Bareh v. Honeywell Int'l

Superior Court of California, County of Los Angeles

August 25, 2023, Decided

23STCV00437

Reporter
2023 Cal. Super. LEXIS 59179 *

SAMSON BAREH, et al. v. HONEYWELL INTERNATIONAL INC., et al.

Core Terms

cause of action, brakes, clutches, warnings, punitive damages, ***asbestos***-containing, concealed, ***asbestos***, products, summary adjudication, shift a burden, responses, summary judgment motion, summary judgment, deposition testimony, present evidence, started, material fact, misrepresentation, interrogatory, manufactured, allegations, discovery, replaced, summary adjudication motion, suppressed, convincing, malice, interrogatory response, motion to compel

Judges: [*1] Honorable Laura A. Seigle, Judge.

Opinion by: Laura A. Seigle

Opinion

NATURE OF PROCEEDINGS: 1) Hearing on Motion for Summary Adjudication of Misrepresentation, Concealment and Punitive Damages Claims on Behalf of Defendant Mercedes-Benz USA, Inc. (Bareh-23STCV00437); (2) Hearing on Motion for Summary Judgment or in the Alternative Summary Adjudication for Defendant Morse Tec LLC (Bareh-23STCV00437); (3) Hearing on Motion for Summary Judgment or in the Alternative Summary Adjudication for Defendant American Honda Motor Co., Inc. (Bareh-23STCV00437); (4) Hearing on Motion to Compel Admissions (Bareh-23STCV00437); (5) Hearing on Motion -Other Re: Discovery Disputes (Bareh - 23STCV00437); (6) Hearing on Motion to Compel Further Responses to Requests for Admission, Set One on Behalf of Defendant Volkswagen Group of America, Inc. (Bareh-23STCV00437)

Matters are called for hearing.

The Court issues Tentative Rulings.

1) The Court calls the Hearing on Motion for Summary Adjudication of Misrepresentation, Concealment and Punitive Damages Claims on Behalf of Defendant Mercedes-Benz USA, Inc.:

The Hearing on Motion for Summary Adjudication of Misrepresentation, Concealment and Punitive Damages Claims on Behalf of Defendant **[*2]** Mercedes-Benz USA, Inc. (Bareh-23STCV00437) scheduled for 08/25/2023 is 'Held' for case 23STCV00437.

Counsel submit and the Court adopts the Tentative Ruling as the Final Court Order as follows:

ORDER RE MOTION FOR SUMMARY ADJUDICATION (MERCEDES)

Defendant Mercedes-Benz USA, LLC filed a motion for summary adjudication of the first cause of action for strict product liability, second cause of action for negligence, third cause of action for fraud, and request for punitive damages.

A defendant seeking summary judgment must "conclusively negate[] a necessary element of the plaintiff's case, or … demonstrate[] that under no hypothesis is there a material issue of fact that requires the process of trial." (*Guz v. Bechtel Nat. Inc. (2000) 24 Cal.4th 317, 334*.) To show that a plaintiff cannot establish an element of a cause of action, a defendant must make the initial showing "that the plaintiff does not possess, and cannot reasonably obtain, needed evidence." (*Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 854*.) "The defendant may, but need not, present evidence that conclusively negates an element of the plaintiff's cause of action. The defendant may also present evidence that the plaintiff does not possess, and cannot reasonably obtain, needed evidence - as through admissions by the plaintiff **[*3]** following extensive discovery to the effect that he has discovered nothing."

(*Id. at p. 855*.) A plaintiff's deposition testimony that the plaintiff has no knowledge of any exposure to the defendant's products may be sufficient to shift the burden to the plaintiff to demonstrate the existence of triable issues of fact. (*McGonnell v. Kaiser Gypsum Co., Inc. (2002) 98 Cal.App.4th 1098, 1103-1104*.) The plaintiff's deposition testimony that he did not recall ever working with a product manufactured by the defendant may not be sufficient to shift the burden if the plaintiff is able to prove his case by another means. (*Weber v. John Crane, Inc. (2006) 143 Cal.App.4th 1433, 1439*.) "'If plaintiffs respond to comprehensive interrogatories seeking all known facts with boilerplate answers that restate their allegations, or simply provide laundry lists of people and/or documents, the burden of production will almost certainly be shifted to them once defendants move for summary judgment and properly present plaintiff's factually devoid discovery responses.'" (*Id. at p. 1440*.)

A. Objections

Plaintiffs' Nos. 1, 2, 4, 5, 6, 7, 8: Overruled.

Plaintiffs' No. 3: Sustained as to Exhibit F, and otherwise overruled.

Plaintiffs Nos. 9, 10, 11: The court did not rely on this evidence.

Request for Judicial Notice: The court did not rely on this evidence.

B. First and Second **[*4]** Causes of Action

Defendant argues Plaintiffs have no evidence and cannot reasonably obtain evidence that Samson Bareh was exposed to ***asbestos*** in brakes from Defendant because Plaintiffs do not know the model and year of the cars Samson Bareh worked on. (Motion at p. 10.) Defendant states it stopped supplying ***asbestos***-containing brakes in January 1988, and Samson Bareh started replacing brakes on Mercedes vehicles in 1988. (Motion at p. 11; Undisputed Material Fact ("UMF") 1, 13, 27.) Defendant cites the deposition testimony of Samson Bareh that he does not know the model and year of the Mercedes vehicles he worked on. (Ex. L at pp. 324, 349, 365, 366.)

This evidence does not establish that Plaintiffs do not have and cannot reasonably obtain evidence that Samson Bareh replaced ***asbestos***-containing brakes supplied by Mercedes. He testified he saw the Mercedes name stamped on the brakes he was working on; every time he replaced brakes on a Mercedes, the brake that came off was a Mercedes brake; and he did a lot of work on Mercedes vehicles. (Ex. L at pp. 365, 368, 373, 375.) Given that Samson Bareh started replacing brakes on Mercedes vehicles in 1988, it is a reasonable inference that the **[*5]** vehicles he worked on (at least in 1988 and a few years thereafter) had been manufactured before 1988 when Mercedes was still supplying cars with ***asbestos***-containing brakes. It is not a reasonable inference that all of Mercedes vehicles for which he replaced brakes in 1988 and a few years thereafter had been manufactured in 1988 and therefore did not have ***asbestos***-containing brakes. It is not a reasonable inference that brand new cars would need their brakes replaced.

Because Defendants have not conclusively negated an element of Plaintiffs' causes of action and have not shown Plaintiffs do not have and cannot obtain evidence to prove their case, Defendants did not shift the burden. The motion for summary adjudication is denied.

C. Third Cause of Action

The third cause of action alleges in extremely vague terms that Defendant "represented that certain facts were true when they were not," and "falsely represented that the products they marketed, used, sold, supplied, or specified for use were not hazardous" and did not create dust hazards. (Complaint at pp. 80-81.) The complaint does not describe the specific statements Defendant made to Plaintiffs, identify what person made the statements, **[*6]** state when the statements were made, state whether the statements were in writing or oral, or describe how Plaintiffs relied on those statements.

The third cause of action also alleges with no specificity that Defendant "made affirmative statements that were so misleading … that they gave rise to a fraud cause of action." (Complaint at p. 81.) The complaint does not describe these statements, say who made them, state whether they were in writing or oral or when they were made, or describe how Plaintiffs relied on the statements.

The third cause of action allege three conspiracies to commit fraud among all 17 defendants named in the complaint but again gives absolutely no details about the conspiracy and how 17 different companies managed to conspire together to defraud Plaintiffs. (Complaint at pp. 81-83.)

Defendant argues that Plaintiffs have no evidence of the alleged fraud, citing Plaintiffs' response to an

interrogatory asking for details about any misrepresentation made by the manufacturer or supplier of an ***asbestos***-containing friction product. (Ex. Q at pp. 33-34.) In response, Plaintiffs stated they have no knowledge of any misrepresentation. (Id. at p. 34.) This response shifted **[*7]** the burden regarding the claims that Defendant made false statements to Plaintiffs.

In opposition, Plaintiffs say they should not "be expected to have any knowledge of" Defendant's fraud. (Opposition at p. 6.) That is contrary to Plaintiffs' own allegations, which alleged that Plaintiffs in fact did have knowledge of Defendant's fraud and "reasonably relied on Defendants' misrepresentations." (Complaint at p. 81.) In their opposition, Plaintiffs do not present any evidence that Defendant made any misrepresentation or misleading affirmative statement to Plaintiffs.

Defendants also argue that the concealment claim fails because Plaintiffs have no evidence of a transaction between Plaintiffs and Defendant. (Motion at p. 11.) " '[T]he elements of a cause of action for fraud based on concealment are " '(1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or **[*8]** suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage.' " [Citation.]' " (*Bigler-Engler v. Breg, Inc. (2017) 7 Cal.App.5th 276, 310-311*.) When a fiduciary duty does not exist, a duty to disclose arises only "when the defendant had exclusive knowledge of material facts not known to the plaintiff," or "when the defendant actively conceals a material fact from the plaintiff," or "when the defendant makes partial representations but also suppresses some material facts." (*Id. at p. 311*.) This type of relationship " 'can only come into being as a result of some sort of transaction between the parties' " and "must necessarily arise from direct dealings between the plaintiff and the defendant; it cannot arise between the defendant and the public at large." (Ibid.) Evidence that the defendant was involved in retail sales of the disputed product to consumers and profited from them can satisfy the Bigler-Engler requirement. (*Bader v. Johnson & Johnson (2022) 86 Cal.App.5th 1094, 1132*.)

Defendant cites evidence that it does not sell products to consumers and end-users like Samson Bareh, and therefore did not have any relationship or direct transaction with Bareh. (UMF 30.) This was sufficient to shift the burden.

Plaintiffs did not present evidence of any **[*9]** relationship or direct transaction between Plaintiffs and Defendant. Plaintiffs did not present evidence that Samson Bareh was a consumer of Mercedes ***asbestos***-containing brakes who purchased them on the retail market from Defendant for his use. First, he started replacing brakes in 1988, when Mercedes was no longer selling ***asbestos***-containing brakes. Thus even if Samson Bareh was personally purchasing replacement brakes from Defendant, they would have not contained ***asbestos***, and therefore Defendant would not have concealed anything by not mentioning the dangers of ***asbestos***. Second, his son testified that the service station had accounts with various suppliers and dealers from whom the service station obtained its parts. (Ex. N at pp. 104, 105.) Thus, the service station, not Samson Bareh, was purchasing the replacement brakes. And in any event, the parts suppliers and dealers who were selling the brakes to the service station were not Defendant. Plaintiffs did not present evidence of any direct dealings or relationship between Samson Bareh and Defendant. Thus, Plaintiffs did not show disputed issues regarding fraudulent concealment.

Finally, "[c]onspiracy is not a cause of action, but **[*10]** a legal doctrine that imposes liability on persons who, although not actually committing a tort themselves, share with the immediate tortfeasors a common plan or design in its perpetration." (*Applied Equipment Corp. v. Litton Saudi Arabia Ltd. (1994) 7 Cal.4th 503, 510-511*.) "Standing alone, a conspiracy does no harm and engenders no tort liability. It must be activated by the commission of an actual tort." (*Id. at p. 511*.) Because Plaintiffs did not show disputed issues regarding their fraud claim, Defendant cannot be liable for conspiring to commit fraud.

The motion is granted as to the third cause of action.

D. Punitive Damages

Defendant moves for summary adjudication of the request for punitive damages. When the motion targets a request for punitive damages, a higher standard of proof is at play. "Although the clear and convincing evidentiary standard is a stringent one, 'it does not impose on a plaintiff the obligation to "prove" a case for punitive damages at summary judgment [or summary adjudication.' [Citations.] Even so, 'where the plaintiff's

ultimate burden of proof will be by clear and convincing evidence, the higher standard of proof must be taken into account in ruling on a motion for summary judgment or summary adjudication, since if a plaintiff is to prevail on **[*11]** a claim for punitive damages, it will be necessary that the evidence presented meet the higher evidentiary standard.' [Citation.]" (*Butte Fire Cases (2018) 24 Cal.App.5th 1150, 1158-1159*.) "Summary judgment or summary adjudication ' " 'on the issue of punitive damages is proper' only 'when no reasonable jury could find the plaintiff's evidence to be clear and convincing proof of malice, fraud or oppression.' " '. [Citation.]" (*Id. at p. 1159*.)

For a corporate defendant, the oppression, fraud or malice "must be on the part of an officer, director, or managing agent of the corporation." (*Civ. Code, § 3294, subd. (b)*.) That requirement can be satisfied " 'if the evidence permits a clear and convincing inference that within the corporate hierarchy authorized persons acted despicably in "willful and conscious disregard of the rights or safety of others." ' [Citation.]" (*Morgan v. J-M Manufacturing Company, Inc. (2021) 60 Cal.App.5th 1078, 1090*.) A plaintiff also "can satisfy the 'managing agent' requirement 'through evidence showing the information in the possession of the corporation and the structure of management decisionmaking that permits an inference that the information in fact moved upward to a point where corporate policy was formulated.' [Citation.]" (*Id. at p. 1091*.)

" '[I]ntentionally marketing a defective product knowing that it might cause injury and death **[*12]** is 'highly reprehensible.' [Citation.]" (*Bankhead v. ArvinMeritor, Inc. (2012) 205 Cal.App.4th 68, 85*.) Punitive damages may be available when a defendant knows the dangers of ***asbestos***, took action to protect its own employees, knew that its products were likely to pose a danger to users, and did not warn them. (Pfeifer v. John Crane, Inc. (2013) 220 Cal.Ap.4th 1270, 1300.) Such evidence "was sufficient to show malice, that is, despicable conduct coupled with conscious disregard for the safety of others." (Id. at pp. 1300-1301.)

Defendant argues Plaintiffs have no evidence of fraud, malice or oppression necessary to prove punitive damages. (Motion at p. 13.) Defendant cites evidence that it sent a letter to all Merecedes dealers advising them of OSHA regulations and advising of steps to take to test for ***asbestos*** in the air, and Defendant put ***asbestos*** warnings on brake boxes before 1988 and in service bulletins. (Motion at p. 14; UMF 43, 44, 47, 49, 51.) Far from showing fraud, malice, and oppression, this evidence shows Defendant taking precautions and warning about ***asbestos***. It is sufficient to shift the burden.

In opposition, Plaintiffs cite evidence that Defendant knew about OSHA regulations regarding ***asbestos***. (Opposition at pp. 16-18.) That is not in dispute. As noted above Defendant admits it knew about the regulations **[*13]** and informed dealers about the regulations.

Plaintiffs argue that Defendant's communication with dealers about the OSHA regulations and precautions in doing brake jobs and air testing were not sufficient. (Opposition at pp. 19-20.) Plaintiffs argue that Defendant did not put warnings on its ***asbestos***-containing products. (Motion at pp. 17, 18, 20-21.) In support of this assertion, Plaintiffs cite its Additional Disputed Facts ("ADF") 100-106.

ADF 100 states Defendant's warnings on ***asbestos***-containing brakes were inadequate. First, this is not evidence there were no warnings. (Ex. 6 at p. 32.) Second, the evidence supporting this assertion refers to interrogatory responses in another case from 24 years ago. Those responses are not admissible in this case. (*Code Civ. Proc., § 2030.410*.) And in any event, the interrogatory responses say the investigation to answer the interrogatory was ongoing. They do not say there were no warning.

ADF 101 states Defendant did not include any warnings on ***asbestos***-containing products. Again, Plaintiffs cite an interrogatory response in a different case from more than 20 years ago, which is not admissible in this case. Also, the response does not state that Defendant did not include **[*14]** any warnings. (Ex. 9 at p. 13.)

ADF 102 states Defendant has no brake packages from 1964 to 1985, citing an interrogatory response from another case 15 years ago. This is not admissible in this case. Also, it is not relevant because Samson Bareh did not start working on Mercedes brake jobs until 1988.

ADF 103 states Defendant found a photograph of a brake box, which has an ***asbestos*** warning on it, and ADF 104 states Defendant's attorneys had the photograph of the box. This does not prove Plaintiffs' assertion that Defendant did not include warnings. If anything, it supports the contrary conclusion.

ADF 105 states Defendant did not give any warnings to dealers about ***asbestos***-containing products until 1986. That fact is not evidence there were no warnings during

the exposure period in this case, which started in 1988.

ADV 106 describes the evidence supporting Defendant's contention that it gave warnings to dealers in 1986 and put warnings on brake boxes. Again, this is not evidence there were not warnings.

In sum, even Plaintiffs' evidence supports Defendant's contention that it provided warnings before Samson Bareh started replacing brakes on Mercedes vehicles. Plaintiffs have not shown the **[*15]** existence of a disputed fact concerning punitive damages, let alone by clear and convincing evidence. The motion is granted as to punitive damages.

The motion for summary adjudication is DENIED as to the first and second causes of action. It is GRANTED as to the third cause of action and the request for punitive damages.

The moving party is to give notice.

2) The Court calls the Hearing on Motion for Summary Judgment or in the Alternative Summary Adjudication for Defendant Morse Tec LLC:

The Hearing on Motion for Summary Judgment or in the Alternative Summary Adjudication for Defendant Morse Tec LLC (Bareh-23STCV00437) scheduled for 08/25/2023 is 'Held' for case 23STCV00437.

Counsel submit and the Court adopts the Tentative Ruling as the Final Court Order as follows:

ORDER RE MOTION FOR SUMMARY ADJUDICATION (MORSE TEC)

Defendant Morse Tec LLC filed a motion for summary judgment, and in the alternative summary adjudication, of Plaintiffs Samson Bareh and Gen Bareh's claims that Samson Bareh was exposed to ***asbestos*** by Defendant's products.

A defendant seeking summary judgment must "conclusively negate[] a necessary element of the plaintiff's case, or … demonstrate[] that under no hypothesis **[*16]** is there a material issue of fact that requires the process of trial." (*Guz v. Bechtel Nat. Inc. (2000) 24 Cal.4th 317, 334*.) To show that a plaintiff cannot establish an element of a cause of action, a defendant must make the initial showing "that the plaintiff does not possess, and cannot reasonably obtain, needed evidence."

(*Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 854*.) "The defendant may, but need not, present evidence that conclusively negates an element of the plaintiff's cause of action. The defendant may also present evidence that the plaintiff does not possess, and cannot reasonably obtain, needed evidence - as through admissions by the plaintiff following extensive discovery to the effect that he has discovered nothing." (*Id. at p. 855*.) A plaintiff's deposition testimony that the plaintiff has no knowledge of any exposure to the defendant's products may be sufficient to shift the burden to the plaintiff to demonstrate the existence of triable issues of fact.

(*McGonnell v. Kaiser Gypsum Co., Inc. (2002) 98 Cal.App.4th 1098, 1103-1104*.) The plaintiff's deposition testimony that he did not recall ever working with a product manufactured by the defendant may not be sufficient to shift the burden if the plaintiff is able to prove his case by another means. (*Weber v. John Crane, Inc. (2006) 143 Cal.App.4th 1433, 1439*.) "'If plaintiffs respond to comprehensive interrogatories seeking all known facts with boilerplate **[*17]** answers that restate their allegations, or simply provide laundry lists of people and/or documents, the burden of production will almost certainly be shifted to them once defendants move for summary judgment and properly present plaintiff's factually devoid discovery responses.'" (*Id. at p. 1440*.)

A. Objections

1. Defendant's Objections

Defendant's evidentiary objections are not in the proper form. The objections to Plaintiffs' use of their own interrogatory responses are sustained, as discussed below. The court did not rely on the other exhibits.

B. Summary Judgment

Defendant argues Plaintiffs cannot prove Samson Bareh was exposed to Defendant's ***asbestos***-containing products because its predecessor, Borg-Warner stopped making ***asbestos***-containing clutches by 1986 and Samson Bareh testified he first encountered Borg-Warner clutches in 1988. (Motion at pp. 4-5.) In response to an interrogatory asking for the identities of persons with knowledge supporting the contention that Samson Bareh was exposed to ***asbestos*** from Defendant's products, Plaintiffs identified Samson Bareh, Mike Bareh, and Magdy Bareh, unnamed persons, and Defendant's witnesses. (Ex. 2 at p. 3; Ex. 5 at pp. 8-9.) Plaintiffs did not explain **[*18]** how Defendant's witnesses would know what products

Samson Bareh was exposed to.

In support of its argument, Defendant cites the Hornick Declaration, stating "Borg-Warner ceased manufacturing, distributing, and selling any ***asbestos***-containing products, including manual clutches, by 1986." (Ex. 9, ¶ 8.) Defendant cites Samson Bareh's deposition testimony that he worked as a mechanic at services stations from 1983 to 2010, he does not recall working with Borg-Warner clutches, he does not know who made the parts including clutches that he took off cars, he does not know when the replacement clutches he installed were made, he associates Borg-Warner with shoes, brakes, and clutches, and he saw other mechanics doing clutch jobs but does not know the brand or manufacturer of the clutches they were working with. (Ex. 13 at pp. 17, 56; Ex. 15 at pp. 325, 347-348; Ex. 16 at pp. 495, 499, 501-502; Ex. 18 at p. 731.) The first clutch work he did was between 1988 and 1990. (Undisputed Material Fact ("UMF") 39.) His son, Mike Bareh, saw Borg-Warner's emblem on packages of clutches that Samson Bareh installed and testified the service station bought Borg-Warner clutches, but he does not know the manufacturer **[*19]** of the clutches his father removed. (Ex. 20 at pp. 433-434, 439, 486, 503, 522.) Magdy Bareh testified Samson Bareh did clutch work, and he saw him install Borg-Warner clutches, but he does not know the brand or manufacturer of the clutches that were removed. (Ex. 24 at pp. 450, 455, 507-508, 511.)

Defendant showed that Plaintiffs only have evidence that Samson Bareh installed new Borg-Warner clutches starting in 1988, by which time the company was not selling ***asbestos***-containing clutches. Thus, Defendant established Plaintiffs do not have, and cannot reasonably obtain evidence to support their claims of exposure against Defendant, shifting the burden.

In opposition, Plaintiffs argue that Borg-Warner could have been selling ***asbestos***-containing clutches later than 1986, citing Hornick's deposition testimony from a prior case in which he tried to interpret what some other person in an even earlier deposition had meant by the phrase "well into the '80s." (Opposition at p. 10.; Ex. 2 at pp. 68-69.) First, the Hornick deposition testimony does not establish that Hornick had the foundation to interpret the meaning of a vague statement made by another person in a 2011 deposition. Second, in **[*20]** the deposition testimony, Hornick stated: "I don't disagree with Mr. Anderson. We could - when he says 'well into the '80s," we would say 1986 because that's - "well into the '80s" could be later than 1986, so … ." (Ex. 2 at p. 69.) That inarticulate answer, even if admissible, does not establish that Borg-Warner sold ***asbestos***-containing clutches after 1986 or show the existence of a disputed issue on that point. It simply establishes that the phrase "well into the '80s" as used by someone 12 years ago is vague and could mean different things.

Plaintiffs also rely on their own verified interrogatory responses to assert that Samson Bareh worked with Borg-Warner clutches starting in 1983. (Opposition at p. 9.) A party cannot use its own interrogatory responses to oppose a motion for summary judgment. (*Code Civ. Proc., § 2030.410* ["the propounding party or any party other than the responding party may use any answer or part of an answer to an interrogatory only against the responding party"].)

Thus, Plaintiffs presented no admissible evidence that (1) Samson Bareh worked with Borg-Warner clutches before 1988 and (2) Borg-Warner sold ***asbestos***-containing brakes after 1986. Therefore, Plaintiffs did not show disputed **[*21]** issues concerning exposure to ***asbestos***-containing products from Defendant, the motion for summary judgment is GRANTED.

Defendant is to file a proposed judgment within five days.

The moving party is to give notice.

3) The Court calls the Hearing on Motion for Summary Judgment or in the Alternative Summary Adjudication for Defendant American Honda Motor Co., Inc.:

The Hearing on Motion for Summary Judgment or in the Alternative Summary Adjudication for Defendant American Honda Motor Co., Inc. (Bareh-23STCV00437) scheduled for 08/25/2023 is 'Held' for case 23STCV00437.

Counsel submit and the Court adopts the Tentative Ruling as the Final Court Order as follows:

ORDER RE MOTION FOR SUMMARY ADJUDICATION (HONDA)

Defendant American Honda Motor Co., Inc. filed a motion for summary judgment, and in the alternative, summary adjudication of Plaintiffs Samson Bareh and Gen Barah's claims that Samson Bareh was exposed to ***asbestos*** from Defendant's products.

A defendant seeking summary judgment must "conclusively negate[] a necessary element of the plaintiff's case, or … demonstrate[] that under no

hypothesis is there a material issue of fact that requires the process of trial." (*Guz v. Bechtel Nat. Inc. (2000) 24 Cal.4th 317, 334*.) To show that a plaintiff **[*22]** cannot establish an element of a cause of action, a defendant must make the initial showing "that the plaintiff does not possess, and cannot reasonably obtain, needed evidence." (*Aguilar v. Atlantic Richfield Co. (2001) 25 Cal.4th 826, 854*.) "The defendant may, but need not, present evidence that conclusively negates an element of the plaintiff's cause of action. The defendant may also present evidence that the plaintiff does not possess, and cannot reasonably obtain, needed evidence - as through admissions by the plaintiff following extensive discovery to the effect that he has discovered nothing." (*Id. at p. 855*.) A plaintiff's deposition testimony that the plaintiff has no knowledge of any exposure to the defendant's products may be sufficient to shift the burden to the plaintiff to demonstrate the existence of triable issues of fact. (*McGonnell v. Kaiser Gypsum Co., Inc. (2002) 98 Cal.App.4th 1098, 1103-1104*.) The plaintiff's deposition testimony that he did not recall ever working with a product manufactured by the defendant may not be sufficient to shift the burden if the plaintiff is able to prove his case by another means. (*Weber v. John Crane, Inc. (2006) 143 Cal.App.4th 1433, 1439*.) "'If plaintiffs respond to comprehensive interrogatories seeking all known facts with boilerplate answers that restate their allegations, or simply provide laundry lists of people and/or documents, **[*23]** the burden of production will almost certainly be shifted to them once defendants move for summary judgment and properly present plaintiff's factually devoid discovery responses.'" (*Id. at p. 1440*.)

A. Objections

1. Defendant's Objections

Nos. 1-4: The court did not rely on this evidence.

B. Summary Judgment

Defendant argues Plaintiffs have no evidence and cannot reasonably obtain evidence that Samson Bareh was exposed to ***asbestos*** in Defendant's products because Defendant started phasing out ***asbestos*** in 1982, Plaintiff contends he worked at services stations on Honda vehicles from 1983 through 2010, and Plaintiffs do not know what model year Honda vehicles Samson Bareh worked on. (Motion at p. 1.) Defendant cites to Plaintiffs' interrogatory responses stating Defendant started phasing out ***asbestos*** in its vehicles in 1982. (Undisputed Material Fact ("UMF") 13.) Defendant cites Samson Bareh's testimony that he worked on many models of Honda vehicles including Accords and Civics but does not know the maintenance history of those vehicles. (Ex. 3 at pp. 539-540.) Magdy Bareh testified Samson Bareh worked on Honda vehicles including Accords and Civics from the 1980s and 1990s but does not remember the specific **[*24]** years. (Ex. 4 at pp. 369-371.) Mike Bareh testified Samson Bareh worked on Honda vehicles such as Civics and Accords but he does not remember the model years. (Ex. 5 at pp. 746, 748-749.)

This evidence does not shift the burden because Defendant did not conclusively negate an element of Plaintiffs' case or show that Plaintiffs do not have and cannot reasonably obtain evidence of exposure. The evidence shows that Samson Bareh started working at service stations in 1983, just one year after Defendant started phasing out ***asbestos*** in its vehicles in 1982. Bareh testified he worked on many Honda vehicles. It is a reasonable inference that some of those vehicles were more than one or two years old, i.e. pre-1983 Honda vehicles that contained ***asbestos***. It is not a reasonable inference that when Bareh started working on vehicles in 1983, he only worked on new Honda vehicles manufactured in 1983 and thereafter. It is not a reasonable inference that only new Honda vehicles would need maintenance work.

Therefore, the motion for summary judgment is denied.

C. Third Cause of Action

The third cause of action alleges in extremely vague terms that Defendant "represented that certain facts were true when **[*25]** they were not," and "falsely represented that the products they marketed, used, sold, supplied, or specified for use were not hazardous" and did not create dust hazards. (Complaint at pp. 80-81.) The complaint does not describe the specific statements Defendant made to Plaintiffs, identify what person made the statements, state when the statements were made, state whether the statements were in writing or oral, or describe who Plaintiffs relied on those statements.

The third cause of action also alleges with no specificity that Defendant "made affirmative statements that were so misleading … that they gave rise to a fraud cause of action." (Complaint at p. 81.) The complaint does not describe these statements, say who made them, state whether they were in writing or oral or when they were made, or describe how Plaintiffs relied on the statements.

The third cause of action alleges three conspiracies to commit fraud among all 17 defendants named in the complaint but again gives absolutely no details about the conspiracy and how 17 different companies managed to conspire together to defraud Plaintiff. (Complaint at pp. 81-83.)

Defendant argues that Plaintiffs have no evidence of the alleged **[*26]** misrepresentations from Defendant to Plaintiffs. (Motion at p. 9.) Defendant cites Plaintiff's response to an interrogatory asking for all facts supporting Plaintiffs' claims against Defendant, where Plaintiffs did not describe any communication, let alone misrepresentation, from Defendant to Plaintiffs. (Ex. 2 at pp. 2-6, 12.) Defendant also cites Samson Bareh's testimony that he is not aware of any communication from Defendant to Plaintiffs. (Ex. 3 at p. 545.) Thus, directly contrary to their allegations that there were communications, Plaintiffs' own evidence is that Samson Bareh had no communications with Defendant. The factually-devoid discovery responses shift the burden on the claims of fraudulent misrepresentations and affirmative misleading statements.

Defendants also argue that the concealment claim fails because Plaintiffs have no evidence of a relationship between Plaintiffs and Defendant. (Motion at p. 11.) " '[T]he elements of a cause of action for fraud based on concealment are " '(1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally **[*27]** concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage.' " [Citation.]' " (*Bigler-Engler v. Breg, Inc. (2017) 7 Cal.App.5th 276, 310-311*.) When a fiduciary duty does not exist, a duty to disclose arises only "when the defendant had exclusive knowledge of material facts not known to the plaintiff," or "when the defendant actively conceals a material fact from the plaintiff," or "when the defendant makes partial representations but also suppresses some material facts." (*Id. at p. 311*.) This type of relationship " 'can only come into being as a result of some sort of transaction between the parties' " and "must necessarily arise from direct dealings between the plaintiff and the defendant; it cannot arise between the defendant and the public at large." (Ibid.) Evidence that the defendant was involved in retail sales of the disputed product to consumers and profited from them can satisfy the Bigler-Engler requirement. (*Bader v. Johnson & Johnson (2022) 86 Cal.App.5th 1094, 1132*.)

In his response to an interrogatory asking for all facts supporting Plaintiffs' **[*28]** claims against Defendant, Samson Breah did not describe any relationship or direct transaction with Defendant. (Ex. 2 at pp. 2-6, 12.) This factually-devoid response is sufficient to shift the burden.

In opposition, Plaintiffs do not present any evidence that Defendant made any misrepresentation or misleading affirmative statement to Plaintiffs. Nor do Plaintiffs present evidence of any relationship or direct transaction between Plaintiffs and Defendant. This is not surprising because the deposition testimony of Samson, Mike, and Madgy Bareh stated that the service stations obtained parts from various suppliers but not directly from Defendant. Therefore, Plaintiffs did not show the existence of disputed issues.

Instead, Plaintiffs say they still need Defendant's deposition about its supply of vehicles containing ***asbestos***, knowledge of ***asbestos*** hazards, efforts to warn, and communications with the EPA. (Opposition at p. 24.) But Plaintiffs do not explain how a deposition on any of those topics will provide evidence that Defendant communicated with Plaintiffs and Defendant and Plaintiffs had a direct relationship. Therefore, the request to continue the motion pending that deposition is **[*29]** denied.

Finally, "[c]onspiracy is not a cause of action, but a legal doctrine that imposes liability on persons who, although not actually committing a tort themselves, share with the immediate tortfeasors a common plan or design in its perpetration." (*Applied Equipment Corp. v. Litton Saudi Arabia Ltd. (1994) 7 Cal.4th 503, 510-511*.) "Standing alone, a conspiracy does no harm and engenders no tort liability. It must be activated by the commission of an actual tort." (*Id. at p. 511*.) Because Plaintiffs did not show disputed issues regarding their fraud claims, Defendant cannot be liable for conspiring to commit fraud.

The motion is granted as to the third cause of action.

D. Punitive Damages

Defendant moves for summary adjudication of the request for punitive damages. When the motion targets a request for punitive damages, a higher standard of proof is at play. "Although the clear and convincing

evidentiary standard is a stringent one, 'it does not impose on a plaintiff the obligation to "prove" a case for punitive damages at summary judgment [or summary adjudication.' [Citations.] Even so, 'where the plaintiff's ultimate burden of proof will be by clear and convincing evidence, the higher standard of proof must be taken into account in ruling on a motion for summary judgment or **[*30]** summary adjudication, since if a plaintiff is to prevail on a claim for punitive damages, it will be necessary that the evidence presented meet the higher evidentiary standard.' [Citation.]" (*Butte Fire Cases (2018) 24 Cal.App.5th 1150, 1158-1159*.) "Summary judgment or summary adjudication ' " 'on the issue of punitive damages is proper' only 'when no reasonable jury could find the plaintiff's evidence to be clear and convincing proof of malice, fraud or oppression.' " '. [Citation.]" (*Id. at p. 1159*.)

For a corporate defendant, the oppression, fraud or malice "must be on the part of an officer, director, or managing agent of the corporation." (*Civ. Code, § 3294, subd. (b)*.) That requirement can be satisfied " 'if the evidence permits a clear and convincing inference that within the corporate hierarchy authorized persons acted despicably in "willful and conscious disregard of the rights or safety of others." ' [Citation.]" (*Morgan v. J-M Manufacturing Company, Inc. (2021) 60 Cal.App.5th 1078, 1090*.) A plaintiff also "can satisfy the 'managing agent' requirement 'through evidence showing the information in the possession of the corporation and the structure of management decisionmaking that permits an inference that the information in fact moved upward to a point where corporate policy was formulated.' [Citation.]" (*Id. at p. 1091*.)

" '[I]ntentionally marketing a defective **[*31]** product knowing that it might cause injury and death is 'highly reprehensible.' [Citation.]" (*Bankhead v. ArvinMeritor, Inc. (2012) 205 Cal.App.4th 68, 85*.) Punitive damages may be available when a defendant knows the dangers of ***asbestos***, took action to protect its own employees, knew that its products were likely to pose a danger to users, and did not warn them. (Pfeifer v. John Crane, Inc. (2013) 220 Cal.Ap.4th 1270, 1300.) Such evidence "was sufficient to show malice, that is, despicable conduct coupled with conscious disregard for the safety of others." (Id. at pp. 1300-1301.)

Defendant argues Plaintiffs have no evidence of fraud, malice or oppression necessary to prove punitive damages. (Motion at p. 13.) Defendants cite Plaintiffs' response to interrogatories asking for all facts supporting the request for punitive damages. Plaintiffs stated Defendant included ***asbestos*** in its vehicles, never places warnings on the ***asbestos***-containing parts, knew about ***asbestos*** regulations and the dangers of ***asbestos*** especially to mechanics, and did not warn end users about the dangers but instead began to gradually phase out ***asbestos*** parts. (Ex. 2 at pp. 3-6, 13.) This response is not factually-devoid. Therefore, the burden does not shift, and the motion is denied.

The motion for summary judgment is DENIED. The motion for summary adjudication **[*32]** is GRANTED as to the third cause of action and DENIED as to the request for punitive damages.

The moving party is to give notice.

4) The following is improperly calendared and vacated as follows:

On the Court's own motion, the Hearing on Motion to Compel Admissions (Bareh-23STCV00437) scheduled for 08/25/2023 is vacated for case 23STCV00437.

(6) The Court calls the Hearing on Motion to Compel Further Responses to Requests for Admission, Set One on Behalf of Defendant Volkswagen Group of America, Inc.:

The Hearing on Motion to Compel Further Responses to Requests for Admission, Set One on Behalf of Defendant Volkswagen Group of America, Inc. (Bareh-23STCV00437) scheduled for 08/25/2023 is 'Held' for case 23STCV00437.

Counsel submit and the Court adopts the Tentative Ruling as the Final Court Order as follows:

ORDER RE Volkswagen's Motion to Compel Further Responses to Requests for Admission

Defendant Volkswagen Group of America, Inc. filed a motion to compel further responses from Plaintiffs to requests for admission Nos. 35-46, 51-60, 65-68, 73, 74, 80-87, and 89-188. The motion papers also discuss Plaintiffs' responses to form interrogatory No. 17.1, but the notice of motion states only that **[*33]** Defendant moves to compel further responses to request for admission.

Defendant argues Plaintiffs' responses do not comply with the Code of Civil Procedure. Plaintiffs argue the RFAs are improper.

Section 2033.220 requires answers to RFAs to "be as

complete and straightforward as the information reasonably available to the responding party permits." Each answer must either (1) "[a]dmit so much of the matter involved in the request as is true," (2) [d]eny so much of the matter involved in the request as is untrue," or (3) [s]pecifiy so much of the matter involved in the request as to the truth of which the responding party lacks sufficient information or knowledge." (*Code Civ. Proc., § 2033.220, subd. (b)*.) If the responding party lacks information to admit or deny a request, the answer needs to state that a reasonable inquiry has been made and the information known or readily obtainable is insufficient to enable the party to admit the matter. (*Code Civ. Proc., § 2033.220, subd. (c)*.)

The court notes that propounding 188 requests for admission on one party is excessive, but Plaintiffs did not object on that ground.

The court rules as follows:

RFA Nos. 35, 37, 38, 42, 43, 52, 53, 57, 58, 67, 68, 73, 82, 83, 87, 92, 93, 97, 98, 99, 100, 104, 105, 109, 110, 114, 115, 119, 120, 124, **[*34]** 125, 129, 130, 134, 135, 139, 140, 144, 145, 149, 150, 154, 155, 159, 160, 164, 165, 169, 170, 174, 175, 179, 180: Denied. These RFAs are vague and ambiguous, compound, argumentative, irrelevant, or otherwise objectionable.

RFA Nos. 36, 39, 40, 40, 41, 44, 45, 46, 51, 54, 55, 56, 59, 60, 65, 66, 74, 80, 81, 84, 85, 86, 89, 90, 91, 94, 95, 96, 101, 102, 103, 106, 107, 108, 111, 112, 113, 116, 117, 118, 121, 122, 124, 126, 127, 128, 131, 132, 133, 136, 137, 138, 141, 142, 143, 146, 147, 148, 151, 152, 153, 156, 157, 158, 161, 162, 163, 166, 167, 168, 171, 172, 173, 176, 177, 178, 181, 182, 183, 184, 185, 186, 187, 188: Granted. For the most part, these requests parrot allegations that Plaintiffs have already asserted as true in their complaint.

The motion is GRANTED in part and DENIED in part. Plaintiffs are to serve verified amended responses by September 4, 2023.

The moving party is to give notice.

5) The Court calls the 'Hearing on Motion - Other Re: Discovery Disputes' which is actually Plaintiffs' Motion to Compel Further Documents and Deposition from Mercedes:

The Hearing on Motion - Other Re: Discovery Disputes (Bareh - 23STCV00437) scheduled for 08/25/2023 is 'Held' for case 23STCV00437. **[*35]**

Counsel argue and submit.

Plaintiffs' motion to compel discovery from Mercedes is placed under submission.

A copy of this minute order will append to the following coordinated case under JCCP4674: 23STCV00437.

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