiffs discovered the Jue v Smiser Case precedent that shows Clause 14A 14F and others are fraudulent
- c. Plaintiffs discovered the Loughrin v Superior Court precedent shows Clause 14A 14F and others are fraudulent
- d. Plaintiffs attempted to engage with over 100 California Attorneys.
 - i. None would engage in sincere dialogue if they questioned the contract clauses.
 - ii. None could provide any legal basis suggesting their view of CA 1102 and the case precedents were inaccurate.
- e. Plaintiffs were forced into Pro Se to recovery from fraud during escrow and fraud found after escrow as a result of the deceit of Whyte and the introduction of a Purchase Agreement not inline with California law
- f. Plaintiffs lost 1000's of hours of life due to Whyte's deceit

40. In March 2024, plaintiffs filed three initial complaints against the Contractors and pre-sale inspectors.

41. In April 2024, plaintiffs filed complaints against Whyte and Palacios, the sellers transaction coordinator, and the Seller.

- a. The complaint against Palacios was dismissed because they stated she was out of the country and would be out of the country for some time.
- b. Given Palacios was given notice of the pending lawsuit prior to filing, Plaintiffs believe she fled the country to avoid service and the embarrassment of this

lawsuit. The inability to serve during that time caused us to cross the three year statute of limitations threshold.

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===== CAUSES OF ACTION =====

1ST CAUSE OF ACTION - FRAUD

(CIV 1710, BPC 10176a/i, 10177g/j)

This cause of action incorporates the Notice of Pro Se filing, paragraphs from above, all related exhibits, as well as the following:

The first Cause of Action is for Fraud without privity of Contract (CIV 1710). The BPC codes for fraud should apply equally (BPC 10176a/i, 10177g/j).

1. CA 1572 is for misrepresentation of facts to induce a contract. While this is related to establishing a playinfield for that fraud, that would be in "conspiracy with others".
2. CA 1573 is for construction fraud to induce a Contract. That does not pertain to this complaint.

<https://www.justia.com/trials-litigation/docs/caci/1900/1900/>

For a finding of Actual Fraud (CA 1710)...

The Plaintiffs, Bryan Canary and Holly Bowers, allege that Defendant Peter Whyte made false statements of fact that harmed them. Whyte provided plaintiffs with a Purchase Agreement Template that was concerning and illogical. When questioned Whyte suggested their concerns were without basis in California. Their concerns were in fact based in California and Whyte knew or should have known that. Plaintiffs relied on Whyte as a Real Estate expert. Plaintiffs were harmed by fraudulent schemes that were encouraged by the fraudulent documents. Plaintiffs were harmed by lack of recovery options as a result of the fraudulent documents.

The fraudulent documents provided by Whyte invited damages and prevented expeditious recovery of them and his actions were a substantial factor in plaintiff harm.

2ND CAUSE OF ACTION - BREACH OF FIDUCIARY DUTY

This cause of action incorporates the Notice of Pro Se filing and all Statement of Facts from above as well as the following:

The Plaintiffs, Bryan Canary and Holly Bowers, allege that Defendant Peter Whyte 1) owed them a fiduciary duty, 2) breached that duty of good faith and due care, and 3) were the (proximate) cause for economic and non-economic damages to Plaintiffs.

3RD CAUSE OF ACTION - INFLICTION OF EMOTIONAL DISTRESS - INTENTIONAL

This cause of action incorporates the Notice of Pro Se filing and all Statement of Facts from above, prose in Cause of Action 1 , all counts, as well as the following:

The Plaintiffs, Bryan Canary and Holly Bowers, allege that Defendant Peter Whyte 1) owed Canary and Bowers a duty of due care and 2) engaged in outrageous conduct with reckless disregard for the probability of causing emotional distress 3) Canary and bowers suffered emotional distress and will continue to do so into the future and 4) the defendants are the proximate cause for damages to Plaintiffs.

This behavior by Whyte while leading Palacios qualifies as “outrageous conduct” with a foreseeable outcome in mental, emotional and financial injury. It is “outrageous” for a man with 40 years realty experience, who must be trusted explicitly by buyers for industry knowledge to suggest they contract on an \$895,000 home BEFORE being told if “the roof leaks in winter”

This commercial scheme can also be called a “commercial hoax” and foundational to a hoax is the inclusion of behavior that is “outrageous”. The vocabulary aligns because the behavior aligns.

Canary writes to maintain sanity in the presence and proximity of the mentally infirmed. Canary can not afford other forms of therapy and he can not escape the nut house at this time, thus he writes. Canary created over 20 websites with approximately 4,000 to 10,000 pages of prose, much of which says the same thing, over and over again, but in subtly different ways. It was his only way to cope with this level of mental illness of others. That is outrageous behavior to match the outrageous behavior of others, when in fact misrepresentation law and expectations can sbe summed up in a half page and should have been learned by all attorneys on day 1 of contract law class.

DEMAND FOR JUDGMENT

Plaintiffs were harmed by \$250,000 in compensatory damages via others who took advantage of the contract documents presented by Whyte and under Whytes guidance. Plaintiffs demand \$250,000 in damages for fraud (CA 3343) from Whyte for contributory conspiracy in those acts. Plaintiffs request those in a "joint and several manner".

Plaintiffs demand \$1,250,000 in punitive damages (CA 3294) for engaging in the fraud. Punitive damages are based on a 5x multiple from Jimenez v Capero.

Jimenez vs Caparo in 2022 provides precedent of 5x punitive damages for fraud in a Construction Concealment matter in a real estate transaction in Los Angeles. A \$350,000 home conveyed with \$100,000 in concealed defects and the jury awarded \$100,000 for compensatory damages and \$500,000 for punitive damages against a Broker and Agent who participated in the fraud.

Plaintiffs demand damages for non-economic pain and suffering as deemed appropriate by a judge or jury.

WHEREFORE, the Plaintiffs seek damages from the Defendant in the amount of \$250,000 in compensatory damages in a joint and several manner, \$1,250,000 in punitive damages for fraud, , plus non-economic damages, plus court costs, plus interest plus any other remedy the courts deemed just. .

The Plaintiffs declare under penalty of perjury under the Laws of California that the forgoing is true and correct as of 4/24/2024.

Respectfully Submitted,

Bryan Canary - Co Buyer

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Pro-Se Representation by Requirement

Holly Bowers - Co Buyer

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Castroville CA 95012

Pro-Se Representation by Requirement