July 19, 2024
Dept. 9
Tentative Rulings

1.	24CV0481	MATTER OF SAUER
Petition for Order Permitting Pre-Commencement Discovery		

Petitioner requests that the Court enter an order authorizing Petitioner to engage in pre-commencement discovery, which entails service of document subpoenas to six entities that are listed in the Petition, for the purpose of preserving evidence and to trace and locate stolen funds.

Code of Civil Procedure section 2035.010(a) provides:

> One who expects to be a party or expects a successor in interest to be a party to an action that may be cognizable in a court of the state, whether as a plaintiff, or as a defendant, or in any other capacity, may obtain discovery within the scope delimited by Chapter 2 (commencing with Section 2017.010), and subject to the restrictions set forth in Chapter 5 (commencing with Section 2019.010), for the purpose of perpetuating that person's own testimony or that of another natural person or organization, or of preserving evidence for use in the event an action is subsequently filed.

Section 2035.050(a) provides: "If the court determines that all or party of the discovery requested under this chapter may prevent a failure or delay of justice, it shall make an order authorizing that discovery. (Id., § 2035.050, subd. (a).)

In Petitioner's case, he intends to file an action in El Dorado Superior Court to recover funds he lost in a cryptocurrency scam but lacks sufficient information to be able to file a Complaint. The investigation of the matter is ongoing, both by Petitioner and by law enforcement, including the El Dorado County Sheriff's Office. The El Dorado County Sheriff's Office has obtained documents and things through the execution of a search warrant, and has expressed willingness to provide that information to Petitioner but only pursuant to the issuance of a subpoena.

Code of Civil Procedure section 2035.040(a) requires Petitioner to "cause service of a notice of the petition under Section 2035.030 to be made on each natural person or organization named in the petition as an expected adverse party. This service shall be made in the same manner provided for the service of a summons." Section 2035.040(b) requires service of the notice to be accompanied by a copy of the Petition. Section 2035.040(c) requires the service of a notice of the Petition to be made effected at least 20 days prior to the date specified in the notice for the hearing on the Petition.

The verified Petition states that Notice of the Petition was personally served on each of the entities named in the Petition as potential adverse parties at least 20 days prior to the date for hearing on the Petition. Declaration of Counsel clarifies that they attempted service by certified mail on the one entity identified as expected adverse party, but the mail was returned

as "not deliverable." Service was attempted on the address listed on the Colorado Secretary of State website. However, the website lists the entity as "delinquent." Counsel also performed a public records search on Westlaw for the name of the agent for service, but the search returned zero results. It is counsel's belief that this person does not exist and that "U S Jiarong Trading Co Limited" is an entity only created to perpetuate that scam and fraud.

No opposition to the Petition has been filed with the court.

The hearing of May 3, 2024, was continued to July 19, 2024, to allow proper service by publication. Proof of publication was filed on June 14, 2024 (Denver Post) and June 17, 2024 (Mountain Democrat).

TENTATIVE RULING #1:

PETITION IS GRANTED.

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

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2.	**22CV0521**	**LVNV FUNDING LLC v. MEYER**
Motion for Entering Judgment		

After Plaintiff initiated this matter, the parties settled and entered into a written Settlement Agreement. Under the terms of the settlement agreement, the parties agreed that no judgment would be entered so long as Defendant made certain periodic payments towards the agreed upon settlement amount. Plaintiff claims that Defendant has defaulted by failing to make the agreed payments.

Under the terms of the agreement, Defendant should have paid $4,275.00 by the date of the declaration, but Plaintiff had only received $2,800.00. Plaintiff requests that the court enter a judgment in favor of Plaintiff and against Defendant in the amount of $3,786.43, which consists of $3,351.43 in principal and $435 in court costs. Plaintiff's proof of service does not indicate the date of service – it appears this information was "whited-out" on page 1 of the proof.

Plaintiff requests that the court take judicial notice of the court's file, pursuant to Evidence Code §452(d). Plaintiff's request for judicial notice is granted.

CCP § 664.6:

> (a) If parties to pending litigation stipulate, in a writing signed by the parties outside of the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.
>
> (b) For purposes of this section, a writing is signed by a party if it is signed by any of the following:
>
> > (1) The party.
> >
> > (2) An attorney who represents the party.
> >
> > (3) If the party is an insurer, an agent who is authorized in writing by the insurer to sign on the insurer's behalf.

Based on the terms of the Settlement Agreement, counsel's representations to the court regarding Defendant's default on payments, and lack of a response by Defendant, the Motion is granted.

TENTATIVE RULING #2:

MOTION IS GRANTED, PENDING COURT RECEIPT OF A COMPLETE PROOF OF SERVICE.

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3.	**23CV1110**	**WINN v. CHARITABLE SOLUTIONS, LLC**
Motion to be Relieved		

Counsel for the Plaintiff has filed a motion to be relieved as counsel pursuant to Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362. A declaration on Judicial Council Form MC-052 accompanies the motion, as required by California Rules of Court, Rule 3.1362, stating that there has been a breakdown in attorney-client communication, the specific facts of which must remain confidential.

Code of Civil Procedure § 284(2) and California Rules of Court, Rule 3.1362 allow an attorney to withdraw after notice to the client. Proof of service of the motion on the Defendants at their last known address and on counsel for Plaintiff was filed on June 5, 2024.

There is a Settlement Conference on October 16, 2024, an Issues Conference on November 22, 2024, Trial Confirmation on December 6, 2024, and Trial on December 9, 2024; all of these dates or listed in the proposed Order as required by California Rules of Court, Rule 3.1362(e).

No opposition was filed.

TENTATIVE RULING #3:

THE MOTION IS GRANTED. COUNSEL IS DIRECTED TO SERVE A COPY OF THE SIGNED ORDER (FORM MC-053) ON THE CLIENT AND ALL PARTIES THAT HAVE APPEARED IN THE CASE IN ACCORDANCE WITH CALIFORNIA RULES OF COURT, RULE 3.1362(e). ORDER IS EFFECTIVE AS OF THE FILING OF THE PROOF OF SERVICE INDICATING SERVICE OF THE ORDER ON THE CLIENT.

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4.	**22CV0175**	**DASGUPTA v. TUNDAVIA**
Motion to Compel & Trial Setting		

Defendant brings this Motion to compel Plaintiff's deposition and provide responses to discovery requests, along with monetary sanctions. This case involves defamation and related causes of action, but Defendant also references a real property case, which does not seem to be part of the present Motion. Defendant conflates the two cases in this singular Motion. However, Case PC20200482 is not before the Court for the July 19, 2024, hearing.

Defendant states there was a prior motion, which the Court granted on July 7, 2023, and ordered sanctions; he also notes a second motion, which was heard on November 17, 2023, and the Court gave Plaintiff another opportunity to provide responses. On January 16, 2024, in relation to the second motion, the Court ordered monetary sanctions to be paid by February 16, 2024. Defendant claims at the time of this Motion, the sanctions have not been paid.

In terms of the present Motion, Defendant claims on June 2, 2022, he served: Request for Production of Documents, Set One; Special Interrogatories, Set One; and Form Interrogatories, Set One. He further claims that Plaintiff never responded.

On February 5, 2024, Defendant states he served Plaintiff with a Notice of Deposition for April 4, 2024, at 9:00 AM. On the day before deposition, Plaintiff's Counsel informed Defendant that the deposition would not be going forward due to Plaintiff's availability, but that he would provide alternate dates. Defendant states he has not received alternative dates.

After providing responses to Form Interrogatory 17.1, Plaintiff identified witnesses. Defendant states he issued Deposition Subpoenas and had the witnesses served. One such witness was B. Heinrich, who was personally served. Defendant claims that Heinrich confirmed her attendance two days prior to the deposition, but then failed to attend; Defendant claims that Heinrich stated Plaintiff told her not to appear. Two additional witnesses have also refused to appear for their depositions. The rest of Defendant's contentions seem to involve the other case, which is not before the Court on this day.

Defendant requests an order compelling Plaintiff to attend a deposition within 30 days of the order, respond to discovery requests within 15 days of the order, and comply with all further discovery requests. He also requests $75,000 in monetary sanctions to compensate him for his attorney's fees. Prior counsel filed a declaration, supporting Defendant's Motion and the facts alleged therein.

Plaintiff's counsel also filed a declaration and does not dispute that Plaintiff has failed to attend the second part of her deposition. He indicates that Plaintiff is available on August 28, 2024, and that counsel is available as well. Plaintiff's counsel states that discovery has been responded to, and that she will amend her responses if there are any issues.

Code of Civil Procedure 2030.300:

(d) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a further response to interrogatories, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(e) If a party then fails to obey an order compelling further response to interrogatories, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Chapter 7 (commencing with Section 2023.010). In lieu of, or in addition to, that sanction, the court may impose a monetary sanction under Chapter 7 (commencing with Section 2023.010).

Prior to the hearing, the parties are to meet and confer regarding the discovery requests and the issues alleged regarding them. Parties are ordered to appear at the hearing to address the issues before the court. At the hearing, Defendant is directed to confirm whether Plaintiff's suggested date of August 28, 2024 at 9:00 a.m. is agreeable.

TENTATIVE RULING #4:

APPEARANCES REQUIRED ON FRIDAY, JULY 19, 2024, AT 8:30 A.M. IN DEPARTMENT NINE.

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5.	**24CV0576**	**BANK OF AMERICA v. GOODSON**
Motion for Judgment on the Pleadings		

The Complaint was filed on March 22, 2024, and Defendant answered on April 22, 2024. Plaintiff thereafter filed this Motion on May 9, 2024.

Standard of Review

When the moving party is the plaintiff, a motion for judgment on the pleadings may be granted where "the complaint states facts sufficient to constitute a cause or causes of action against the defendant and the answer does not state facts sufficient to constitute a defense to the complaint." (Code Civ. Proc. § 438(c)(1)(A).) The grounds for the motion shall appear on the face of the challenged pleading or from any matter of which the court is required to take judicial notice (Code Civ. Proc. § 438 (d).) Except as provided by statute, a motion for judgment on the pleadings is analyzed like a general demurrer. (*Cloud v. Northrop Grumman Corp.* (1998) 67 Cal.App.4th 995, 999.) Thus, on a motion for judgment on the pleadings, the Court may extend consideration to matters that are subject to judicial notice; in doing so, the Court performs essentially the same task as ruling on a general demurrer. (*Smiley v. Citibank* (1995) 11 Cal.4th 138, 146.)

Procedural Requirements

Pursuant to CCP 438(f), it is proper to bring a Motion for Judgment on the Pleadings at this time, because the time period to demur to the Answer has passed.

Counsel for Plaintiff has complied with the meet and confer requirements of CCP 439(a)(3). *Decl. B. Langedyk.*

Argument

Plaintiff alleges that Defendant does not deny any allegations of the complaint, does not deny owing the debt, and does not set forth any affirmative defenses. Defendant does describe some financial difficulties, including limited income from Social Security benefits. Plaintiff argues that total failure to deny a material allegation necessarily results in an admission. 5 Witkin, *Cal.Procedure* (5th ed., 2008) Pleading, §1053, p.493. Plaintiff further argues that because defendant has admitted owing the debt, there is no reasonable possibility that the defect could be cured by amendment and therefore the motion should be granted without leave to amend. *Smiley v. Citibank* (1995) 19 11 Cal. 4th 138, 164.

Plaintiff prays that the motion be granted without leave to amend on the grounds that the Complaint states facts sufficient to constitute a cause of action and the Answer does not state facts sufficient to constitute a defense, and that judgment be entered for the amount set forth in the Complaint ($14,550.47) and costs according to the memorandum of costs ($503.61).

The Court notes that in the Answer, Defendant does not generally deny each statement of the Complaint, nor does she partially deny the Complaint. As such, the Motion is granted with leave to amend.

TENTATIVE RULING #5:

MOTION IS GRANTED WITH LEAVE TO AMEND THE ANSWER WITHIN 30 DAYS.

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6.	**PC20180378**	**SPERRY ET AL v. ALGONQUIN POWER & UTILITIES**
Motion for Summary Adjudication		

On February 20, 2024, Defendant Liberty Utilities (CALPECO) Electric filed a Notice of Motion and Motion for Summary Adjudication. Concurrently therewith Defendant filed a Declaration of Justin M. Marvisi, a Separate Statement in Support of Summary Adjudication and a Compendium of Evidence. All documents were electronically served on the same date as filing.

On July 3rd, Plaintiffs filed and served their Memorandum of Points and Authorities in Opposition to Defendant Liberty Utilities (CALPECO) Electric, LLC's Motion for Summary Adjudication. Plaintiffs also filed and served a Separate Statement and Evidence, a Declaration of Mohamad Ahmad, an Index of Exhibits, and a Request for Judicial Notice.

Defendant filed and served its Reply documents on July 12th including a Reply Memorandum in Support of Motion for Summary Adjudication, Evidentiary Objections to Declaration of Michael Douglas Flautt, Reply to Plaintiffs' Separate Statement, and a Supplemental Declaration of Justin M. Marvisi.

This matter arises from an incident where Plaintiff Todd Sperry claims to have sustained injuries after being electrocuted when plugging a vacuum cleaner into a wall socket at the home where he resided with his wife, Plaintiff Linda Sperry, and their children.

After hearing buzzing coming from the electrical panel where Plaintiffs resided, Defendant was called and asked to deenergize the property. Joel Kuntz, an electrician employed by Defendant, responded to the call.

Mr. Kuntz is a journeyman with over 11 years of experience. After arriving, Mr. Kuntz cut service to the property and removed the meter owned by Defendant. Once removed, it was determined that the panel needed to be replaced. Given that replacement of the panel required a permit, the decision was made to bypass the panel to allow Plaintiffs to have power at their residence while the permit process was ongoing.

After bypassing the meter and re-energizing the property, Mr. Kuntz, along with James Edens, the independent electrician hired by the property owners, tested the electrical output at the residence. Mr. Kuntz also states he tested the main line to ensure there were no grounds. Mr. Kuntz then installed a cover over the bypassed wires.

As part of their claim for punitive damages, Plaintiffs argue that Defendant was admonished by Senior City Inspector Mr. Walker on multiple occasions to stop hot wiring buildings because they would seriously injure or hurt someone. They concede, however, that Mr. Walker testified that he did not recall making such a statement and there has been no evidence to establish that the statement or statements were made.

By way of its Motion for Summary Adjudication, Defendant argues that Plaintiffs cannot, as a matter of law, establish their claim for punitive damages as there is no evidence to support their contention that Defendant acted with malice, oppression, or fraud, in bypassing the electric meter. Defendant contends that the act of bypassing the meter did not constitute despicable conduct and a conscious disregard for human safety. Defendant further contends that the actions of its employee cannot be imputed to the company as Mr. Kuntz was not an officer, director, or managing agent, and the company did not authorize or ratify his actions.

Plaintiffs argue that there is a triable issue of material fact as to whether Defendant acted with malice and therefore whether punitive damages are warranted. They argue that Mr. Kuntz knew the danger of the burnt-out electric meter and the dangers of bypassing it. They further argue that punitive damages under the present circumstances would serve the public policy of imposing a penalty on Defendant to ensure that Defendant does not engage in similar conduct in the future.

Request for Judicial Notice

As part of their opposition Plaintiffs request judicial notice of the following: (1) California Residential Code § R105.1 et. seq., (2) California Public Utilities Commission (PUC) Tariff Rule 14, and (3) PUC Tariff Rule 16.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 govern the circumstances in which the court may take judicial notice of a matter. Section 451 provides a comprehensive list of matters that must be judicially noticed, including, among other things, "public statutory law of this state and of the United States." Cal. Ev. Code § 451(a).

Plaintiffs' request for judicial notice is granted. The court hereby takes judicial notice of (1) California Residential Code § R105.1 et. seq., (2) California Public Utilities Commission (PUC) Tariff Rule 14, and (3) PUC Tariff Rule 16. While the request for notice of these statutory provisions is granted, the court notes that they are attached to the declaration of Mr. Flautt. It is unclear if Plaintiffs are requesting judicial notice of Mr. Flautt's declaration or any portion thereof. To the extent such a request is being made, the request is denied.

Evidentiary Objection

Defendant objects to the declaration of Mr. Flautt as a whole, as well as specified individual portions of the declaration. The objection to the entirety of the declaration is made on the basis that he was not identified as a designated expert as part of Plaintiffs' expert disclosure. Defendant relies on *Perry v. Bakewell Hawthorne*, *LLC*, 244 Cal. App. 4th 712 (2016).

Pursuant to Section 2034.300, the court may exclude expert opinion of any witness offered by a party who has "unreasonably failed" to disclose expert witness information. Cal. Civ. Pro. § 2034.300. The *Perry* court addressed the issue of whether Section 2034.300 allowed

for the exclusion of such evidence at the summary judgment/adjudication phase, or if it was only applicable to testimony at trial. *Perry* found that the trial court did not abuse its discretion in excluding expert declarations from consideration on a motion for summary judgment where the party proffering the declarations was found to have unreasonably failed to disclose expert witness information. *Perry v. Bakewell Hawthorne, LLC*, 244 Cal. App. 4th 712 (2016).

Here, Defendant served its Demand for Exchange of Expert Information on September 5, 2023. Plaintiff responded with their expert designations on September 25, 2023. It has been almost 10 months since that exchange was made and Plaintiffs have not, in that time, amended their expert disclosure to add Mr. Flautt. Accordingly, the court does find that Plaintiffs unreasonably failed to disclose Mr. Flautt as an expert witness and therefore the objection to his declaration is sustained and the declaration will not be considered by the court.

Legal Standard for a Motion for Summary Adjudication

A motion for summary adjudication shall be granted if there is no triable issue as to any material fact and the papers submitted show that the moving party is entitled to judgment as a matter of law as to one or more causes of action or claims for damages. Cal. Civ. Pro. § 437c(f)(1). A defendant moving for summary adjudication need only show that one or more elements of the cause of action cannot be established. *Aguilar v. Atlantic Richfield Co.*, (2001) 25 Cal.4th 826, 849. This can be done in one of two ways, either by affirmatively presenting evidence that would require a trier of fact *not* to find any underlying material fact more likely than not; or by simply pointing out "that the plaintiff does not possess and cannot reasonably obtain, evidence that *would* allow such a trier of fact to find any underlying material fact more likely than not." *Id.* at 845; *Brantly v. Pisaro*, 42 Cal. App. 4th 1591, 1601 (1996).

The moving party bears the burden of making a prima facie case for summary adjudication. *White v. Smule, Inc.*, 75 Cal. App. 5th 346 (2022). In other words, the party moving for summary judgment or adjudication must show that it is entitled to judgment as a matter of law. *Doe v. Good Samaritan Hospital*, 23 Cal. App. 5th 653, 661 (2018). Where the defendant makes the required showing, the burden shifts to plaintiff to make a prima facie showing that there exists a triable issue of material fact. *Zoran Corp. v. Chen*, 185 Cal. App. 4th 799, 805 (2010). "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." *Aguilar, Supra* 25 Cal. 4th at 850.

Here, the issue is whether or not there is a triable issue of material fact which would potentially warrant the imposition of punitive damages. The court finds that there is not.

Punitive Damages

Exemplary, otherwise known as punitive, damages are recoverable "where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice…" Cal. Civ. Code § 3294(a). Malice, as used in Section 3294, includes "…despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights

or safety of others." Cal. Civ. Code § 3294(b). Thus, to determine the potential basis of a punitive damage claim, one must first look to the existence of "despicable conduct" and "conscious disregard."

"'Despicable conduct' is conduct 'so vile, base, contemptible, miserable, wretched or loathsome that it would be looked down upon and despised by most ordinary decent people.'" Hardeman v. Monsanto Company, 997 F.3d 941, 971 (2021) *citing* Pac. Gas & Elec. Co. v. Sup. Ct., 24 Cal. App. 5th 1150 (2018). "'Conscious disregard' requires that the defendant 'have actual knowledge of the risk of harm it is creating and, in the face of that knowledge, fail to take steps it knows will reduce or eliminate the risk of harm." *Id.* Given that courts have repeatedly imposed the standard for actual knowledge, it stands to reason that "…mere reckless disregard or misconduct," (*Taylor v. Sup. Ct.*, 24 Cal. 3d 890, 895 (1979)) "carelessness" (*American Airlines, Inc. v. Sheppard, Mullin, Richter & Hampton*, 96 Cal. App. 4th 1017, 1051 (2002)), or an "honest error of judgment…mere negligence or other such noniniquitous human failing" (*Tomaselli v. Transamerica Ins. Co.*, 25 Cal. App. 4th 1269, 1288 (1994)) cannot be enough to sustain an award of punitive damages.

To allow for the imposition of punitive damages, the existence of malice must be made by clear and convincing evidence. Cal. Civ. Code § 3294(a). In other words, the evidence must be "'so clear as to leave no substantial doubt' and 'sufficiently strong to command the unhesitating assent of every reasonable mind.'" *Pac. Gas & Elec. Co. v. Sup. Ct.*, 24 Cal. App. 5th 1150 (2018) *citing Shade Foods, Inc. v. Innovative Products Sales & Marketing, Inc.*, 78 Cal. App. 4th 847, 891 (2000). "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 omitted]" *Id.* at 1158. Nevertheless, in ruling on a motion for summary adjudication of a punitive damage claim the court must view the evidence in light of the higher standard. In other words, "…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." *Id.* at 1159.

Where it can be shown, by clear and convincing evidence, that an employee acted with malice, a plaintiff seeking to hold an employer liable for the conduct of its employees must go one step further and establish that the employer "…authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice. With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation." Cal. Civ. Code § 3294(b).

Given that the initial burden rests with the moving party, the court first turns to Defendant's moving papers. Defendant bears the initial burden of showing that Plaintiffs do not possess and cannot reasonably obtain, evidence that would allow a trier of fact to find that

Defendant acted with malice in bypassing the meter at Plaintiffs' residence. The court finds Defendant has met this burden.

As stated above, malice requires a showing of despicable conduct and conscious disregard for safety. A conscious disregard for safety requires (1) actual knowledge of the risk to human safety, and (2) failure to take steps to reduce or eliminate the risk of harm. *Hardeman v. Monsanto Company*, 997 F.3d 941, 971 (2021)

Mr. Kuntz testified that he had performed approximately 15 similar bypasses while employed by Defendant. Kuntz Depo., 58:19-21. There is no evidence before the court that any of those bypasses resulted in any injuries or property damage. Where Mr. Kuntz had performed the same procedure approximately 15 times without issue, it cannot be said that he had actual knowledge of the harm that could potentially come from his actions.

Moreover, it is undisputed that Mr. Kuntz and Mr. Edens tested the electrical output of the property after the bypass and re-energizing was done. Additionally, Mr. Kuntz tested the main line for grounds and installed a cover over the bypass wires. According to the testimony of Mr. Edens, he and Mr. Kuntz would have known "immediately" if the bypass of the meter had been done incorrectly. Regardless of whether or not the bypass was actually done safely and correctly, the fact that both electricians took precautions in an attempt to determine whether it was done properly is in stark contrast to a showing of a conscious disregard for safety. In fact, conscious disregard requires a showing that the defendant failed to take steps it knew would reduce or eliminate the risk of harm. *Hardeman v. Monsanto Company*, 997 F.3d 941, 971 (2021). To the contrary, these acts actually seem to establish an attempt by Mr. Kuntz to test the safety of his work.

With the moving party having met its burden, the court must now shift to whether Plaintiffs have done the same. Plaintiffs argue that Mr. Kuntz had actual knowledge of the risk of harm he created because he is a trained electrician and the authority on the subject when the decision to bypass was made. However, they concede that the Senior City Inspector, Mr. Walker, testified that bypassing is not, in and of itself, an unsafe procedure. Depo. Dave Walker 20:6-15, 42:20-23. Nonetheless, Plaintiffs offer the testimony of electrician John Nicholas who is of the opinion that either the neutral wire was inappropriately reattached, or that Mr. Kuntz did not properly check all the neutrals when re-energizing the home. Depo. Nicholas, 42:3-10. While this may be sufficient to establish negligence, it does not form the basis of an intentional act or conscious disregard for safety, on the part of Mr. Kuntz or Defendant and therefore it is not sufficient to establish a claim for punitive damages.

Finally, while there does appear to be some dispute as to whether Defendant had a policy of bypassing electrical meters for 72 hours, the court does not find this to be material. Plaintiffs have not established Mr. Kuntz's conduct to be subject to punitive damages. Without

Mr. Kuntz acting with a conscious disregard for human safety it is irrelevant if his actions were ratified by the corporation's alleged 72-hour bypass policy.

Conclusion

In summary, to establish a cause of action for punitive damages, Petitioners bear the hefty burden of showing, by clear and convincing evidence, that Defendant acted despicably and with conscious disregard for human safety. The undisputed material facts before the court do not establish either of the requisite elements for malice on the part of Mr. Kuntz or Defendant. Therefore, Defendant's Motion for Summary Adjudication is granted.

TENTATIVE RULING #6:

1. **PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE IS GRANTED. THE COURT HEREBY TAKES JUDICIAL NOTICE OF (1) CALIFORNIA RESIDENTIAL CODE § R105.1 ET. SEQ., (2) CALIFORNIA PUBLIC UTILITIES COMMISSION (PUC) TARIFF RULE 14, AND (3) PUC TARIFF RULE 16. WHILE THE REQUEST FOR NOTICE OF THESE STATUTORY PROVISIONS IS GRANTED, THE COURT NOTES THAT THEY ARE ATTACHED TO THE DECLARATION OF MR. FLAUTT.**
2. **IT IS UNCLEAR IF PLAINTIFF IS REQUESTING JUDICIAL NOTICE OF MR. FLAUTT'S DECLARATION OR ANY PORTION THEREOF. TO THE EXTENT SUCH A REQUEST IS BEING MADE, THE REQUEST IS DENIED. THE COURT DOES FIND THAT PLAINTIFFS UNREASONABLY FAILED TO DISCLOSE MR. FLAUTT AS AN EXPERT WITNESS AND THEREFORE THE OBJECTION TO HIS DECLARATION IS SUSTAINED AND THE DECLARATION WILL NOT BE CONSIDERED BY THE COURT.**
3. **DEFENDANT'S MOTION FOR SUMMARY ADJUDICATION IS GRANTED.**

NO HEARING ON THIS MATTER WILL BE HELD UNLESS A REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 621-6551 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; LOCAL RULE 8.05.07; SEE ALSO LEWIS V. SUPERIOR COURT, 19 CAL.4TH 1232, 1247 (1999).

NOTICE TO ALL PARTIES OF A REQUEST FOR ORAL ARGUMENT AND THE GROUNDS UPON WHICH ARGUMENT IS BEING REQUESTED MUST BE MADE BY TELEPHONE OR IN PERSON BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. CAL. RULE CT. 3.1308; EL DORADO COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES

ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM, PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.