

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC.	DATE FILED:	6/30/2014
PLAINTIFF(s)	CASE TYPE:	COMPLAINT
VS.	CASE SUBTYPE:	BREACH OF CONTRACT
SAUSAL CORPORATION ( COMPLEX )	DATE OF LAST ACTIVITY:	2/13/2020
DEFENDANT(s)	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

**INVOLVED PERSON/PARTY AND ATTORNEY SUMMARY:**

VOLPE COMPANY, INC., A CALIFORNIA CORPORATION is the PLAINTIFF and is represented by: BOWLES, RICHARD T.  
 TILBURY CONSTRUCTORS, INC. A CALIFORNIA CORPORATION is the PLAINTIFF and is represented by: TILBURY, TREVEN I.  
 SAUSAL CORPORATION is the DEFENDANT and is represented by: GERNHARDT, HEATHER INGLE; HAMILTON, ROBERT P.; LEE, DAVID S.; MCCORMICK, JAMES L.; MCLENNON, DANIEL F.; MOORE, ALEXANDER R.; WALLACE, CRAIG  
 LIBERTY MUTUAL INSURANCE COMPANY is the DEFENDANT and is represented by: MCLENNON, DANIEL F.  
 NORTH AMERICAN SPECIALTY INSURANCE COMPANY is the DEFENDANT and is represented by:  
 SAUSAL CORPORATION is the DEFENDANT and is represented by: HAMILTON, ROBERT P.  
 CALIFORNIA AIR, INC. is the CROSS COMPLAINANT and is represented by:  
 SAFECO DOOR & HARDWARE is the CROSS COMPLAINANT and is represented by: BRIDGMAN, KURT DARROW; BURKE, MICHAEL S.; WALSH, PATRICIA  
 SAUSAL CORPORATION, A CALIFORNIA CORPORATION (1) is the CROSS COMPLAINANT and is represented by: LEE, CHRISTINE  
 SAUSAL CORPORATION is the CROSS DEFENDANT and is represented by:  
 LIBERTY MUTUAL INSURANCE COMPANY is the CROSS DEFENDANT and is represented by:  
 SAUSAL CORPORATION, A PURPORTED CALIFORNIA CORP is the CROSS DEFENDANT and is represented by: BUSSEY, ALYSSA M  
 CITY OF NOVATO, A PUBLIC ENTITY is the CROSS DEFENDANT and is represented by: GILPIN, JAMES B; SCHARTIGER, HANNAH  
 LIBERTY MUTUAL INSURANCE COMPANY is the CROSS DEFENDANT and is represented by: BUSSEY, ALYSSA M  
 CITY OF NOVATO (1) is the CROSS DEFENDANT and is represented by: GILPIN, JAMES B; SCHARTIGER, HANNAH  
 LIBERTY MUTUAL INSURANCE COMPANY, A SURETY (2) is the CROSS DEFENDANT and is represented by: MCLENNON, DANIEL F.  
 SAUSAL CORPORATION, A CALIFORNIA CORPORATION (2) is the CROSS DEFENDANT and is represented by:  
 STRUCTURAL ENGINEERS, INC. is the CROSS DEFENDANT and is represented by:  
 BKF ENGINEERS is the CROSS DEFENDANT and is represented by:  
 STEINER, BEVERLY is the CLAIMANT and is represented by: PRO PER

**REGISTER OF ACTIONS:**

06/30/2014 CASE OPEN / ACTIVE STATUS HON ROY O CHERNUS  
 06/30/2014 FILING FEE PROCESSED: PLTF, VOLPE COMPANY, INC., A CALIFORNIA CORPORATION - 435.00  
 06/30/2014 COMPLAINT/FIRST PAPER COMPLAINT FOR BREACH OF CONTRACT, ETC.  
 06/30/2014 SUMMONS ISSUED AND FILED  
 07/02/2014 HEARING CONFIRMED FOR: 09/10/2014 AT: 08:30 AM FOR APPEARANCE TYPE: OSCH IN DEPARTMENT: D06  
 07/02/2014 HEARING CONFIRMED FOR: 10/09/2014 AT: 08:30 AM FOR APPEARANCE TYPE: OSCH IN DEPARTMENT: D06  
 07/02/2014 HEARING CONFIRMED FOR: 11/20/2014 AT: 08:30 AM FOR APPEARANCE TYPE: CMGT IN DEPARTMENT: D06  
 07/25/2014 PROOF OF SERVICE FILED, AS TO: DEFT, SAUSAL CORPORATION BY PERSONAL SERVICE ON 7/9/2014.  
 07/25/2014 PROOF OF SERVICE FILED, AS TO: DEFT, CITY OF NOVATO BY PERSONAL SERVICE ON 7/7/2014.  
 07/25/2014 PROOF OF SERVICE FILED, AS TO: DEFT, LIBERTY MUTUAL INSURANCE COMPANY BY PERSONAL SERVICE ON 7/3/2014.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
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07/25/2014 APPEARANCE DROPPED FOR 09/10/2014 AT: 08:30 AM FOR APPEARANCE TYPE: OSCH IN DEPARTMENT: D06  
DROP REASON: POS FILED

09/08/2014 ANSWER DEFT, LIBERTY MUTUAL INSURANCE COMPANY

09/08/2014 ANSWER DEFT, SAUSAL CORPORATION

09/08/2014 FILING FEE PROCESSED: DEFT, SAUSAL CORPORATION - 435.00

09/08/2014 FILING FEE PROCESSED: DEFT, LIBERTY MUTUAL INSURANCE COMPANY - 435.00

09/08/2014 CROSS-COMPLAINT FILED (1) BY ATTY DANIEL MCLENNON OBO CROSS-COMPLAINANT SAUSAL CORP., AGAINST  
CROSS-DEFT VOLPE COMPANY, INC. AND ROES 1-100, INCLUSIVE.

10/01/2014 PARTIAL DISMISSAL AS TO: DEFT, CITY OF NOVATO - WITHOUT PREJUDICE

10/02/2014 IT IS ORDERED: STIPULATION TO FILE AMENDED COMPLAINT; ORDER. PLAINTIFF SHALL FILE ITS AMENDED  
COMPLAINT IN THIS MATTER WITHIN TEN DAYS OF THE EXECUTION OF THIS ORDER. JUDGE ROY O. CHERNUS.

10/09/2014 MINUTE ORDER POSTED - Appearance: 10/09/2014 at 8:30AM for OSC RE: FILING OF ANSWER  
JUDGE/PROTEM/REFEREE ROY O. CHERNUS , REPORTER MATTER NOT REPORTED , DEP CLK J. LANGFORD  
HEARING BEFORE TRIAL  
NO APPEARANCE BY OR FOR THE PARTIES  
THIS MATTER SHALL REMAIN AS SET FOR 11/20/14 @ 8:30AM IN DEPT. B FOR CASE MANAGEMENT CONFERENCE  
NOTICE OF HEARING MAILED  
ENTERED BY: J. LANGFORD

10/10/2014 AMENDED COMPLAINT FILED (1ST) BY ATTY BRIANNA FRAZIER OBO PLTF, FOR DAMAGES, ADDING DEFT NORTH  
AMERICAN SPECIALTY INSURANCE COMPANY AND DOES 1 THROUGH 100.

10/22/2014 NOTICE OF CHANGE OF FIRM ADDRESS FILED BY ATTY MICHAEL TIMPANE OBO PLAINTIFF.

11/20/2014 MINUTE ORDER POSTED - Appearance: 11/20/2014 at 8:30AM for CASE MANAGEMENT CONFERENCE  
JUDGE/PROTEM/REFEREE ROY O. CHERNUS , REPORTER MATTER NOT REPORTED , DEP CLK J. LANGFORD  
COURT CALL APPEARANCE BY BRIANNA FRAZIER FOR PLAINTIFF  
COURT CALL APPEARANCE BY CHRISTINE LEE FOR DEFENDANT  
HEARING BEFORE TRIAL  
DISCUSSION HELD BETWEEN COURT AND COUNSEL  
THIS MATTER SHALL BE CONTINUED FOR FURTHER CASE MANAGEMENT CONFERENCE TO 01/22/15 @ 8:30AM IN  
DEPT. B  
ORDER TO SHOW CAUSE IS DISCHARGED  
HEARING CONTINUED TO: 01/22/2015 AT: 08:30 AM FOR APPEARANCE TYPE: CMGT IN DEPARTMENT: D06 FROM  
DATE: 11/20/2014 FROM TIME: 08:30 AM FROM APPEARANCE TYPE: CMGT FROM DEPARTMENT: D06  
ENTERED BY: J. LANGFORD

01/22/2015 MINUTE ORDER POSTED - Appearance: 01/22/2015 at 8:30AM for CASE MANAGEMENT CONFERENCE  
JUDGE/PROTEM/REFEREE ROY O. CHERNUS , REPORTER NOT REPORTED , DEP CLK S. HENDRYX  
COURT CALL APPEARANCE BY BRIANNA FRAZIER FOR PLAINTIFF  
COURT CALL APPEARANCE BY CHRISTINE LEE FOR DEFENDANT SAUSAL CORPORATION  
HEARING BEFORE TRIAL  
THE PARTIES ARE ATTEMPTING TO RESOLVE THE MATTER INFORMALLY.  
THE CASE MANAGEMENT CONFERENCE SHALL BE CONTINUED TO 4-16-15 AT 8:30 A.M. IN DEPT. B FOR TRIAL  
SETTING.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
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HEARING CONTINUED TO: 04/16/2015 AT: 08:30 AM FOR APPEARANCE TYPE: CMGT IN DEPARTMENT: D06 FROM DATE: 01/22/2015 FROM TIME: 08:30 AM FROM APPEARANCE TYPE: CMGT FROM DEPARTMENT: D06 ENTERED BY: SH

04/16/2015 MINUTE ORDER POSTED - Appearance: 04/16/2015 at 8:30AM for CASE MANAGEMENT CONFERENCE JUDGE/PROTEM/REFEREE ROY O CHERNUS , REPORTER MATTER NOT REPORTED , DEP CLK J. LANGFORD COURT CALL APPEARANCE BY BRIANNA FRAISER FOR PLAINTIFF COURT CALL APPEARANCE BY CHRISTINE LEE FOR DEFENDANT HEARING BEFORE TRIAL DISCUSSION HELD BETWEEN COURT AND COUNSEL

THIS MATTER IS CONTINUED FOR FURTHER CASE MANAGEMENT CONFERENCE TO 07/09/15 @ 8:30AM IN DEPT. B HEARING CONTINUED TO: 07/09/2015 AT: 08:30 AM FOR APPEARANCE TYPE: CMGT IN DEPARTMENT: D06 FROM DATE: 04/16/2015 FROM TIME: 08:30 AM FROM APPEARANCE TYPE: CMGT FROM DEPARTMENT: D06 ENTERED BY: J. LANGFORD

07/09/2015 MINUTE ORDER POSTED - Appearance: 07/09/2015 at 8:30AM for CASE MANAGEMENT CONFERENCE JUDGE/PROTEM/REFEREE ROY O. CHERNUS , REPORTER NOT REPORTED , DEP CLK P. OKUBO COURT CALL APPEARANCE BY MICHAEL TIMPANE FOR PLAINTIFF COURT CALL APPEARANCE BY CHRISTINE LEE FOR DEFENDANT HEARING BEFORE TRIAL

MS. LEE GIVES STATUS.  
CITY OF NOVATO MAY BE APPEARING.  
IT IS ORDERED: FUTURE CASE MANAGEMENT CONFERENCE DATE: 9/10/15 TIME: 8:30 A.M.

HEARING CONTINUED TO: 09/10/2015 AT: 08:30 AM FOR APPEARANCE TYPE: CMGT IN DEPARTMENT: D06 FROM DATE: 07/09/2015 FROM TIME: 08:30 AM FROM APPEARANCE TYPE: CMGT FROM DEPARTMENT: D06 ENTERED BY: P. OKUBO

07/24/2015 STIPULATION AND ORDER GRANTING LEAVE FOR DEFT AND CROSS-COMPLAINANT SAUSAL CORPORATION TO FILE ITS FIRST AMENDED CROSS-COMPLAINT FILED

08/11/2015 CROSS-COMPLAINT FILED (1) (FIRST AMENDED) BY ATTY ON BEHALF OF CROSS-COMPLAINANT ADDING CROSS-DEFENDANT CITY OF NOVATO

08/17/2015 SUMMONS ISSUED FIRST AMENDED SUMMONS ON CROSS-COMPLAINT FILED BY CROSS-COMPLAINANT SAUSAL CORPORATION

08/20/2015 SUBSTITUTION OF ATTORNEY FILED, AS TO: ATTORNEY EDWARD STEPANS FOR PLAINTIFF

08/28/2015 REQUEST FOR DISMISSAL OF ONLY THE THIRD AND SIX CAUSES OF ACTION OF SAUSAUL CORPORATION'S CROSS COMPLAINT WITHOUT PREJUDICE. ALL OTHER CAUSES OF ACTION REMAIN.

08/28/2015 PROOF OF SERVICE OF SUMMONS ON FIRST AMENDED CROSS-COMPLAINT; FIRST AMENDED CROSS COMPLAINT ON CITY OF NOVATO BY SUBSTITUTED SERVICE OF JULIE WILLIAMS ON 8/19/2015. DOM: 8/21/2015.

09/10/2015 MINUTE ORDER POSTED - Appearance: 09/10/2015 at 8:30AM for CASE MANAGEMENT CONFERENCE JUDGE/PROTEM/REFEREE ROY O CHERNUS , REPORTER MATTER NOT REPORTED , DEP CLK J. LANGFORD COURT CALL APPEARANCE BY MICHAEL CONNOLLY FOR PLAINTIFF COURT CALL APPEARANCE BY CHRISTINE LEE FOR DEFENDANT HEARING BEFORE TRIAL DISCUSSION HELD BETWEEN COURT AND COUNSEL

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

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SAUSAL CORPORATION ( COMPLEX )	DATE OF LAST ACTIVITY:	2/13/2020
DEFENDANT(S)	DATE/TIME RUN:	04/07/2020 12:37 PM
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THIS MATTER IS CONTINUED FOR FURTHER CASE MANAGEMENT CONFERENCE TO 10/15/15 @ 8:30AM IN DEPT. B  
 HEARING CONTINUED TO: 10/15/2015 AT: 08:30 AM FOR APPEARANCE TYPE: CMGT IN DEPARTMENT: D06 FROM  
 DATE: 09/10/2015 FROM TIME: 08:30 AM FROM APPEARANCE TYPE: CMGT FROM DEPARTMENT: D06  
 ENTERED BY: J. LANGFORD

09/23/2015 CROSS-COMPLAINT FILED (2) BY ATTORNEY KEVIN WANG ON BEHALF OF CROSS-COMPLAINANT CITY OF NOVATO AGAINST CROSS-DEFENDANTS SAUSAL CORPORATION, LIBERTY MUTUAL INSURANCE COMPANY, AND ROES 101-150, INCLUSIVE

09/23/2015 ANSWER CRDF, CITY OF NOVATO

09/25/2015 ANSWER CRDF, VOLPE COMPANY, INC., CALIF. CORP. (1)

09/29/2015 FILING FEE WAIVED- GOVERNMENTAL AGENCY CRDF, CITY OF NOVATO

09/29/2015 FILING FEE WAIVED- GOVERNMENTAL AGENCY CRDF, CITY OF NOVATO

10/15/2015 MINUTE ORDER POSTED - Appearance: 10/15/2015 at 8:30AM for CASE MANAGEMENT CONFERENCE  
 JUDGE/PROTEM/REFEREE ROY O CHERNUS , REPORTER MATTER NOT REPORTED , DEP CLK J. LANGFORD  
 COURT CALL APPEARANCE BY MICHAEL P. CONNOLLY FOR PLAINTIFF  
 COURT CALL APPEARANCE BY LINDA R BECK FOR CROSS-DEFENDANT, CITY OF NOVATO  
 COURT CALL APPEARANCE BY CHRISTINE LEE FOR DEFENDANT, SAUSAL  
 HEARING BEFORE TRIAL

DISCUSSION HELD BETWEEN COURT AND COUNSEL  
 THIS MATTER IS CONTINUED FOR FURTHER CASE MANAGEMENT CONFERENCE TO 12/15/15 @ 8:30AM IN DEPT. B  
 HEARING CONTINUED TO: 12/15/2015 AT: 08:30 AM FOR APPEARANCE TYPE: CMGT IN DEPARTMENT: D06 FROM  
 DATE: 10/15/2015 FROM TIME: 08:30 AM FROM APPEARANCE TYPE: CMGT FROM DEPARTMENT: D06  
 ENTERED BY: J. LANGFORD

11/19/2015 NOTICE OF ASSOCIATION OF COUNSEL FILED BY ATTY OBO DEFENDANT,CRDF SAUSAL CORPORATION. ASSOCIATING IN ATTY MICHAEL L. MARX.

11/19/2015 ANSWER CRDF, SAUSAL CORPORATION (2)

11/19/2015 ANSWER CRDF, LIBERTY MUTUAL INSURANCE COMPANY (2)

12/15/2015 MINUTE ORDER POSTED - Appearance: 12/15/2015 at 8:30AM for CASE MANAGEMENT CONFERENCE  
 JUDGE/PROTEM/REFEREE ROY O CHERNUS , REPORTER MATTER NOT REPORTED , DEP CLK J. LANGFORD  
 COURT CALL APPEARANCE BY RICHARD A. ROBINSON FOR PLAINTIFF  
 COURT CALL APPEARANCE BY CHRISTINE LEE FOR DEFENDANT, SAUSAL  
 COURT CALL APPEARANCE BY DENISE SUTHERLAND FOR DEFENDANT/CROSS-COMPLAINANT, SAUSAL CORPORATION  
 COURT CALL APPEARANCE BY LINDA R. BECK FOR CROSS-DEFENDANT, CITY OF NOVATO  
 HEARING BEFORE TRIAL

DISCUSSION HELD BETWEEN COURT AND COUNSEL  
 PARTIES TO MEET AND CONFER RE: ADR  
 THIS MATTER IS CONTINUED FOR FURTHER CASE MANAGEMENT CONFERENCE TO 02/16/16 @ 8:30AM IN DEPT. B  
 HEARING CONTINUED TO: 02/16/2016 AT: 08:30 AM FOR APPEARANCE TYPE: CMGT IN DEPARTMENT: D06 FROM  
 DATE: 12/15/2015 FROM TIME: 08:30 AM FROM APPEARANCE TYPE: CMGT FROM DEPARTMENT: D06  
 ENTERED BY: J. LANGFORD

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
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12/30/2015 MINUTE ORDER POSTED  
 JUDGE/PROTEM/REFEREE ROY O CHERNUS , REPORTER MATTER NOT REPORTED , DEP CLK J. LANGFORD  
 ATTORNEY DANIEL F. MCLENNON APPEARED FOR DEFENDANT  
 NO APPEARANCE BY OR FOR THE OTHER PARTIES  
 HEARING BEFORE TRIAL  
 EX PARTE MINUTE ORDER  
 CASE FILE NOT IN COURT  
 THIS MATTER COMES BEFORE THE COURT ON DEFENDANT EX PARTE APPLICATION AND APPLICATION FOR AN  
 ORDER SHORTENING TIME TO HEAR SAUSAL CORPORATIONS' MOTION FOR LEAVE TO FILE SECOND AMENDED  
 CROSS-COMPLAINT  
 DISCUSSION HELD BETWEEN COURT AND COUNSEL  
 IT IS ORDERED: DEFENDANT'S EX PARTE APPLICATION IS GRANTED  
 COUNSEL FOR SAUSAL WILL FILE AND MAIL SERVE THE SECOND AMENDED CROSS-COMPLAINT ON OR BEFORE  
 12/31/15  
 ORDER SIGNED IN OPEN COURT AND GIVEN TO COUNSEL FOR FILING IN THE CLERK'S OFFICE  
 FEES PAID IN THE CLERK'S OFFICE  
 ENTERED BY: J. LANGFORD

12/30/2015 IT IS ORDERED: ORDER GRANTING SAUSAL CORPORATION'S NOTICE OF EX PARTE APPLICATION AND  
 APPLICATION FOR AN ORDER SHORTENING TIME TO HEAR SAUSAL CORPORATIONS' MOTION FOR LEAVE TO  
 FILE SECOND AMENDED CROSS-COMPLAINT. JUDGE CHERNUS

12/30/2015 CROSS-COMPLAINT FILED (1)(SECOND AMENDED) FOR DAMAGES AND ADDING SAFECO DOOR & HARDWARE,  
 INC; CALIFORNIA AIR,INC.;DECORATIVE PAVING, INC.;DETAIL CONSTRUCTION & WATERPROOFING,INC;  
 KONE,INC.;M A C PLUMBING; NORTHERN PACIFIC DRYWALL,INC.;SOLANO COUNTY ROOFING,INC.;CRDFS

12/30/2015 CONT. CRDFS STEVEN E. BERLIN, INC.; SUPERIOR GUNITE; AND ROES 1-100, INCLUSIVE.

01/05/2016 SUMMONS ISSUED TO SAUSAL CORPORATION FOR SECOND AMENDED CROSS COMPLAINT AND FILED

01/22/2016 CRDF-CITY OF NOVATO ANSWER TO CRCO SAUSAL CORPORATION'S UNVERIFIED SECOND AMENDED CROSS-  
 COMPLAINT.

01/26/2016 CROSS-DEFENDANT VOLPE COMPANY, INC.'S ANSWER TO CROSS-COMPLAINANT SAUSAL CORPORATION'S  
 SECOND AMENDED CROSS-COMPLAINT.

02/16/2016 MINUTE ORDER POSTED - Appearance: 02/16/2016 at 8:30AM for CASE MANAGEMENT CONFERENCE  
 JUDGE/PROTEM/REFEREE ROY O CHERNUS , REPORTER MATTER NOT REPORTED , DEP CLK J. LANGFORD  
 COURT CALL APPEARANCE BY JAMES K COBB FOR PLAINTIFF, BERLIN  
 COURT CALL APPEARANCE BY RICHARD BOWLES FOR PLAINTIFF, VOLPE  
 COURT CALL APPEARANCE BY CRAIG WALLACE FOR DEFENDANT, SAUSAL  
 COURT CALL APPEARANCE BY ROBERT HAMILTON FOR CROSS-COMPLAINANT, SAUSAL  
 NO APPEARANCE BY OR FOR THE THE OTHER PARTIES  
 HEARING BEFORE TRIAL  
 DISCUSSION HELD BETWEEN COURT AND COUNSEL  
 COUNSEL INFORMS THE COURT, HE NEEDS CARRIER CONSENT TO MEDIATE THIS CASE  
 THIS MATTER IS CONTINUED FOR FURTHER CASE MANAGEMENT CONFERENCE TO 03/16/16 @ 8:30AM IN DEPT. B  
 HEARING CONTINUED TO: 03/16/2016 AT: 08:30 AM FOR APPEARANCE TYPE: CMGT IN DEPARTMENT: D06 FROM  
 DATE: 02/16/2016 FROM TIME: 08:30 AM FROM APPEARANCE TYPE: CMGT FROM DEPARTMENT: D06

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
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REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

ENTERED BY: J. LANGFORD

02/18/2016 CROSS-COMPLAINT FILED (3)BY ATTY OBO CROSS-COMPLAINANT SUPERIOR GUNITE, A CALIFORNIA CORPORATION, AGAINST CROSS-DEFT SAUSAL CORPORATION , A CALIFORNIA CORPORATION.

02/18/2016 ANSWER CRDF, SUPERIOR GUNITE - TO CROSS COMPLAINANT SAUSAL CORPORATION'S SECOND AMENDED CROSS- COMPLAINT

02/18/2016 FILING FEE PROCESSED: CRDF, SUPERIOR GUNITE - 435.00

02/29/2016 PROOF OF SERVICE FILED, AS TO: CRDF, SAUSAL CORPORATION, A CALIFORNIA CORPORATION: CROSS-DEFT SUPERIOR GUNITE'S CROSS-COMPLAINT 2/29/16.

02/29/2016 CROSS-DEFT. SUPERIOR GUNITE'S ANSWER TO SECOND AMENDED CROSS-COMPLAINT OF SAUSAL CORP.

03/04/2016 ANSWER CRDF, KONE, INC.: TO SAUSAL CORPORATION'S SECOND AMENDED CROSS-COMPLAINT.

03/04/2016 FILING FEE PROCESSED: CRDF, KONE, INC. - 435.00

03/04/2016 ANSWER CRDF, STEVEN E. BERLIN, INC.

03/04/2016 JURY FEE DEPOSIT DEFT, SAUSAL CORPORATION - 150.00

03/04/2016 CROSS-COMPLAINT FILED (4) BY ATTY OBO CROSS- COMPLAINANT KONE INC., AGAINST CROSS-DEFENDANTS SAUSAL CORPORATION, LIBERTY MUTUAL INSURNACE COMPANY AND ZOES 1-30.

03/09/2016 FILING FEE PROCESSED: CRDF, STEVEN E. BERLIN, INC. - 435.00

03/10/2016 CROSS-COMPLAINT FILED (7)FILED BY ATTY OBO CROSS-COMPLAINANT SOLANO COUNTY ROOFING,AGAINST CROSS-DEFENDANTS CALIFORNIA AIR, INC., STEVEN E. BERLIN, INC., ALUMAWALL,INC. AND ROES 1 THROUGH 25, INCLUSIVE.

03/10/2016 SUMMONS ISSUED ON CRCO (7) AND FILED

03/10/2016 ANSWER CRDF, SOLANO COUNTY ROOFING, INC.: TO SAUSAL CORPORATION'S SECOND AMENDED CROSS-COMPLAINT.

03/10/2016 FILING FEE PROCESSED: CRDF, SOLANO COUNTY ROOFING, INC. - 435.00

03/14/2016 ANSWER CRDF, SAFECO DOOR & HARDWARE, INC.

03/14/2016 CROSS-COMPLAINT FILED BY ATTY OBO CROSS-COMPLAINANT SAFECO DOOR & HARDWARE DBA AHC GLASS, A CALIFORNIA CORPORATION, AGAINST CROSS-DEFENDANTS SAUSAL CORP, CITY OF NOVATO, LIBERTY MUTUAL INSURANCE COMPANY AND DOES 1 THROUGH 500, INCLUSIVE.

03/14/2016 SUMMONS ISSUED AND FILED ON CROSS-COMPLAINT.

03/15/2016 FILING FEE PROCESSED: CRDF, SAFECO DOOR & HARDWARE, INC. - 435.00

03/15/2016 ANSWER CRDF, DECORATIVE PAVING,INC.

03/15/2016 FILING FEE PROCESSED: CRDF, DECORATIVE PAVING,INC. - 435.00

03/15/2016 CROSS-COMPLAINT FILED OBO CROSS COMPLAINANT, DECORATIVE PAVING, INC. BY CROSS-DEFENDANTS TOES 1-10

03/15/2016 SUMMONS ISSUED SUMMONS FILED OBO CROSS COMPLAINANT, DECORATIVE PAVING, INC. VS. CROSS DEFENDAND TOES 1-10

03/16/2016 MINUTE ORDER POSTED - Appearance: 03/16/2016 at 8:30AM for CASE MANAGEMENT CONFERENCE  
 JUDGE/PROTEM/REFEREE ROY O CHERNUS , REPORTER MATTER NOT REPORTED , DEP CLK J. LANGFORD  
 COURT CALL APPEARANCE BY RICHARD T BOWLES FOR PLAINTIFF  
 COURT CALL APPEARANCE BY SAMIRA F. TORSHIZI FOR DEFENDANT, SUPERIOR GUNITE  
 COURT CALL APPEARANCE BY KEITH P REYEN FOR DEFENDANT, KONE  
 COURT CALL APPEARANCE BY CHRISTINE LEE FOR DEFENDANT, SAUSAL  
 COURT CALL APPEARANCE BY MATTHEW LEE FOR CROSS-DEFENDANT, SOLANO COUNTY ROOFING  
 COURT CALL APPEARANCE BY PETER J. LINN FOR CROSS-DEFENDANT, STEVEN E BERLIN

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

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SAUSAL CORPORATION ( COMPLEX )	DATE OF LAST ACTIVITY:	2/13/2020
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COURT CALL APPEARANCE BY JAMES B GIPLIN FOR CROSS-DEFENDANT, CITY OF NOVATO

COURT CALL APPEARANCE BY PAUL B WALSH FOR CROSS-DEFENDANT, DECORATIVE PAVING, INC

COURT CALL APPEARANCE BY ROBERT P. HAMILTON FOR CROSS-COMPLAINANT, SAUSAL

HEARING BEFORE TRIAL

DISCUSSION HELD BETWEEN COURT AND COUNSEL

COURT STATES, CASE IS NOT AT ISSUE

THIS MATTER IS CONTINUED FOR FURTHER CASE MANAGEMENT CONFERENCE AND DISCUSSION RE: ADR TO 05/18/16 @ 8:30AM IN DEPT. B

HEARING CONTINUED TO: 05/18/2016 AT: 08:30 AM FOR APPEARANCE TYPE: CMGT IN DEPARTMENT: D06 FROM DATE: 03/16/2016 FROM TIME: 08:30 AM FROM APPEARANCE TYPE: CMGT FROM DEPARTMENT: D06

ROBERT HAMILTON MUST PROVIDE NOTICE OF THIS ORDER TO OTHER PARTIES

ENTERED BY: J. LANGFORD

- 03/25/2016 NOTICE OF LIEN: BEVERLY STEINER HEREBY IS ENTITLED TO AND HEREBY CLAIMS A LIEN OF \$150,000 ON ANY SETTLEMENT, JUDGMENT OR OTHER RECOVERY OBTAINED BY VOLPE COMPANY, INC. IN THE ABOVE CAPTIONED MATTER. NOTICE OF ANY SETTLEMENT, JUDGMENT OR DISMISSAL IS TO BE GIVEN TO BEVERLY STEINER, P.O. BOX 4559, EL DORADO HILLS, CA 95762 BY ATTORNEYS FOR PLAINTIFF AND CROSS-COMPLAINANT VOLPE COMPANY, INC.
- 04/05/2016 JURY FEE DEPOSIT CRCO, SOLANO COUNTY ROOFING - 150.00
- 04/07/2016 ANSWER CRDF, SAUSAL CORPORATION, A CALIFORNIA CORPORATION
- 04/08/2016 ANSWER CRDF, YVONNE HOLMES
- 04/08/2016 ANSWER CRDF, NORTHERN PACIFIC DRYWALL, INC.
- 04/08/2016 FILING FEE PROCESSED: CRDF, NORTHERN PACIFIC DRYWALL, INC. - 435.00
- 04/08/2016 ANSWER CRDF, DETAIL CONSTRUCTION & WATERPROOFING, INC.
- 04/08/2016 FILING FEE PROCESSED: CRDF, DETAIL CONSTRUCTION & WATERPROOFING, INC. - 435.00
- 04/19/2016 PROOF OF SERVICE FILED, AS TO: CRDF, ALUMAWALL, INC. BY PERSONAL SERVICE ON 3/25/2016.
- 04/19/2016 ANSWER CRDF, CITY OF NOVATO, A PUBLIC ENTITY
- 04/25/2016 AMENDMENT TO COMPLAINT FILED, AS TO: (1) ROE AMENDMENT NO. 1 TO THE SECOND AMENDED CROSS COMPLAINT OF SAUSAL CORPORATION NAMING ROE 1 - G.D. NIELSON CONSTRUCTION, INC. & ROE 2 LANDAVAZO BROTHERS, INC.
- 04/29/2016 ANSWER CRDF, SAUSAL CORPORATION, A PURPORTED CALIFORNIA CORP
- 04/29/2016 ANSWER CRDF, LIBERTY MUTUAL INSURANCE COMPANY
- 05/05/2016 FILING FEE PROCESSED: CRDF, ALUMAWALL, INC. - 435.00
- 05/05/2016 PARTIAL DISMISSAL AS TO: CRDF, KONE, INC., WITHOUT PREJUDICE
- 05/05/2016 PARTIAL DISMISSAL AS TO: CRDF, M A C PLUMBING, WITHOUT PREJUDICE
- 05/09/2016 NOTICE OF CHANGE OF HANDLING ATTORNEYS WITHIN FIRM BY ROBERT P. HAMILTON AND JAMES L. MCCORMICK OF GOODMAN NEUMAN & HAMILTON LLP ON BEHALF OF DEFENDANT, CROSS-COMPLAINANT AND CROSS-DEFENDANT SAUSAL CORPORATION
- 05/09/2016 PARTIAL DISMISSAL AS TO: CRDF, KONE INC., WITHOUT PREJUDICE, EACH PARTY TO BEAR ITS OWN FEES AND COSTS
- 05/09/2016 NOTICE OF ENTRY OF DISMISSAL AND PROFF OF SERVICE RE: CONSTRUCTION DEFECT BY ATTORNEY ROBERT HAMILTON ON BEHALF OF DEFENDANT SAUSAL CORPROATION
- 05/13/2016 PROOF OF SERVICE OF SUMMONS AS TO X-DEFT G,D, NIELSON CONSTRUCTION, INC. BY PERSONAL SERVICE ON 5/3/16

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

05/13/2016 PROOF OF SERVICE OF SUMMONS AS TO X-DEFT SUPERIOR GUNITE, BY PERSONAL SERVICE ON 2/1/16

05/13/2016 PROOF OF SERVICE OF SUMMONS AS TO X-DEFT YVONNE MILLICH , BY PERSONAL SERVICE ON 2/3/16

05/13/2016 PROOF OF SERVICE OF SUMMONS AS TO X-DEFT DECORATIVE PAVING, INC. , BY SUBSTITUTED SERVICE ON 2/5/16, LEFT THE DOCUMENTS WITH CURT MARDOCK - PERSON IN CHARGE OF OFFICE BY MAIL ON 2/10/16

05/13/2016 PROOF OF SERVICE OF SUMMONS AS TO X-DEFT CALIFORNIA AIR, INC. , BY SUBSTITUTED SERVICE ON 2/11/16, LEFT THE DOCUMENTS WITH RONALD AUGUST - CO-OCCUPANT, BY MAIL ON 2/12/16

05/13/2016 PROOF OF SERVICE OF SUMMONS AS TO X-DEFT NORTHERN PACIFIC DRYWALL, INC., LEFT THE DOCUMENTS WITH VICKI SPANN, EMPLOYEE- PERSON IN CHARGE OF OFFICE, BY MAIL ON 2/11/16

05/13/2016 PROOF OF SERVICE OF SUMMONS AS TO X-DEFT SAFECO DOOR & HARDWARE, INC. DBA A H C GLASS, BY SUBSTITUTED SERVICE ON 2/5/16, LEFT THE DOCUMENTS WITH SINA AHMADI - PERSON IN CHARGE OF OFFICE, BY MAIL ON 2/11/16

05/13/2016 PROOF OF SERVICE ON SUMMONS AS TO X-DEFT SOLANO COUNTY ROOFING,INC., BY SUBSTITUTED SERVICE ON 2/31/6, LEFT THE DOCUMENTS WITH CARMEN, BY MAIL ON 2/11/16

05/17/2016 NOTICE OF ENTRY OF DISMISSAL AND PROOF OF SERVICE REGARDING CONSTRUCTION DEFECT BY ATTORNEY BRET LANDESS ON BEHALF OF CROSS-COMPLAINANT KONE, INC., DISMISSAL DATED 5/9/16

05/17/2016 ANSWER CRDF, CALIFORNIA AIR, INC. (1)

05/17/2016 FILING FEE PROCESSED: CRDF, CALIFORNIA AIR, INC. - 435.00

05/18/2016 MINUTE ORDER POSTED - Appearance: 05/18/2016 at 8:30AM for CASE MANAGEMENT CONFERENCE  
JUDGE/PROTEM/REFEREE ROY O CHERNUS , REPORTER MATTER NOT REPORTED , DEP CLK J. LANGFORD  
COURT CALL APPEARANCE BY RICHARD T. BOWLES FOR PLAINTIFF, VOLPE COMPANY  
COURT CALL APPEARANCE BY CRAIG WALLACE FOR DEFENDANT, SAUSAL  
ATTORNEY JIM MCCORMICK APPEARED FOR DEFENDANT, SAUSAL  
COURT CALL APPEARANCE BY SAMIRA F. TORSHIZI FOR DEFENDANT, SUPERIOR GUNITE  
COURT CALL APPEARANCE BY MATTHEW B LEE FOR CROSS-DEFENDANT, SOLANO COUNTY ROOFING  
COURT CALL APPEARANCE BY JAMES B GILPIN FOR CROSS-DEFENDANT, CITY OF NOVATO  
COURT CALL APPEARANCE BY WILLIAM M KAUFMAN FOR CROSS-COMPLAINANT(S), SAFECO DOOR & HARDWARE DBA AHC GLASS  
COURT CALL APPEARANCE BY PAUL B WALSH FOR CROSS-DEFENDANT(S), DECORATIVE PAVING, INC.  
COURT CALL APPEARANCE BY LYDIA V. KO FOR CROSS-DEFENDANT(S), NORTHERN PACIFIC DRYWALL, INC./DETAIL CORPORATION  
HEARING BEFORE TRIAL  
DISCUSSION HELD BETWEEN COURT AND COUNSEL  
PARTIES TO MEET AND CONFER RE: SPECAIL MASTER'S AND CONSOLIDATION  
THIS MATTER IS CONTINUED FOR FURTHER CASE MANAGEMENT CONFERENCE/TRIAL SETTING TO 08/18/16 @ 8:30AM IN DEPT. B  
HEARING CONTINUED TO: 08/18/2016 AT: 08:30 AM FOR APPEARANCE TYPE: CMGT IN DEPARTMENT: D06 FROM DATE: 05/18/2016 FROM TIME: 08:30 AM FROM APPEARANCE TYPE: CMGT FROM DEPARTMENT: D06  
ENTERED BY: J. LANGFORD

06/06/2016 CROSS-COMPLAINT FILED (8) BY ATTORNEY ELIZABETH A. SKANE ON BEHALF OF CROSS-COMPLAINANT CALIFORNIA AIR, INC., AGAINST ZOES 1 THROUGH 50, INCLUSIVE

07/13/2016 HEARING CONFIRMED FOR: 08/24/2016 AT: 01:30 PM FOR APPEARANCE TYPE: LMCV IN DEPARTMENT: D06

07/15/2016 MINUTE ORDER POSTED  
JUDGE/PROTEM/REFEREE ROY O CHERNUS , REPORTER NOT REPORTED , DEP CLK C. ASLESON



**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

ATTORNEY APPEARED FOR

ATTORNEY JAMES MCCORMICK APPEARED FOR DEFENDANT/CROSS-COMPLAINT/CROSS-DEFENDANT SAUSAL CORPORTATION

ATTORNEY MATTHEW LEE APPEARED FOR CROSS-COMPLAINT/CROSS-DEFENDANT SOLOANO COUNTY ROOFING

ATTORNEY JOHN C HEDGER APPEARED FOR CROSS-COMPLAINANT/CROSS-DEFENDANT CALIFORNIA AIR, INC.

COURT CALL APPEARANCE BY SAMIRA TORSHIZI FOR DEFENDANT SUPERIOR GUNITE

COURT CALL APPEARANCE BY CRAIG WALLACE FOR DEFENDANT SAUSAL CORPORTATION

COURT CALL APPEARANCE BY WHITNEY BLACKHURST FOR CROSS-DEFENDANT CITY OF NOVATO

HEARING BEFORE TRIAL

CASE FILE NOT IN COURT

EX PARTE FEE PAID IN THE CIVIL DIVISION

EX PARTE MINUTE ORDER APPLICATION TO DESIGNATE ACTION AS COMPLEX AND SET COMPLEX CASE MANAGEMENT CONFERENCE ON SHORTENED TIME

MOTION(S) HEARD AND ARGUED.

MOTION DENIED COURT FINDS NO EMERGENCY TO GRANT THE EX PARTE.

THE COURT EXPECTS TO DEEM THE CASE COMPLEX AT THE NEXT CASE MANAGEMENT CONFERENCE HEARING 08/18/2016 AND WILL ADDRESS THE ISSUE AT THAT TIME.

ENTERED BY: C. ASLESON

08/01/2016

OPPOSITION/RESPONSE TO MOTION FILED BY ATTY OBO PLTF, TO CONSOLIDATE. (8/24/16)

08/12/2016

PARTIAL DISMISSAL AS TO: CRDF, G. D. NIELSON CONSTRUCTION, INC., WITHOUT PREJUDICE

08/15/2016

JURY FEE DEPOSIT CRCO, SUPERIOR GUNITE, A CALIFORNIA CORPORATION - 150.00

08/18/2016

MINUTE ORDER POSTED - Appearance: 08/18/2016 at 8:30AM for CASE MANAGEMENT CONFERENCE

JUDGE/PROTEM/REFEREE ROY O. CHERNUS , REPORTER NOT REPORTED , DEP CLK S. DIENER

COURT CALL APPEARANCE BY SAMIRA F. TORSHIZI FOR DEFENDANTS SUPERIOR GUNITE

COURT CALL APPEARANCE BY CHRISTINE LEE FOR DEFENDANT SAUSAI

COURT CALL APPEARANCE BY MATTHEW B. LEE FOR CROSS-DEFENDANTS SOLANO COUNTY

COURT CALL APPEARANCE BY TERRANCE BRACH FOR CROSS-DEFENDANTS STEVEN E. BERLIN

COURT CALL APPEARANCE BY JAMES B. GILPIN FOR CROSS-DEFENDANT CITY OF NOVATO

COURT CALL APPEARANCE BY WILLIAM KAUFMAN FOR CROSS-COMPLAINANT SAFECO DOOR & HARDWARE DBA AHC GLASS

COURT CALL APPEARANCE BY PAUL B. WALSH FOR CROSS-DEFENDANT DECORATIVE PAVING, INC.

COURT CALL APPEARANCE BY JERRY CAROL FOR CROSS-DEFENDANT ALUMAWALL

COURT CALL APPEARANCE BY RICHARD T. BOWLES FOR PLAINTIFF VOLPE

COURT CALL APPEARANCE BY LYDIA V. KO FOR CROSS-DEFENDANT NORTHERN PACIFIC DRYWALL AND DETAIL CONSTRUCTION.

ATTORNEY JAMES MCCORMICK APPEARED FOR DEFENDANT SAUSAL

ATTORNEY JOHN HEDGER APPEARED FOR DEFENDANT CALIFORNIA AIR

COUNSELOR MCCORMICK REQUESTS THIS CASE BE DECLARED COMPLEX AND REMOVE IT FROM FAST TRACK.

ONE OBJECTION - MATTER IS DISCUSSED.

COURT DECLARES THIS A COMPLEX CASE

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC.	DATE FILED:	6/30/2014
PLAINTIFF(S)	CASE TYPE:	COMPLAINT
VS.	CASE SUBTYPE:	BREACH OF CONTRACT
SAUSAL CORPORATION ( COMPLEX )	DATE OF LAST ACTIVITY:	2/13/2020
DEFENDANT(S)	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

IT IS ORDERED:

COURT REFERS THIS MATTER TO THE DISCOVERY FACILITATOR PROGRAM.

THIS MATTER CONTINUED TO 10/20/16 FOR STATUS OF CONSOLIDATION MOTION.

HEARING CONTINUED TO: 10/20/2016 AT: 08:30 AM FOR APPEARANCE TYPE: CMGT IN DEPARTMENT: D06 FROM DATE: 08/18/2016 FROM TIME: 08:30 AM FROM APPEARANCE TYPE: CMGT FROM DEPARTMENT: D06

ENTERED BY: S.D.

08/23/2016

AMENDED ANSWER OF YVONNE KATHLEEN HOLMES DBA DETAIL CONSTRUCTION PREVIOUSLY INCORRECTLY APPEARING AS DETAIL CONSTRUCTION & WATERPROOFING, INC. TO SECOND AMENDED COMPLAINT (1) OF SAUSAL CORPORATION

08/24/2016

MINUTE ORDER POSTED - Appearance: 08/24/2016 at 1:30PM for MOTION TO CONSOLIDATE JUDGE/PROTEM/REFEREE ROY O CHERNUS , REPORTER NOT REPORTED , DEP CLK C. ASLESON  
 NO APPEARANCE BY OR FOR THE PLAINTIFF  
 NO APPEARANCE BY OR FOR THE DEFENDANTS  
 COURT CALL APPEARANCE BY JAMES GILPIN FOR CROSS-DEFENDANT CITY OF NOVATO  
 HEARING BEFORE TRIAL  
 MATTER ON CALENDAR FOR ARGUMENT ON THE TENTATIVE RULING.  
 NO ARGUMENT MADE.

THE MATTER IS NOT HEARD OR REPORTED. THE TENTATIVE RULING IS FINAL.

IT IS ORDERED:

RULING:

DEFENDANT/CROSS-COMPLAINANT SAUSAL CORP.'S MOTION TO CONSOLIDATE THIS ACTION VOLPE COPMPANY, INC. V. SAUSAL CORP., ET AL. (CASE NO. 1402511), WITH THE RELATED ACTION STEVEN BERLIN, INC. V. SAUSAL CORP., ET AL. (CASE NO. 1502674), FOR ALL THE PURPOSES IS GRANTED.

CONSOLIDATION IS PROPER WHERE SEPARATE LAWSUITS RAISE COMMON QUESTIONS OF LAW OR FACT AND ARE PENDING IN THE SAME COURT. (CODE CIV.PROC. § 1048.) THE PURPOSE OF CONSOLIDATION IS TO: (1) AVOID UNNECESSARY DUPLICATION OF EVIDENCE AND PROCEDURES; AND (2) TO AVOID THE SUBSTAINAL DANGER OF INCONSISTENT ADJUDICATIONS BEFORE DIFFERENT TRIBUNALS. (WEIL & BROWN, CAL. PRACTICE GUIDE, CIVIL PROC. BEFORE TRIAL (TRG 2016) § 12:340, P. 12(1)-61.)

IN THE INSTANT VOLPE ACTION FOR NON-PAYMENT OF MONIES OWED UNDER ITS SUBCONTRACT WITH SAUSAL, DEFENDANT SAUSAL HAS FILED A CROSS-COMPLAINANT AGAINST THE CITY OF NOVATO AND ALL 11 IF ITS SUBCONTRACTORS ON THE PUBLIC WORKS PROJECT, INCLUDING VOLPE AND STEVE BERLIN, INC., ALLEGING: BREACH OF THE SUBCONTRACTS DUE TO INCOMPETENT WORKMANSHIP; CONTRACTUAL AND EQUITABLE INDEMNITY FOR ANY LIABILITY AND DAMAGES SAUSAL INCURS TO VOLPE AND THE CITY BY REASON OF THE WORK PERFORMED BY SUBCONTRACTORS ON THE PROJECT; AND BREACH OF SUBCONTRACTS AND EQUITABLE CONTRIBUTION BASED ON SUBCONTRACTORS' FAILURE TO DEFEND AND INDEMNIFY SAUSAL AGAINST THE CITY'S CLAIMS ARISING OUT OF THE WORK PERFORMED BY THE SUBCONTRACTORS IN THIS PROJECT.

IN THAT ACTION, THE CITY OF NOVATO AND SIX SUBCONTRACTORS HAVE ALSO FILED THEIR OWN CROSS-COMPLAINANTS AGAINST SAUSAL AND /OR OTHER SUBCONTRACTOS ALLEGING BREACH OF THE SUBCONTRACTS AND INDEMNITY/CONTRIBUTION FOR LIABILITY AND DAMAGES THEY MAY SUFFER DUE TO THE CROSS-DEFENDANTS' NEGLIGENT CONDUCT.

THIS COURT HAS DECLARED THE VOLPE ACTION A "COMPLEX CASE". (CAL RULES OF THE COURT, RULE 3.400.)

IN ITS SEPERATE ACTION, CROSS-DEFENDANT BERLIN, A MASONARY CONTRACTOR, IS THE PLAINTIFF IN CASE NO. 1502674, AND IT HAS SUED SAUSAL AND THE CITY FOR PAYMENT OF \$69,400.00 FOR WORK MASONRY AND STONE VENEER WORK CLAIMED TO BE OWED UNDER THE SUBCONTRACT. BERLIN ALSO SEEKS TO RECOVER ON THE PAYMENT BOND ISSUED BY SURETY LIBERTY MUTUAL INS.CO.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC.	DATE FILED:	6/30/2014
PLAINTIFF(S)	CASE TYPE:	COMPLAINT
VS.	CASE SUBTYPE:	BREACH OF CONTRACT
SAUSAL CORPORATION ( COMPLEX )	DATE OF LAST ACTIVITY:	2/13/2020
DEFENDANT(S)	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

DEFENDANT SAUSAL HAS FILED A CROSS-COMPLAINANT AGAINST SAUSAL ALLEGING THE SAME CLAIMS AS IT DID IN THE VOGEL ACTION: BREACH OF THE PRIME CONTRACT; PROMPT PAYMENT PENALTIES; AND BREACH OF IMPLIED WARRANTY OF CORRECTNESS OF PLANS AND SPECIFICATION.

THE ISSUES AND FACTS SURROUNDING BERLIN'S AFFIRMATIVE CLAIMS, AS WELL AS THOSE OF THE DEFENDANTS/CROSS-COMPLAINANTS SAUSAL AND THE CITY, INVOLVE MANY OF THE SAME FACTS AND ISSUES RAISED IN THE VOLPE ACTION IN WHICH BERLIN IS ALREADY A CROSS-DEFENDANT; E.G. , EXISTENCE OF THE CONSTRUCTION DEFECT, OFFSETS FOR MONIES OWED, LIABILITY OF SURETY ON THE PAYMENT BOND, WILL ALL BE COMPLETELY RESOLVED THERE.

CONSOLIDATION OF THESE TWO ACTIONS WILL AVOID UNNECESSARY DUPLICATION OF WITNESS TESTIMONY AND REDUCE COSTS, SAVE TIME, ADN AVOID INCONSISTENT FINDINGS AND JUDGMENTS.

FURTHER, SINCE THE VOLPE ACTION HAS BEEN DESIGNATED A "COMPLEX CASE", CONSOLIDATING THE BERLIN ACTION UNDER THE COURT'S BROAD "COMPLEX CASE" MANAGAMENT AUTHORITY WILL ALLOW THE COURT TO COORDINATE ALL THE PRE-TRIAL AND TRIAL ACTIVITIES REQUIRED BY THE MANY SEPARATELY REPRESENTED PARTIES UNDER ONE, CLOSELY MONITORED UMBRELLA.

FOR THESE REASONS THE MOTION TO CONSOLIDATE CASE NO. 1502674 WITH CASE NO. 1402511 FOR ALL PURPOSES IS GRANTED.

- 08/26/2016 IT IS ORDERED: STIPULATION AND ORDER TO AMEND PLEADINGS AND APPEARANCE OF DETAIL CONSTRUCTION & WATERPROOFING, INC. TO YVONNE KATHLEEN HOLMES DBA DETAIL CONSTRUCTION (ERRONEOUSLY SUED HEREIN AS DETAIL CONSTRUCTION & WATERPROOFING, INC.) JUDGE ROY O CHERNUS
- 09/06/2016 HEARING CONFIRMED FOR: 10/19/2016 AT: 08:30 AM FOR APPEARANCE TYPE: LMCV IN DEPARTMENT: D06
- 09/07/2016 IT IS ORDERED: COMPLEX CASE MANAGEMENT ORDER NO. 1 JUDGE ROY O. CHERNUS (COPIES LEFT IN WILL CALL UNDER G)
- 09/07/2016 IT IS ORDERED: COMPLEX CASE MANAGEMENT ORDER NO. 2 JUDGE ROY O. CHERNUS (COPIES LEFT IN WILL CALL UNDER G)
- 09/13/2016 COPIES OF ORDERS LEFT IN WILL CALL UNDER G
- 09/13/2016 IT IS ORDERED: THIS COURT HAS DECLARED THE VOLPE ACTION A "COMPLEX CASE" (CAL RULES OF THE COURT, RULE 3.400.). CASE CIV-1402511 IS ORDERED CONSOLIDATED FOR ALL PURPOSES WITH CIV-1502674. CASE CIV-1402511 IS LEAD CASE. HONORABLE ROY O. CHERNUS, JUDGE OF THE MARIN COUNTY SUPERIOR COURT \*\*\*\*SIGNED AND FILED SEPTEMBER 13, 2016\*\*\*\*
- 09/14/2016 COMPLEX ORDER PENDING JUDICIAL ORDER
- 09/14/2016 COMPLEX ORDER PENDING JUDICIAL ORDER
- 09/14/2016 CASE: CIV 1502674 CONSOLIDATED TO CONTROLLING CASE: CIV 1402511
- 09/14/2016 NOTICE OF APPOINTMENT OF DISCOVERY FACILITATOR BRENDAN J. FOGARTY
- 09/23/2016 NOTICE OF ENTRY OF COMPLEX CASE MANAGEMENT ORDERS (9/7/16)
- 09/29/2016 NOTICE OF CHANGE OF HANDLING ATTORNEYS FOR CROSS-DEFENDANT CITY OF NOVATO.
- 10/05/2016 OPPOSITION/RESPONSE TO MOTION FILED BY ATTYS OBO DEFTS, TO BIFURCATE. (10/19/16)
- 10/07/2016 NOTICE OF ASSOCIATION OF COUNSEL BY LAUREN O'BRIEN AS CO-COUNSEL ASSOCIATES WITH GERALD CARROLL ON BEHALF OF CROSS DEFENDANT ALUMAWALL, INC.
- 10/12/2016 ANSWER (7) CRDF, STEVEN E. BERLIN, INC., A CALIFORNIA CORPORATION
- 10/19/2016 MINUTE ORDER POSTED - Appearance: 10/19/2016 at 1:30PM for MOTION  
JUDGE/PROTEM/REFEREE ROY O CHERNUS , REPORTER CHRIS GILSON , DEP CLK C. ASLESON  
ATTORNEY RICHARD BOWLES APPEARED FOR PLAINTIFF VOLPE COMPANY, INC.  
ATTORNEY JAMES MCCORICK AND CRAIG WALLACE (COURTCALL) APPEARED FOR DEFENDANT SAUSAL CORPORATION  
COURT CALL APPEARANCE BY JAMES GILPIN FOR DEFENDANT CITY OF NOVATO  
COURT CALL APPEARANCE BY DARLENE MCIVER FOR CROSS-DEFENDANT SOLANO COUNTY ROOFING.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

HEARING BEFORE TRIAL

MATTER ON CALENDAR FOR ARGUMENT ON THE TENTATIVE RULING.

ARGUMENT MADE.

THE TENTATIVE RULING IS AFFIRMED AND MADE FINAL.

IT IS ORDERED:

RULING:

PLAINTIFF/CROSS-DEFENDANT VOLPE COMPANY, INC.'S MOTION TO BIFURCATE/SEVER ITS ACTION FOR NON-PAYMENT UNDER A SUBCONTRACT AGAINST DEFENDANT/CROSS-COMPLAINANT SAUSAL CORP., FROM THE TRIAL OF THIS CONSOLIDATED COMPLEX ACTION, AND TO BE TRIED TO JUDGMENT BY A SEPARATE JURY, IS DENIED WITHOUT PREJUDICE. (CODE CIV. PROC. § 1048(B).)

PLAINTIFF'S CLAIM FOR PAYMENT UNDER ITS SUBCONTRACT WITH SAUSAL IS INTERTWINED WITH SAUSAL'S CROSS-COMPLAINT AGAINST THE CITY OF NOVATO FOR REJECTION OF ITS DEMANDS FOR PAYMENT FOR ADDITIONAL WORK PERFORMED BY VOLPE PURSUANT TO CHANGE ORDERS, ETC. RESOLUTION OF THIS CLAIM DEPENDS ON WHETHER VOLPE PERFORMED WORK AS AUTHORIZED BY THE PRIME CONTRACT, WHICH CONTRACT IS UNINCORPORATED INTO VOLPE'S SUBCONTRACT, AND THAT DETERMINATION WILL BE BASED ON EVIDENCE PRESENTED BY NOVATO, VOLPE AND SAUSAL.

ALSO, ABSENT COMPLETION OF DISCOVERY IT IS TOO EARLY TO TELL IF NOVATO IS CLAIMING ANY DEFECTS FROM VOLPE'S WORK AS PART OF ITS CLAIM OF DEFECTIVE WORKMANSHIP BY THE SUBCONTRACTORS. UNTIL THAT INFORMATION IS PRODUCED, IT CANNOT BE DETERMINED IF SAUSAL'S CLAIMS FOR INDEMNITY/CONTRIBUTION ARISING OUT OF NOVATO'S CLAIMS FOR VOLPE'S WORK, IF ANY, ARE VIABLE.

ON THIS RECORD, BIFURCATION/SEVERANCE WOULD NOT RESULT IN THE EFFICIENT USE OF JUDICIAL RESOURCES OR LEAD TO THE QUICK RESOLUTION OF A CLAIM OR ISSUE THAT DOES NOT REQUIRE OVERLAPPING AND EXTENSIVE DISCOVERY WITH THE OTHER ISSUES OR CLAIMS. (CODE CIV. PROC. § 1048(B).)

THE CASE MANAGEMENT CONFERENCE SET 10/20/2016 AT 8:30AM TO BE CONTINUED TO 12/19/2016 AT 8:30AM IN DEPARTMENT B.

APPEARANCE MOVED TO: 12/19/2016 AT: 08:30 AM FOR APPEARANCE TYPE: CMGT IN DEPARTMENT: D06 MOVE REASON: COURT 10/19/16 FROM DATE: 10/20/2016 FROM TIME: 08:30 AM FROM APPEARANCE TYPE: CMGT FROM DEPARTMENT: D06

ENTERED BY: C. ASLESON

11/16/2016 SUBSTITUTION OF ATTORNEY FILED, AS TO: ATTORNEY D.CREIGHTON SEBRA FOR CROSS- DEFT / CROSS COMPLAINANT SOLANO COUNTY ROOFING

12/19/2016 MINUTE ORDER POSTED - Appearance: 12/19/2016 at 8:30AM for CASE MANAGEMENT CONFERENCE JUDGE/PROTEM/REFEREE ROY O CHERNUS , REPORTER NOT REPORTED , DEP CLK C. ASLESON  
COURT CALL APPEARANCE BY RICHARD BOWLES FOR PLAINTIFF VOLPE COMPANY  
ATTORNEY JAMES MCCORMICK APPEARED FOR DEFENDANT SAUSAL CORPORATION  
COURT CALL APPEARANCE BY CREIGHTON SEBRA FOR DEFENDANT/CROSS-COMPLAINANT SOLANO COUNTY ROOFING  
COURT CALL APPEARANCE BY SAMIRA TORSHIZI FOR CROSS-COMPLAINANT SUPERIOR GUNITE  
COURT CALL APPEARANCE BY LAUREN O'BRIEN FOR CROSS-DEFENDANT ALUMAWALL, INC.  
COURT CALL APPEARANCE BY HANNAH SCHATIGER FOR DEFENDANT CITY OF NOVATO  
COURT CALL APPEARANCE BY WILLIAM KAUFMAN FOR CROSS-COMPLAINANT SAFECO DOOR & HARDWARE  
COURT CALL APPEARANCE BY LYDIA KO FOR CROSS-DEFENDANT NORTHERN PACIFIC DRYWALL AND DETAIL CONSTRUCTION  
COURT CALL APPEARANCE BY PAUL B WALSH FOR CROSS-DEFENDANT DECORATIVE PAVING  
HEARING BEFORE TRIAL

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

THIS MATTER COMES BEFORE THE COURT FOR A CASE MANAGEMENT CONFERENCE RE: TRIAL SETTING  
IT IS ORDERED:

FUTURE CASE MANAGEMENT CONFERENCE 02/27/2017 AT 8:30 A.M. IN DEPARTMENT B.

HEARING CONTINUED TO: 02/27/2017 AT: 08:30 AM FOR APPEARANCE TYPE: CMGT IN DEPARTMENT: D06 FROM DATE: 12/19/2016 FROM TIME: 08:30 AM FROM APPEARANCE TYPE: CMGT FROM DEPARTMENT: D06

ENTERED BY: C. ASLESON

- 01/19/2017 SAFECO DOOR & HARDWARE DBA AHC GLASS' NOTICE OF ASSOCIATION OF COUNSEL BY PATRICIA WALSH HEREBY ASSOCIATES WITH JOSEPH FENECH
- 02/02/2017 AMENDMENT TO COMPLAINT FILED, AS TO: (1) TRUE NAME OF CROSS-DEFENDANT ALUMAWALL, INC. (ROE 3) BY ATTORNEY JAMES MCCORMICK ON BEHALF OF CROSS-COMPLAINANT SAUSAL CORPORATION TO SECOND AMENDED CROSS-COMPLAINT
- 02/10/2017 JURY FEE DEPOSIT PLTF, VOLPE COMPANY, INC., A CALIFORNIA CORPORATION - 150.00
- 02/27/2017 MINUTE ORDER POSTED - Appearance: 02/27/2017 at 8:30AM for CASE MANAGEMENT CONFERENCE  
JUDGE/PROTEM/REFEREE ROY O. CHERNUS , REPORTER NOT REPORTED , DEP CLK J. DALE  
COURT CALL APPEARANCE BY RICHARD T. BOWLES FOR PLAINTIFF/CROSS-DEFENDANT VOLPE COMPANY, INC  
COURT CALL APPEARANCE BY TERENCE BRACH FOR PLAINTIFF/CROSS-DEFENDANT STEVEN E. BERLIN, INC.  
ATTORNEY JAMES MCCORMICK APPEARED FOR DEFENDANT/CROSS-COMPLAINANT/CROSS-DEFENDANT SAUSAL CORPORATION, AND SPECIALLY FOR CROSS-COMPLAINANT CALIFORNIA AIR, INC  
COURT CALL APPEARANCE BY SAMIRA F. TORSHIZI FOR CROSS-COMPLAINANT SUPERIOR GUNITE  
COURT CALL APPEARANCE BY LAUREN O'BRIEN FOR CROSS-DEFENDANT ALUMAWALL, INC  
COURT CALL APPEARANCE BY HANNA SCHATIGER FOR DEFENDANT/CROSS-DEFENDANT CITY OF NOVATO  
COURT CALL APPEARANCE BY JOSEPH M. FRENCH FOR CROSS-COMPLAINANT/CROSS-DEFENDANT SAFECO DOOR & HARDWARE, INC.  
COURT CALL APPEARANCE BY JULIET LOMPA FOR CROSS-DEFENDANT NORTHERN PACIFIC DRYWALL, INC.  
COURT CALL APPEARANCE BY PAUL B. WALSH FOR CROSS-COMPLAINANT/CROSS-DEFENDANT DECORATIVE PAVING, INC.  
HEARING BEFORE TRIAL  
THIS MATTER COMES BEFORE THE COURT FOR CASE MANAGEMENT CONFERENCE ON TRIAL SETTING  
COUNSEL MCCORMICK REPORTS MEDIATION HAS BEEN SET WITH ROBERT BELLAGAMBA FOR 08/08/2017, AND REQUESTS MATTER BE PUT OVER 90 DAYS  
COUNSEL BOWLES REQUESTS THE DISCOVERY STAY BY LIFTED  
THE COURT MAKES THE FOLLOWING FINDINGS AND ORDERS:  
MOTION DENIED WITHOUT PREJUDICE - REQUEST TO LIFT DISCOVERY STAY. THE COURT WILL REVISIT THE MATTER AT THE NEXT CASE MANAGEMENT CONFERENCE.  
MATTER CONTINUED TO 06/05/2017 AT 9:00 AM IN DEPARTMENT B FOR CASE MANAGEMENT CONFERENCE AND TRIAL SETTING  
HEARING CONTINUED TO: 06/05/2017 AT: 09:00 AM FOR APPEARANCE TYPE: CMGT IN DEPARTMENT: D06 FROM DATE: 02/27/2017 FROM TIME: 08:30 AM FROM APPEARANCE TYPE: CMGT FROM DEPARTMENT: D06  
ENTERED BY: J. DALE
- 02/28/2017 ANSWER CRDF, ALUMAWALL, INC.
- 06/02/2017 ANSWER CRDF, LANDAVAZO BROTHERS, INC. TO SECOND AMENDED CROSS-COMPLAINT OF SAUSAL CORPORATION (1)
- 06/05/2017 MINUTE ORDER POSTED - Appearance: 06/05/2017 at 9:00AM for CASE MANAGEMENT CONFERENCE

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

JUDGE/PROTEM/REFEREE ROY O CHERNUS , REPORTER NOT REPORTED , DEP CLK C. ASLESON  
 COURT CALL APPEARANCE BY RICHARD BOWLES FOR THE PLAINTIFF VOLPE COMPANY  
 COURT CALL APPEARANCE BY HANNAH SCHATIGER FOR THE DEFENDANT CITY OF NOVATO  
 COURT CALL APPEARANCE BY JAMES MCCORMICK FOR THE DEFENDANT SAUSAL CORPORATION  
 COURT CALL APPEARANCE BY JENNIFER LETULLE FOR THE CROSS-COMPLAINANT CALIFORNIA AIR, INC.  
 COURT CALL APPEARANCE BY CRAIG WALLACE FOR THE DEFENDANT SAUSAL CORPORATION  
 COURT CALL APPEARANCE BY HOSEPH M. FENECH FOR THE CROSS-COMPLAINANT SAFECO DOOR &  
 HARDWARE  
 COURT CALL APPEARANCE BY D. CREIGHTON SEBRA FOR THE CROSS-COMPLAINT SOLANO COUNTY ROOFING  
 COURT CALL APPEARANCE BY ROBERT NIDA FOR THE CROSS-COMPLAINANT SUPERIOR GUNITE  
 COURT CALL APPEARANCE BY LAUREN O'BRIEN FOR THE CROSS-DEFENDANT ALUMAWALL, INC.  
 COURT CALL APPEARANCE BY MICHAEL J. ESTEP FOR THE CROSS-DEFENDANT LANDAVAZO BROTHERS, INC.  
 COURT CALL APPEARANCE BY DREW WILLIAMS FOR THE CROSS-DEFENDANT DREW WILLIAMS  
 COURT CALL APPEARANCE BY LYDIA KO FOR THE CROSS-DEFENDANT NORTHERN PACIFIC DRYWALL, INC.  
 COURT CALL APPEARANCE BY TERRENCE BARASH FOR THE CROSS-DEFENDANT STEVEN BERLIN  
 HEARING BEFORE TRIAL  
 THIS MATTER COMES BEFORE THE COURT FOR A CASE MANAGEMENT CONFERENCE RE TRIAL SETTING.  
 MEDIATION IS SET ON AUGUST 8, 2017 FOR CONSTRUCTION PORTION ONLY. .

IT IS ORDERED:

THE FUTURE CASE MANAGEMENT CONFERENCE 09/08/2017 AT 9:00 A.M. IN DEPARTMENT B.

HEARING CONTINUED TO: 09/08/2017 AT: 09:00 AM FOR APPEARANCE TYPE: CMGT IN DEPARTMENT: D06 FROM  
 DATE: 06/05/2017 FROM TIME: 09:00 AM FROM APPEARANCE TYPE: CMGT FROM DEPARTMENT: D06

ENTERED BY: CA

- 06/21/2017 SUBSTITUTION OF ATTORNEY FILED, AS TO: OBO CROSS-DEFENDANT CALIFORNIA AIR , INC. FORMER ATTY.  
ELIZABETH SKANE NEW ATTY. TIM AGAJANIAN.
- 07/28/2017 HEARING CONFIRMED FOR: 08/30/2017 AT: 01:30 PM FOR APPEARANCE TYPE: LMCV IN DEPARTMENT: D06
- 08/10/2017 NOTICE OF FIRM NAME CHANGE FILED BY ANN ASIANO OF CLARK HILL LLP ON BEHALF OF CROSS-DEFENDANT  
SOLANO COUNTY ROOFING
- 08/22/2017 NOTICE OF ADDRESS CHANGE FILED BY ATTORNEY PAUL WALSH AS TO MCNAMARA, NEY, BEATTY, SLATTERY,  
BORGES & AMBACHER LLP
- 08/30/2017 MINUTE ORDER POSTED - Appearance: 08/30/2017 at 1:30PM for NOTICE OF MOTION  
JUDGE ROY O CHERNUS ,REPORTER NOT REPORTED , DEP CLK C. ASLESON  
NO APPEARANCE BY OR FOR THE PARTIES  
HEARING BEFORE TRIAL  
THIS MATTER COMES BEFORE THE COURT FOR ARGUMENT ON THE TENTATIVE RULING.  
THE MATTER IS NOT HEARD OR REPORTED. THE TENTATIVE RULING IS FINAL.  
IT IS ORDERED:  
RULING:  
GOOD CAUSE APPEARING, ATTORNEY KO'S UNOPPOSED MOTION TO BE RELIEVED AS COUNSEL IS GRANTED.  
ENTERED BY: CA

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

09/08/2017 MINUTE ORDER POSTED - Appearance: 09/08/2017 at 9:00AM for CASE MANAGEMENT CONFERENCE  
 JUDGE ROY O CHERNUS ,REPORTER NOT REPORTED , DEP CLK C. ASLESON  
 COURT CALL APPEARANCE BY RICARD BOWLES FOR THE PLAINTIFF VOLPE  
 ATTORNEY JAMES MCCORMICK APPEARED FOR THE DEFENDANT SAUSAL CORPORATION.  
 COURT CALL APPEARANCE BY ROBERT NIDA FOR THE CROSS-COMPLAINANT SUPERIOR GUNITE  
 COURT CALL APPEARANCE BY ANDREW KLIMENKO FOR THE CROSS-COMPLAINANT SOLANO COUNTY ROOFING  
 COURT CALL APPEARANCE BY KENNETH LITTON FOR THE CROSS-DEFENDANT ALUMAWALL  
 COURT CALL APPEARANCE BY HANNAH SCHATIGER FOR THE DEFENDANT CITY OF NOVATO  
 COURT CALL APPEARANCE BY MATT ZUMSTEIN FOR CROSS-DEFENDANT CALIFORNIA AIR  
 COURT CALL APPEARANCE BY WILLIAM KAUFMAN FOR THE CROSS-COMPLAINANT SAFECO DOOR & HARDWARE  
 COURT CALL APPEARANCE BY MICHAEL ESTEP FOR CROSS-DEFENDANT LANDAVAZO BROTHERS  
 COURT CALL APPEARANCE BY JULIETTE LOMPA FOR CROSS-DEFENDANT NORTHERN PACIFIC DRYWALL  
 COURT CALL APPEARANCE BY DREW WILLIAMS FOR CROSS-DEFENDANT DECORATOVE PAVING  
 HEARING BEFORE TRIAL  
 THIS MATTER COMES BEFORE THE COURT FOR A CASE MANAGEMENT CONFERENCE RE TRIAL SETTING  
 COUNSEL MCCORMICK INFORMS THE COURT MEDIATION IS SET FOR THE DEFENSE IN OCTOBER.  
 COURT AND COUNSEL HOLD DISCUSSIONS.  
 IT IS ORDERED:  
 THE FUTURE CASE MANAGEMENT CONFERENCE 01/05/2018 AT 9:00 A.M. IN DEPARTMENT B FOR MEDIATION  
 RESULTS.  
 HEARING CONTINUED TO: 01/05/2018 AT: 09:00 AM FOR APPEARANCE TYPE: CMGT IN DEPARTMENT: D06 FROM  
 DATE: 09/08/2017 FROM TIME: 09:00 AM FROM APPEARANCE TYPE: CMGT FROM DEPARTMENT: D06  
 ENTERED BY: CA

11/07/2017 IT IS ORDERED: ORDER GRANTING ATTORNEY'S MOTION TO BE RELIEVED AS COUNSEL FILEDBY ATTORNEY  
 LYDIA KO ON BEHALF OF CROSS DEFENDANT YVONNE KATHLEEN HOLMES, CROSS-DEFENDANT IS NOW PRO  
 PER JUDGE ROY O. CHERNUS

12/11/2017 NOTICE OF ENTRY OF ORDER BY ATTORNEY LYDIA KO ON BEHALF OF CROSS-DEFENDANT YVONNE KATHLEEN  
 HOLMES DBA DETAIL CONSTRUCTION (PREVIOUSLY INCORRECTLY APPEARING AS DETAIL CONSTRUCTION &  
 WATERPROOFING , INC.) (11/7/17)

12/19/2017 NOTICE OF ASSOCIATION OF COUNSEL BY ATTORNEY GERALD CARROLL ON BEHALF OF DEFENDANT ALUMA  
 WALL, INC.: DEFENDANT ALUMA WALL, INC. HEREBY ASSOCIATES DANIEL A. SEROT; VAN DE POEL, LEVY,  
 ARNEAL & SEROT, LLP AS COUNSEL.

01/03/2018 CASE: CIV 1701668 CONSOLIDATED TO CONTROLLING CASE: CIV 1402511

01/03/2018 PARTIAL DISMISSAL AS TO: DEFT, JAMES MOFFA \*\*SEE CIV-1701668 - ANCILLARY\*\*

01/03/2018 PARTIAL DISMISSAL AS TO: DEFT, MYREX INDUSTRIES, LTD \*\*SEE CIV-1701668 - ANCILLARY\*\*

01/05/2018 MINUTE ORDER POSTED - Appearance: 01/05/2018 at 9:00AM for CASE MANAGEMENT CONFERENCE  
 JUDGE ROY O CHERNUS ,REPORTER NOT REPORTED , DEP CLK C. ASLESON  
 COURT CALL APPEARANCE BY JAMES COBB FOR THE PLAINTIFF STEVEN BERLIN  
 COURT CALL APPEARANCE BY RICHARD BOWLES FOR THE PLAINTIFF VOLPE COMPANY  
 ATTORNEY JAMES MCCORMICK APPEARED FOR THE DEFENDANT SASUAL CORPORTATION  
 COURT CALL APPEARANCE BY HANNAH SCHATIGER FOR THE DEFENDANT/CROSS DEFENDANT CITY OF  
 NOVATO

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

COURT CALL APPEARANCE BY JENNIFER LETULLE FOR THE CROSS DEFENDANT CALIFORNIA AIR  
 COURT CALL APPEARANCE BY LAUREN O'BRIEN FOR THE CROSS DEFENDANT ALUMAWALL  
 COURT CALL APPEARANCE BY ROBERT NIDA FOR THE CROSS COMPLAINANT/CROSS-DEFENDANT SUPERIOR GUNITE  
 COURT CALL APPEARANCE BY MICHAEL FOR CROSS DEFENDANT/CROSS COMPLAINANT SOLANO ROOFING  
 COURT CALL APPEARANCE BY WILLIAM KAUFMAN FOR CROSS COMPLAINANT SAFECO DOOR  
 COURT CALL APPEARANCE BY KEVIN LEE FOR CROSS DEFENDANT ALUMAWAL  
 COURT CALL APPEARANCE BY LYDIA KO FOR THE CROSS DEFENDANT DETAIL CONSTRUCTION  
 COURT CALL APPEARANCE BY DREW WILLIAMS FOR THE CROSS-DEFENDANT DECORATIVE PAVING  
 HEARING BEFORE TRIAL  
 THIS MATTER COMES BEFORE THE COURT FOR A CASE MANAGEMENT CONFERENCE FOR TRIAL SETTING  
 COUNSEL JAMES MCCORMICK INFORMS THE COURT MEDIATION IS SET 01/16/2018  
 COURT AND COUNSEL HOLD DISCUSSION RE POSSIBLE TRIAL SETTING

IT IS ORDERED:

THE FUTURE CASE MANAGEMENT CONFERENCE 04/06/2018 AT 9:00 A.M. IN DEPARTMENT B FOR MEDIATION RESULTS/TRIAL SETTING

HEARING CONTINUED TO: 04/06/2018 AT: 09:00 AM FOR APPEARANCE TYPE: CMGT IN DEPARTMENT: D06 FROM DATE: 01/05/2018 FROM TIME: 09:00 AM FROM APPEARANCE TYPE: CMGT FROM DEPARTMENT: D06

THE ORDER TO SHOW CAUSE RE PARTIES WHO HAVE NOT COMPILED WITH THE CASE MANAGEMENT CONFERENCE STATEMENTS AND FAILURE TO APPEAR 04/06/2018 AT 9:00 A.M. IN DEPARTMENT B

HEARING CONFIRMED FOR: 04/06/2018 AT: 09:00 AM FOR APPEARANCE TYPE: OSCH IN DEPARTMENT: D06

COUNSEL JAMES MCCORMICK MUST PROVIDE NOTICE OF THIS ORDER TO PARTIES RE FAILURE TO COMPLY WITH CMC STATEMENTS

ENTERED BY: CA

04/04/2018 NOTICE OF FIRM NAME CHANGE AND EMAIL ADDRESSES BY ATTORNEY ROBERT NIDA OF NIDA & ROMAN, P.C. ON BEHALF OF CROSS-DEFENDANT SUPERIOR GUNITE

04/06/2018 MINUTE ORDER POSTED - Appearance: 04/06/2018 at 9:00AM for CASE MANAGEMENT CONFERENCE

JUDGE ROY O CHERNUS ,REPORTER NOT REPORTED , DEP CLK C. ASLESON

COURT CALL APPEARANCE BY JAMES COBB FOR THE PLAINTIFF STEVEN E BERLIN

DEFENDANT/RESPONDENT TREVEN TILBURY IS PRESENT IN PRO PER

COURT CALL APPEARANCE BY RICHARD BOWLES FOR THE PLAINTIFF VOLPE COMPANY

COURT CALL APPEARANCE BY HANNAH SCHARTIGER FOR THE DEFENDANT CITY OF NOVATO

ATTORNEY JAMES MCCORMICK AND CRAIG WALLACE (COURTCALL) APPEARED FOR THE DEFENDANT SAUSAL CORPORATION

COURT CALL APPEARANCE BY CHANTELL FOR THE DEFENDANT CALIFORNIA AIR

COURT CALL APPEARANCE BY DREW WILLIAMS FOR THE CROSS DEFENDANT DECORATIVE PAVING

COURT CALL APPEARANCE BY JOSEPH FENECH FOR THE CROSS COMPLAINANT SAFECO DOOR & HARDWARE

COURT CALL APPEARANCE BY D. CREIGHTON SEBRA FOR THE CROSS COMPLAINANT/CROSS DEFENDANT SOLANO COUNTY ROOFING

COURT CALL APPEARANCE BY ROBERT NIDA FOR THE CROSS COMPLAINANT/CROSS DEFENDANT SUPERIOR GUNITE

COURT CALL APPEARANCE BY LAUREN O'BRIEN AND KEVIN LEE FOR THE CROSS DEFENDANT ALUMAWALL



**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED: 6/30/2014
VS.	CASE TYPE: COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE: BREACH OF CONTRACT
	DATE OF LAST ACTIVITY: 2/13/2020
	DATE/TIME RUN: 04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER: CIV 1402511

COURT CALL APPEARANCE BY TERRENCE BRASCH FOR THE CROSS DEFENDANT STEVEN E BERLIN  
 COURT CALL APPEARANCE BY MICHAEL ESTEP FOR THE CROSS DEFENDANT LANDAVAZO BROTHERS  
 COURT CALL APPEARANCE BY LYDIA KO FOR THE CROSS DEFENDANT NORTHERN PACIFIC  
 HEARING BEFORE TRIAL

THIS MATTER COMES BEFORE THE COURT FOR A CASE MANAGEMENT CONFERENCE RE MEDIATION  
 RESULTS/TRIAL SETTING AND AN ORDER TO SHOW CAUSE RE FAILURE TO COMPLY WITH CMC STATEMENTS  
 COURT AND COUNSEL HOLD DISCUSSION RE STATUS OF THE MATTER

COUNSEL RICHARD BOWLES REQUEST A TRIAL DATE

IT IS ORDERED:

THE COURT SET THE FOLLOWING TRIAL SCHEDULE IN DEPARTMENT B TRIAL 04/02/2019 AT 9:00 A.M.  
 MANDATORY SETTLEMENT CONFERENCE 03/04/2019 AT 9:00 A.M. CASE MANAGEMENT CONFERENCE 07/20/2018  
 AT 9:00 A.M.

ALL PARTIES WAIVE NOTICE OF TRIAL

HEARING CONFIRMED FOR: 07/20/2018 AT: 09:00 AM FOR APPEARANCE TYPE: CMGT IN DEPARTMENT: D06

HEARING CONFIRMED FOR: 03/04/2019 AT: 09:00 AM FOR APPEARANCE TYPE: STLC IN DEPARTMENT: D06

HEARING CONFIRMED FOR: 04/02/2019 AT: 09:00 AM FOR APPEARANCE TYPE: TRCL IN DEPARTMENT: D06

PARTIES ORDERED TO PROVIDE COURT WITH UPDATED CASE MANAGEMENT CONFERENCE STATEMENTS AT  
 THE NEXT HEARING

THE COURT SIGNS THE COMPLEX CASE MANAGEMENT ORDER NO. 3 IN OPEN COURT. ORDER FORWARDED TO  
 THE CIVIL DIVISION FOR PROCESSING

ENTERED BY: CA

04/06/2018 IT IS ORDERED: COMPLEX CASE MANAGEMENT ORDER NO. 3 JUDGE ROY O. CHERNUS

04/13/2018 MINUTE ORDER POSTED

JUDGE ROY O CHERNUS ,REPORTER NOT REPORTED , DEP CLK C. ASLESON

ATTORNEY JAMES MCCORMICK APPEARED FOR THE PLAINTIFF

COURT CALL APPEARANCE BY MICHAEL TCHENG FOR THE CROSS DEFENDANT SOLANO ROOFING

HEARING BEFORE TRIAL

CASE FILE NOT IN COURT

EX PARTE MINUTE ORDER APPLICATION FOR LEAVE TO FILE THIRD AMENDED CROSS-COMPLAINT; OR  
 ALTERNATIVELY FOR AN ORDER SHORTENING TIME FOR HEARING ON MOTION FOR LEAVE TO FILE THIRD  
 AMENDED CROSS-COMPLAINT

THE COURT HAS REVIEWED THE APPLICATION

NO ARGUMENT MADE

MOTION GRANTED

IT IS ORDERED: ORDER GRANTING LEAVE TO FILE THIRD AMENDED CROSS-COMPLAINT

ORDER SIGNED IN OPEN COURT AND PROVIDED TO COUNSEL FOR FILING IN THE CIVIL DIVISION

ENTERED BY: CA

04/13/2018 IT IS ORDERED: ORDER GRANTING LEAVE TO FILE THIRD ADMENDED CROSS-COMPLAINT. JUDGE CHERNUS

04/13/2018 CROSS-COMPLAINANT SAUSAL CORPORATION ADDING JAMES CURTIS WOLFBERG DBA J W PAINTING, MICHAEL ALBERT  
 CAMILLI DBA M A C PLUMBING, MYREX INDUSTRIES, LTD, RMW ARCHITECTURE & INTERIORS AND TILBURY  
 CONSTRUCTORS, INC. AS ADDITIONAL PARTIES TO THE CASE

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC.	DATE FILED:	6/30/2014
PLAINTIFF(s)	CASE TYPE:	COMPLAINT
VS.	CASE SUBTYPE:	BREACH OF CONTRACT
SAUSAL CORPORATION ( COMPLEX )	DATE OF LAST ACTIVITY:	2/13/2020
DEFENDANT(s)	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

04/13/2018 SUMMONS ISSUED ON (THIRD AMENDED) (CRCO) AND FILED

04/13/2018 NOTICE OF ENTRY OF ORDER GRANTING LEAVE TO FILE THIRD AMENDED CROSS-COMPLAINT BY ATTORNEY JAMES MCCORMICK ON BEHALF OF CROSS-COMPLAINANT SAUSAL CORPORATION (4/13/18)

04/26/2018 CROSS-DEFENDANT LANDAVAZO BROTHERS, INC.'S ANSWER TO THIRD AMENDED CROSS-COMPLAINT OF SAUSAL CORPORATION.

04/26/2018 CROSS-DEFENDANT STEVEN E. BERLIN, INC.'S ANSWER TO THE THIRD AMENDED CROSS-COMPLAINT OF SAUSAL CORPORATION (1)

05/01/2018 TILBURY CONSTRUCTORS, INC.'S ANSWER TO THIRD AMENDED CROSS-COMPLAINT OF SAUSAL CORPORATION (1)

05/01/2018 ANSWER OF ALUMAWALL, INC. TO UNVERIFIED THIRD AMENDED CROSS-COMPLAINT OF SAUSAL CORPORATION

05/03/2018 CROSS-DEFENDANT VOLPE COMPANY, INC'S ANSWER TO CROSS-COMPLAINANT SAUSAL CORPORATION'S THIRD AMENDED CROSS-COMPLAINT (1)

05/04/2018 ANSWER OF CITY OF NOVATO TO SAUSAL CORPORATION'S THIRD AMENDED CROSS-COMPLAINT.

05/04/2018 CROSS-DEFENDANT CALIFORNIA AIR, INC.'S ANSWER TO CROSS-COMPLAINANT SAUSAL CORPORATION'S THIRD AMENDED CROSS-COMPLAINT.

05/04/2018 FILING FEE WAIVED- GOVERNMENTAL AGENCY DEFT, CITY OF NOVATO

05/04/2018 FILING FEE WAIVED- GOVERNMENTAL AGENCY CRCO, CITY OF NOVATO (2)

05/04/2018 FILING FEE WAIVED- GOVERNMENTAL AGENCY CRDF, CITY OF NOVATO (1)

05/04/2018 FILING FEE WAIVED- GOVERNMENTAL AGENCY CRDF, CITY OF NOVATO, A PUBLIC ENTITY

05/11/2018 DECORATIVE PAVING, INC.'S ANSWER TO SAUSAL CORPORATION'S THIRD AMENDED CROSS-COMPLAINT.

05/15/2018 SAFECO DOOR & HARDWARE DBA AHC GLASS' ANSWER TO SAUSAL CORPORATION'S THIRD AMENDED CROSS-COMPLAINT

05/22/2018 NORTHERN PACIFIC DRYWALL'S ANSWER TO SAUSAL CORPORATION'S THIRD AMENDED CROSS-COMPLAINT

05/25/2018 SOLANO COUNTY ROOFING'S ANSWER TO SAUSAL CORPORATION'S THIRD AMENDED CROSS-COMPLAINT

06/01/2018 DECLARATION RE: 30 DAY EXTENSION TO FILE RESPONSIVE PLEADING CROSS-DEFENDANT ROBINSON , MILLS & WILLIAMS .

06/01/2018 FILING FEE PROCESSED: CRDF, RMW ARCHITECTURE & INTERIORS - 435.00

06/01/2018 COMPLEX FEE PROCESSED CRDF, RMW ARCHITECTURE & INTERIORS - 500.00

06/01/2018 ADMINISTRATIVE MODIFICATION OF REGISTER

06/01/2018 COMPLEX FEE REMOVED CRDF, RMW ARCHITECTURE & INTERIORS

06/01/2018 COMPLEX FEE PROCESSED CRDF, RMW ARCHITECTURE & INTERIORS - 1,000.00

06/28/2018 ASSOCIATION OF COUNSEL FILED OBO CROSS-DEFT. TIBURY CONSTRUCTIRS, INC. ADDING IN MATTHEW S. CONSTANTION .

06/28/2018 HEARING CONFIRMED FOR: 08/08/2018 AT: 01:30 PM FOR APPEARANCE TYPE: LMCV IN DEPARTMENT: D06

06/28/2018 DEMURRER FILED BY: BY CROSS DEFENDANT ROBINSON, MILLS +WILLIAMS (ERRONEOUSLY SUED AS RMW ARCHITECTURE & INTERIORS)

07/19/2018 HEARING CONFIRMED FOR: 08/22/2018 AT: 01:30 PM FOR APPEARANCE TYPE: LMCV IN DEPARTMENT: D06

07/20/2018 MINUTE ORDER POSTED - Appearance: 07/20/2018 at 9:00AM for CASE MANAGEMENT CONFERENCE  
 JUDGE ROY O CHERNUS ,REPORTER NOT REPORTED , DEP CLK C. YOUNG  
 VCOURT TELEPHONIC APPEARANCE BY TREVEN TILBURY FOR THE PLAINTIFF TILBURY CONSTRUCTORS  
 VCOURT TELEPHONIC APPEARANCE BY KEN MCKENZIE FOR THE PLAINTIFF VOLPE COMPANY  
 VCOURT TELEPHONIC APPEARANCE BY MATTHEW CONSTANIO FOR THE CROSS DEFENDANT TILBURY CONSTRUCTORS

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

VCOURT TELEPHONIC APPEARANCE BY MICHAEL ESTEP FOR THE CROSS DEFENDANT LANDAVAZO BROTHERS  
VCOURT TELEPHONIC APPEARANCE BY KEVIN LEE AND GERALD CARROL FOR THE CROSS DEFENDANT ALUMAWALL

VCOURT TELEPHONIC APPEARANCE BY GLEN BARGAR FOR THE CROSS COMPLAINANT/CROSS DEFENDANT SUPERIOR GUNITE

ATTORNEY JAMES MCCORMICK APPEARED FOR THE DEFENDANT SAUSAL CORPORATION

VCOURT TELEPHONIC APPEARANCE BY LYDIA KO FOR THE CROSS DEFENDANT NORTHERN PACIFIC DRYWALL

VCOURT TELEPHONIC APPEARANCE BY CREIGHTON SEBRA FOR THE CROSS COMPLAINANT/CROSS DEFENDANT SOLANO COUNTY ROOFING

VCOURT TELEPHONIC APPEARANCE BY DREW WILLIAMS FOR THE CROSS DEFENDANT DECORATIVE PAVING

VCOURT TELEPHONIC APPEARANCE BY JENNIFER LITTLE FOR THE CROSS DEFENDANT CALIFORNIA AIR

VCOURT TELEPHONIC APPEARANCE BY HANNAH SCHATIGER FOR THE DEFENDANT/CROSS COMPLAINANT/CROSS DEFENDANT CITY OF NOVATO

VCOURT TELEPHONIC APPEARANCE BY ELIZABETH O BRIEN FOR THE CROSS DEFENDANT RMW ARCHITECTURE HEARING BEFORE TRIAL

THIS MATTER COMES BEFORE THE COURT FOR A CASE MANAGEMENT CONFERENCE

COURT AND COUNSEL HOLD DISCUSSION RE STATUS

IT IS ORDERED:

THE FUTURE CASE MANAGEMENT CONFERENCE 11/02/2018 AT 10:00 A.M. IN DEPARTMENT B

HEARING CONTINUED TO: 11/02/2018 AT: 10:00 AM FOR APPEARANCE TYPE: CMGT IN DEPARTMENT: D06 FROM DATE: 07/20/2018 FROM TIME: 09:00 AM FROM APPEARANCE TYPE: CMGT FROM DEPARTMENT: D06

ENTERED BY: CY

- 07/25/2018 OPPOSITION/RESPONSE TO MOTION FILED BY ATTY FOR DEFT, TO DEMURRER (08/08/18)
- 07/27/2018 PROOF OF SERVICE FILED, AS TO: CRDF, JAMES WOLFBERG BY SUB SERVICE ON 5/20/18, COPIES LEFT WITH ALLISON WOLFBERG (WIFE); DATE OF MAILING 5/21/18
- 07/27/2018 PROOF OF SERVICE FILED, AS TO: CRDF, YVONNE HOLMES BY SUB SERVICE ON 5/8/18, COPIES LEFT WITH JOHN (CO OCCUPANT); DATE OF MAILING 5/9/18
- 07/27/2018 PROOF OF SERVICE FILED, AS TO: CRDF, RMW ARCHITECTURE & INTERIORS BY PERSONAL SERVICE ON 4/27/18
- 07/30/2018 NOTICE OF ASSOCIATION OF COUNSEL TIM AGAJANIAN HEREBY ASSOCIATES WITH CATHERINE LAGMAN-LEGASPI ON BEHALF OF CROSS-DEFENDANT CALIFORNIA AIR, INC.
- 08/07/2018 NOTICE OF CHANGE OF HANDLING ATTORNEY FILED BY ALBERT P. BLAKE , JR. ON BEHALF OF CROSS-DEFENDANT LANDAVAZO BROTHERS, INC.
- 08/08/2018 MINUTE ORDER POSTED - Appearance: 08/08/2018 at 1:30PM for HEARING ON DEMURRER  
JUDGE ROY O CHERNUS ,REPORTER CHRISTINA GILSON , DEP CLK C. YOUNG  
ATTORNEY JAMES MCCORMICK APPEARED FOR THE DEFENDANT SAUSAL CORPORATION  
VCOURT TELEPHONIC APPEARANCE BY ELIZABETH OBRIEN FOR THE CROSS DEFENDANT RMW ARCHITECTURE & INTERIORS  
HEARING BEFORE TRIAL  
THIS MATTER COMES BEFORE THE COURT FOR ARGUMENT ON THE TENTATIVE RULING  
MOTION(S) HEARD AND ARGUED.  
THE TENTATIVE RULING IS AFFIRMED AND MADE FINAL.  
IT IS ORDERED:

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

RULING:

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC.	DATE FILED:	6/30/2014
PLAINTIFF(s)	CASE TYPE:	COMPLAINT
VS.	CASE SUBTYPE:	BREACH OF CONTRACT
SAUSAL CORPORATION ( COMPLEX )	DATE OF LAST ACTIVITY:	2/13/2020
DEFENDANT(s)	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

THE DEMURRER BY CROSS-DEFENDANT ROBINSON, MILLS + WILLIAMS, A CALIFORNIA CORPORATION DBA RMW ARCHITECTURE & INTERIORS (ERRONEOUSLY SUED AS RMW ARCHITECTURE & INTERIORS) (“RMW”) TO THE THIRD AMENDED CROSS-COMPLAINT (“TACC”) OF CROSS-COMPLAINANT SAUSAL CORPORATION (“SAUSAL”), PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 430.10 SUBDIVISION (E) IS OVERRULED. CONTRARY TO RMW’S ARGUMENT, THE TACC ALLEGES THE REQUISITE PREDICATE TORT TO ASSERT EQUITABLE INDEMNITY.

THE COURT TAKES JUDICIAL NOTICE OF THE CROSS-COMPLAINT OF THE CITY OF NOVATO (THE “CITY”) FILED ON SEPTEMBER 22, 2015, AS WELL AS THE TACC FILED BY SAUSAL ON APRIL 13, 2018, PURSUANT TO EVIDENCE CODE SECTION 452, SUBDIVISIONS (D) AND (E).

SAUSAL ALLEGES THAT RMW IS A LICENSED CALIFORNIA ARCHITECTURE FIRM RETAINED BY THE CITY TO DESIGN THE PROJECT AT ISSUE IN THE COMPLAINT AND THE CITY’S CROSS-COMPLAINT. (TACC ¶ 11.) THE DUTIES AND LIABILITIES OF AN ARCHITECT ARE NOT DERIVED SOLELY FROM HIS OR HER CONTRACT WITH THE EMPLOYER, BUT ALSO FROM GENERAL TORT PRINCIPLES. THE STANDARD OF CARE REQUIRED OF ARCHITECTS IN THE PERFORMANCE OF THEIR DUTIES IS THE SAME AS THAT GOVERNING PROFESSIONALS GENERALLY: “. . . [O]NE WHO UNDERTAKES TO RENDER SERVICES IN THE PRACTICE OF A PROFESSION OR TRADE IS REQUIRED TO EXERCISE THE SKILL AND KNOWLEDGE NORMALLY POSSESSED BY MEMBERS OF THAT PROFESSION OR TRADE IN GOOD STANDING IN SIMILAR COMMUNITIES,” UNLESS THE PROFESSIONAL REPRESENTS THAT HE OR SHE HAS GREATER OR LESS SKILL OR KNOWLEDGE RELATIVE THERETO. (REST.2D TORTS, § 299A.)

FROM THE ALLEGATIONS ON THE FACE OF THE TACC, SAUSAL HAS SUFFICIENTLY STATED A CAUSE OF ACTION AGAINST RMW FOR EQUITABLE INDEMNITY ARISING OUT OF PROPERTY DAMAGE CAUSED BY RMW’S ALLEGED BREACH OF DUTY TO THE CITY FROM RMW’S DEFICIENT ARCHITECTURAL DESIGN WORK THAT FELL BELOW THE APPLICABLE STANDARD OF CARE—I.E., PROFESSIONAL NEGLIGENCE. (TACC ¶ 90.)

RMW CITES NO AUTHORITY THAT SAUSAL’S ALLEGATIONS MUST “DETAIL ANY SPECIFIC, ALLEGED WRONGDOING ON THE PART OF RMW,” OVER AND ABOVE ALLEGING THAT AS A LICENSED ARCHITECTURE FIRM, RMW OWED THE CITY A DUTY TO MEET A STANDARD OF CARE IN THE ARCHITECTURAL DESIGN WORK ON THE PROJECT AT ISSUE BUT BREACHED THAT DUTY WHEN SUCH ARCHITECTURAL DESIGN WAS DEFICIENT AND CAUSED PROPERTY DAMAGE. (SEE REPLY, P. 7:6-7; SEE ALSO, TACC ¶ 90.)

AS EXPLAINED IN BFGC ARCHITECTS PLANNERS, INC. V. FORCUM/MACKEY CONSTRUCTION, INC. (2004) 119 CAL.APP.4TH 848:

... THE DOCTRINE [OF EQUITABLE INDEMNITY] APPLIES ONLY AMONG DEFENDANTS WHO ARE JOINTLY AND SEVERALLY LIABLE TO THE PLAINTIFF. AS PLAINTIFF MAINTAINS, JOINT AND SEVERAL LIABILITY IN THE CONTEXT OF EQUITABLE INDEMNITY IS FAIRLY EXPANSIVE. WE AGREE IT IS NOT LIMITED TO “THE OLD COMMON LAW TERM ‘JOINT TORTFEASOR’...” IT CAN APPLY TO ACTS THAT ARE CONCURRENT OR SUCCESSIVE, JOINT OR SEVERAL, AS LONG AS THEY CREATE A DETRIMENT CAUSED BY SEVERAL ACTORS.

ONE FACTOR IS NECESSARY, HOWEVER. WITH LIMITED EXCEPTIONS, THERE MUST BE SOME BASIS FOR TORT LIABILITY AGAINST THE PROPOSED INDEMNITOR. GENERALLY, IT IS BASED ON A DUTY OWED TO THE UNDERLYING PLAINTIFF...

(BFGC ARCHITECTS PLANNERS, INC., SUPRA, 119 CAL.APP.4TH 848, 852 [CITATIONS OMITTED].)

IN WESELOH FAMILY LTD. PARTNERSHIP V. K.L. WESSEL CONSTRUCTION CO., INC. (2004) 125 CAL.APP.4TH 152, THE COURT WROTE: “... ‘...THERE SEEMS NO LOGICAL REASON WHY THE APPLICATION OF THIS DOCTRINE SHOULD TURN ON THE RELATIONSHIP OF THE TORTFEASORS TO EACH OTHER. WHAT IS IMPORTANT IS THE RELATIONSHIP OF THE TORTFEASORS TO THE PLAINTIFF AND THE INTERRELATED NATURE OF THE HARM DONE.’” (WESELOH FAMILY LTD. PARTNERSHIP, SUPRA, 125 CAL.APP.4TH 152, 174-175.)

FURTHER, RMW AND SAUSAL NEED NOT OWE THE CITY THE SAME DUTY. “JOINT AND SEVERAL LIABILITY DOES NOT DEPEND ON WHETHER THE TORTFEASORS OWE A DUTY TO ONE ANOTHER. ‘IT WOULD BE UNFAIR TO REQUIRE ONE TORTFEASOR TO BEAR A LOSS DISPROPORTIONATE TO HIS RELATIVE CULPABILITY SIMPLY BECAUSE A TORTFEASOR WHO CONTRIBUTED TO THE LOSS OWED A DUTY TO THE PLAIN

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

AS ALLEGED, SAUSAL MAY SEEK INDEMNITY FROM RMW AND THE DEMURRER IS OVERRULED.  
COUNSEL JAMES MCCORMICK TO PROVIDE ORDER TO THE COURT

ENTERED BY: CY

08/15/2018 ANSWER CRDF, RMW ARCHITECTURE & INTERIORS (1) TO THIRD AMENDED CROSS-COMPLAINT OF SAUSAL CORPORATION

08/17/2018 IT IS ORDERED: ORDER OVERRULING DEMURRER BY ROBINSON, MILLS+WILLIAMS DBA RMW ARCHITECTURE & INTERIORS (ERRONEOUSLY SUED AS RMW ARCHITECTURE & INTERIORS) TO SAUSAL CORPORATIONS THIRD AMENDED CROSS-COMPLAINT.

08/22/2018 MINUTE ORDER POSTED - Appearance: 08/22/2018 at 1:30PM for MOTION  
JUDGE STEPHEN FRECCERO ,REPORTER NOT REPORTED , DEP CLK C HAHN  
NO APPEARANCE BY OR FOR THE PARTIES  
HEARING BEFORE TRIAL

THIS MATTER COMES BEFORE THE COURT FOR ARGUMENT ON THE COURT'S TENTATIVE RULING.  
THE MATTER IS NOT HEARD OR REPORTED. THE TENTATIVE RULING IS FINAL.

RULING:

THE SETTLEMENT BETWEEN CROSS-DEFENDANT AND CROSS-COMPLAINANT SUPERIOR GUNITE AND DEFENDANT, CROSS-COMPLAINANT AND CROSS-DEFENDANT SAUSAL CORPORATION WAS MADE IN GOOD FAITH BETWEEN SAID PARTIES WITHIN THE MEANING OF CODE OF CIVIL PROCEDURE SECTION 877 ET SEQ. AND THE FACTORS SET FORTH IN TECH-BILT, INC. V. WOODWARD-CLYDE & ASSOCIATES (1985) 37 C.3D 488. IN ADDITION, THE COURT FINDS THAT THE SETTLEMENT WAS MADE WITHOUT COLLUSION OR FRAUD AND THAT THE SETTLEMENT REPRESENTS A FAIR APPORTIONMENT OF DISPUTED LIABILITY OF DAMAGES AMONG THE SETTLING PARTIES.

PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 877.6(C) ALL PAST, PRESENT OR FUTURE CLAIMS BY ANY OTHER PARTY, JOINT TORTFEASOR OR CO-OBLIGOR AGAINST CROSS-DEFENDANT AND CROSS-COMPLAINANT SUPERIOR GUNITE BASED UPON EQUITABLE COMPARATIVE CONTRIBUTION, PARTIAL OR COMPARATIVE INDEMNITY, IMPLIED INDEMNITY, EQUITABLE INDEMNITY OR OTHERWISE BASED IN ANY WAY ON COMPARATIVE NEGLIGENCE OR COMPARATIVE FAULT ARE HEREBY DISMISSED AND FOREVER BARRED

COUNSEL FOR PREVAILING PARTY SHALL PREPARE AND SUBMIT ORDER CONSISTENT WITH THE COURT'S TENTATIVE RULING.

ENTERED BY: C HAHN

08/28/2018 IT IS ORDERED: ON MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT FILED BY CROSS-DEFENDANT AND CROSS-COMPLAINANT SUPERIOR GUNITE. MOTION GRANTED IN ITS ENTIRETY; HON. ROY O. CHERNUS.

09/11/2018 NOTICE OF ASSOCIATION OF COUNSEL ROBERT HAMILTON HEREBY ASSOCIATES WITH DAVID LEE AND DANIEL MCLENNON ON BEHALF OF DEFENDANT/CROSS-COMPLAINANT SAUSAL CORPORATION

09/20/2018 PARTIAL DISMISSAL AS TO: CRCO, SUPERIOR GUNITE, A CALIFORNIA CORPORATION (3) WITH PREJUDICE

09/20/2018 APPLICATION FOR DETERMINATION OF GOOD FAITH SETTLEMENT FILED BY DEFENDANT ALUMA WALL, INC.

09/20/2018 PARTIAL DISMISSAL AS TO: CRDF, SAUSAL CORPORATION, A CALIFORNIA CORPORATION (3) TO CROSS-COMPLAINT OF SUPERIOR GUNITE WITH PREJUDICE

09/21/2018 MINUTE ORDER POSTED

JUDGE ROY O CHERNUS ,REPORTER NOT REPORTED , DEP CLK C. YOUNG  
ATTORNEY JAMES MCCORMICK APPEARED FOR THE DEFENDANT SAUSAL CORPORTATION  
VCOURT TELEPHONIC APPEARANCE BY HANNAH SCHATIGER FOR THE DEFENDANT CITY OF NOVATO  
ATTORNEY KATHERINE SALAH APPEARED FOR CROSS DEFENDANT RMW ARCHITECTURE

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
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REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

CASE FILE NOT IN COURT

EX PARTE FEE PAID IN THE CIVIL DIVISION

EX PARTE MINUTE ORDER APPLICATION FOR ORDER SHORTENING TIME FOR NOTICE OF MOTION TO SEVER

NO OPPOSITIONS MADE

MOTION GRANTED

IT IS ORDERED:

THE MOTION TO SEVER TO BE SET 10/03/2018 AT 1:30 P.M. IN DEPARTMENT B

THE MOTION TO BE FILED WITH THE COURT TODAY

OPPOSITION DUE BY 09/28/2018 REPLY DUE BY 10/01/2018

ORDER SIGNED IN OPEN COURT AND PROVIDED TO COUNSEL KATHERINE SALAH FOR FILING IN THE CIVIL DIVISION

ENTERED BY: CY

- 09/21/2018 IT IS ORDERED: ORDER GRANTING CROSS-DEFENDANT ROBINSON, MILLS + WILLIAMS, A CALIFORNIA CORPORATION DBA RNW ARCHITECTURE & INTERIORS' EX PARTE APPLICATION FOR ORDER SHORTENING TIME FOR NOTICE OF ITS MOTION TO SEVER JUDGE ROY O. CHERNUS
- 09/21/2018 HEARING CONFIRMED FOR: 10/03/2018 AT: 01:30 PM FOR APPEARANCE TYPE: LMCV IN DEPARTMENT: D06
- 09/28/2018 OPPOSITION/RESPONSE TO MOTION FILED DEFT. SAUSAL CORPORATION, ET AL.
- 10/01/2018 REPLY TO MOTION /RFOR FILED. BY X-DEFT'S ROBINSON, MILLS & WILLIAMS
- 10/02/2018 PARTIAL DISMISSAL AS TO: CRDF, SUPERIOR GUNITE (1) SAUSAL CORPORATION'S THIRD AMENDED CROSS-COMPLAINT WITH PREJUDICE
- 10/03/2018 MINUTE ORDER POSTED - Appearance: 10/03/2018 at 1:30PM for MOTION TO SEVER  
 JUDGE ROY O CHERNUS ,REPORTER MAUREEN STEGER , DEP CLK C. YOUNG  
 VCOURT TELEPHONIC APPEARANCE BY HANNAH SCHATIGER FOR THE DEFENDANT CITY OF NOVATO  
 ATTORNEY JAMES MCCORMICK AND ALEX MOORE (VCOURT) APPEARED FOR THE DEFENDANT SAUSAL CORPORATION  
 VCOURT TELEPHONIC APPEARANCE BY ALBERT BLAKE JR. FOR THE CROSS DEFENDANT LANDAVAZO BROTHERS  
 VCOURT TELEPHONIC APPEARANCE BY LAUREN OBRIEN FOR THE CROSS DEFENDANT ALUMALL, INC.  
 VCOURT TELEPHONIC APPEARANCE BY LAURA LOECK FOR THE CROSS DEFENDANT TILBURY CONSTRUCTORS  
 HEARING BEFORE TRIAL  
 THIS MATTER COMES BEFORE THE COURT FOR ARGUMENT ON THE TENTATIVE RULING  
 MOTION(S) HEARD AND ARGUED.  
 THE TENTATIVE RULING IS AFFIRMED AND MADE FINAL.  
 IT IS ORDERED:  
 RULING:  
 CROSS-DEFENDANT CITY OF NOVATO'S OBJECTION TO EVIDENCE OFFERED BY SAUSAL CORPORATION IS SUSTAINED.  
 GOOD CAUSE APPEARING, CROSS-DEFENDANT ROBINSON, MILLS +WILLIAM'S MOTION TO SEVER IS DENIED WITHOUT PREJUDICE. IT IS PREMATURE FOR THE COURT TO ASSESS WHETHER SAID CROSS-DEFENDANT IS ACTUALLY PREJUDICED IN CONDUCTING DISCOVERY AND/OR REVIEWING PREVIOUSLY PRODUCED DISCOVERY SO THAT IT MAY NOT RECEIVE A FAIR TRIAL SIX MONTHS FROM NOW IN APRIL 2019.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

ENTERED BY: CY

- 10/11/2018 MINUTE ORDER POSTED  
JUDGE ROY O CHERNUS ,REPORTER NOT REPORTED , DEP CLK C. YOUNG  
VCOURT TELEPHONIC APPEARANCE BY JAMES MCCORMICK FOR THE DEFENDANT SAUSAL CORPORATION  
VCOURT TELEPHONIC APPEARANCE BY HANNAH SCHATIGER FOR THE DEFENDANT CITY OF NOVATO  
ATTORNEY CATHERINE SALAH APPEARED FOR THE CROSS DEFENDANT RMW ARCHITECTURE & HARDWARE  
HEARING BEFORE TRIAL  
CASE FILE NOT IN COURT  
EX PARTE MINUTE ORDER APPLICATION FOR LEAVE TO FILE CROSS-COMPLAINT; OR, ALTERNATIVELY, FOR AN ORDER SHORTENING TIME TO HEAR MOTION FOR LEAVE TO FILE CROSS-COMPLAINT  
THE COURT HAS REVIEWED THE APPLICATION  
MOTION(S) HEARD AND ARGUED.  
MOTION GRANTED  
IT IS ORDERED: ;ORDER GRANTING ROBINSON MILLS + WILLIAMS DBA RMW ARCHITECTURE & INTERIORS' EX PARTE APPLICATION FOR LEAVE TO FILE CROSS-COMPLAINT  
ORDER SIGNED IN OPEN COURT AND PROVIDED TO COUNSEL CATHERINE A SALAH FOR FILING IN THE CIVIL DIVISION
- 10/11/2018 ENTERED BY: CY
- 10/11/2018 NOTICE OF ENTRY OF JUDGMENT OR ORDER (10/11/18)
- 10/11/2018 IT IS ORDERED: ORDER GRANTING ROBINSON, MILLS & WILLIAMS DBA RMW ARCHITECTURE & INTERIORS' EX PARTE APPLICATION FOR LEAVE TO FILE CROSS - COMPLAINT.
- 10/16/2018 CROSS-COMPLAINT FILED (9) BY ATTORNEY PAUL SAMONI ON BEHALF OF CROSS-COMPLAINANT MIL, LTD. DBA MYREX INDUSTRIES AGAINST CROSS-DEFENDANTS POES 1 THROUGH 100, INCLUSIVE
- 10/16/2018 SUMMONS ISSUED ON CRCO (9) AND FILED
- 10/16/2018 ANSWER CRDF, MYREX INDUSTRIES, LTD
- 10/16/2018 FILING FEE PROCESSED: CRDF, MYREX INDUSTRIES, LTD - 435.00
- 10/16/2018 COMPLEX FEE PROCESSED CRDF, MYREX INDUSTRIES, LTD - 1,000.00
- 10/16/2018 JURY FEE DEPOSIT CRDF, MYREX INDUSTRIES, LTD - 150.00
- 10/16/2018 CROSS-COMPLAINT FILED (10) BY ATTORNEY DION COMINOS ON BEHALF OF CROSS-COMPLAINANT ROBINSON, MILLS + WILLIAMS DBA RMW ARCHITECTURE & INTERIORS (ERRONEOUSLY SUED AS RMW ARCHITECTURE & INTERIORS) AGAINST CROSS-DEFENDANTS STRUCTURAL ENGINEERS, INC.; BKF ENGINEERS; AND ROES 1-20
- 10/16/2018 SUMMONS ISSUED ON CROC (10) AND FILED
- 10/18/2018 IT IS ORDERED: ORDER GRANTING APPLICATION FOR DETERMINATION OF GOOD FAITH SETTLEMENT (ALUMAWALL, INC.) JUDGE ROY O. CHERNUS
- 10/22/2018 IT IS ORDERED: COMPLEX CASE MANAGEMENT ORDER NO. 4 JUDGE ROY O. CHERNUS (COPIES LEFT IN WILL CALL UNDER ONE LEGAL)
- 10/23/2018 IT IS ORDERED: ORDER GRANTING APPLICATION FOR DETERMINATION OF GOOD FIATH SETTLEMENT BY ALUMAWALL,,INC. JUDGE ROY O. CHERNUS
- 10/25/2018 REQUEST FOR DEFAULT FILED, AS TO: CRDF, YVONNE HOLMES
- 10/25/2018 ANSWER CRDF, JAMES WOLFBERG (1) TO CROSS-COMPLAINT OF SAUSAL CORPORATION
- 10/25/2018 FILING FEE PROCESSED: CRDF, JAMES WOLFBERG - 435.00
- 10/25/2018 COMPLEX FEE PROCESSED CRDF, JAMES WOLFBERG - 1,000.00



**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

11/02/2018 MINUTE ORDER POSTED - Appearance: 11/02/2018 at 10:00AM for CASE MANAGEMENT CONFERENCE  
 JUDGE ROY O CHERNUS ,REPORTER NOT REPORTED , DEP CLK C. YOUNG  
 VCOURT TELEPHONIC APPEARANCE BY MATTHEW CONSTANTINO FOR THE PLAINTIFF TILBURY CONSTRUTION  
 VCOURT TELEPHONIC APPEARANCE BY SHARON NOEL FOR THE PLAINTIFF  
 VCOURT TELEPHONIC APPEARANCE BY TIMOTHY MCNEILL FOR THE PLAINTIFF VOLPE COMPANY  
 VCOURT TELEPHONIC APPEARANCE BY HANNAH SCHATIGER FOR THE DEFENDANT CITY OF NOVATO  
 VCOURT TELEPHONIC APPEARANCE BY ALEX MOORE FOR THE DEFENDANT SAUSAL CORPORATION  
 VCOURT TELEPHONIC APPEARANCE BY JAMES MCCORMICK FOR THE DEFENDANT SAUSAL CORPORATION  
 VCOURT TELEPHONIC APPEARANCE BY JENNIFER LETULLE AND CATHERINE LAGMAN-LEGASPI FOR THE CROSS  
 COMPLAINANT CALIFORNIA AIR  
 VCOURT TELEPHONIC APPEARANCE BY DION COMINOS FOR THE CROSS COMPLAINANT ROBINSON, MILLS &  
 WILLIAMS  
 VCOURT TELEPHONIC APPEARANCE BY LAUREN O'BRIEN FOR THE CROSS DEFENDANT ALUMAWALL  
 VCOURT TELEPHONIC APPEARANCE BY PAUL WALSH FOR THE CROSS DEFENDANT DECORATIVE PAVING  
 VCOURT TELEPHONIC APPEARANCE BY ALBERT BLAKE, JR. FOR THE CROSS DEFENDANT LANDAVAZO  
 BROTHERS  
 VCOURT TELEPHONIC APPEARANCE BY PAUL SAMONI FOR THE CROSS DEFENDANT MYREX  
 VCOURT TELEPHONIC APPEARANCE BY LYDIA KO FOR THE CROSS DEFENDANT NORTHERN PACIFIC DRYWALL,  
 INC.  
 VCOURT TELEPHONIC APPEARANCE BY JOSEPH FENECH FOR THE CROSS DEFENDANT SAFEXO DOOR &  
 HARDWARE  
 VCOURT TELEPHONIC APPEARANCE BY TERENCE BRASCH FOR THE CROSS DEFENDANT STEVEN BERLIN  
 HEARING BEFORE TRIAL  
 THIS MATTER COMES BEFORE THE COURT FOR A CASE MANAGEMENT CONFERENCE  
 IT IS ORDERED:  
 THE FUTURE CASE MANAGEMENT CONFERENCE 01/18/2019 AT 9:00 A.M. IN DEPARTMENT B  
 HEARING CONTINUED TO: 01/18/2019 AT: 09:00 AM FOR APPEARANCE TYPE: CMGT IN DEPARTMENT: D06 FROM  
 DATE: 11/02/2018 FROM TIME: 10:00 AM FROM APPEARANCE TYPE: CMGT FROM DEPARTMENT: D06  
 APPEARANCE DROPPED FOR 01/18/2019 AT: 09:00 AM FOR APPEARANCE TYPE: CMGT IN DEPARTMENT: D06  
 DROP REASON: WRONG TIME  
 HEARING CONFIRMED FOR: 01/18/2019 AT: 10:00 AM FOR APPEARANCE TYPE: CMGT IN DEPARTMENT: D06  
 ENTERED BY: CY

11/09/2018 IT IS ORDERED: ORDER DENYING CROSS-DEFENDANT ROBINSON, MILLS+ WILLIAMS DBA RMW ARCHITECTURE &  
 INTERIORS' MOTION TO SEVER JUDGE ROY O. CHERNUS (COPIES LEFT IN WILL CALL UNDER ONE LEGAL)

11/15/2018 (COPIES OF ORDER LEFT IN WILL CALL UNDER ONE LEGAL)

11/20/2018 APPEARANCE MOVED TO: 01/25/2019 AT: 10:00 AM FOR APPEARANCE TYPE: CMGT IN DEPARTMENT: D06 MOVE  
 REASON: COURT NIS FROM DATE: 01/18/2019 FROM TIME: 10:00 AM FROM APPEARANCE TYPE: CMGT FROM  
 DEPARTMENT: D06

11/20/2018 NOTICE OF HEARING MAILED

11/21/2018 PARTIAL DISMISSAL AS TO: CRCO, ROBINSON, MILLS + WILLIAMS, A CALIFORNIA CORPORATION : WITHOUT  
 PREJUDICE

11/27/2018 ANSWER CRDF, M A C PLUMBING (1) TO THIRD AMENDED CROSS-COMPLAINT OF SAUSAL CORPORATION

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
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REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

12/10/2018 NOTICE OF CHANGE OF FIRM NAME AND ADDRESS BY TREVEN I. TILBURY OF REYNOLDS TILBURY WOODWARD LLP ON BEHALF OF CROSS-DEFENDANT TILBURY CONSTRUCTORS, INC.

12/31/2018 CASE REASSIGNED TO JUDGE HON JAMES T CHOU

12/31/2018 APPEARANCE MOVED TO: 03/04/2019 AT: 09:00 AM FOR APPEARANCE TYPE: STLC IN DEPARTMENT: D19 MOVE REASON: RE-ASSIGNMENT FROM DATE: 03/04/2019 FROM TIME: 09:00 AM FROM APPEARANCE TYPE: STLC FROM DEPARTMENT: D06

12/31/2018 APPEARANCE MOVED TO: 04/02/2019 AT: 09:00 AM FOR APPEARANCE TYPE: TRCL IN DEPARTMENT: D19 MOVE REASON: RE-ASSIGNMENT FROM DATE: 04/02/2019 FROM TIME: 09:00 AM FROM APPEARANCE TYPE: TRCL FROM DEPARTMENT: D06

12/31/2018 APPEARANCE MOVED TO: 01/25/2019 AT: 10:00 AM FOR APPEARANCE TYPE: CMGT IN DEPARTMENT: D19 MOVE REASON: RE-ASSIGNMENT FROM DATE: 01/25/2019 FROM TIME: 10:00 AM FROM APPEARANCE TYPE: CMGT FROM DEPARTMENT: D06

01/16/2019 NOTICE OF MANDATORY PARTICIPATION IN DISCOVERY PROGRAM PURSUANT TO STIPULATION

01/25/2019 MINUTE ORDER POSTED - Appearance: 01/25/2019 at 10:00AM for CASE MANAGEMENT CONFERENCE  
JUDGE JAMES T. CHOU ,REPORTER NOT REPORTED , DEP CLK J. DALE  
VCOURT TELEPHONIC APPEARANCE BY ATTORNEY KENNETH B. MCKENZIE FOR THE PLAINTIFF/CROSS DEFENDANT VOLPLE COMPANY, INC.  
ATTORNEY JAMES MCCORMICK APPEARED FOR THE DEFENDANT/CROSS COMPLAINANT/CROSS DEFENDANT SAUSAL CORPORATION  
VCOURT TELEPHONIC APPEARANCE BY ATTORNEY JOANNE LAM FOR THE DEFENDANT/CROSS COMPLAINANT/CROSS DEFENDANT SAUSAL CORPORATION  
VCOURT TELEPHONIC APPEARANCE BY ATTORNEY JENNIFER S. WILLIS FOR THE CROSS DEFENDANT M A C PLUMBING  
VCOURT TELEPHONIC APPEARANCE BY ATTORNEY CATHERINE A. SALAH FOR THE CROSS DEFENDANT ROBINSON, MILLS, & WILLIAMS  
VCOURT TELEPHONIC APPEARANCE BY ATTORNEY MICHAEL TCHENG FOR THE CROSS COMPLAINANT/CROSS DEFENDANT SOLANO COUNTY ROOFING, INC.  
VCOURT TELEPHONIC APPEARANCE BY ATTORNEY LAURA J. LOECK FOR THE PLAINTIFF (CIV1701668)/CROSS DEFENDANT TILBURY CONSTRUCTORS, INC.  
VCOURT TELEPHONIC APPEARANCE BY ATTORNEY YVONNE JORGENSEN AND LAUREN O'BRIEN FOR THE CROSS DEFENDANT ALUMAWALL, INC.  
VCOURT TELEPHONIC APPEARANCE BY ATTORNEYS NATHANIEL DUNN AND CATHERINE LAGMAN-LEGASPI FOR THE CROSS COMPLAINANT/CROSS DEFENDANT CALIFORNIA AIR, INC.  
VCOURT TELEPHONIC APPEARANCE BY ATTORNEYS TERRENCE BRASCH AND JAMES K. COBB FOR THE PLAINTIFF (CIV1502674)/CROSS DEFENDANT STEVEN E. BERLIN, INC.  
VCOURT TELEPHONIC APPEARANCE BY ATTORNEY ALBERT P. BLAKE FOR THE CROSS-DEFENDANT LANDAVAZO BROTHERS, INC.  
VCOURT TELEPHONIC APPEARANCE BY ATTORNEY SHAUN JOYCE FOR THE CROSS DEFENDANT NORTHERN PACIFIC DRYWALL  
VCOURT TELEPHONIC APPEARANCE BY ATTORNEY PAUL SAMONI FOR THE CROSS DEFENDANT MYREX INDUSTRIES, LTD  
VCOURT TELEPHONIC APPEARANCE BY TIMOTHY C. MCNEILL FOR THE CROSS DEFENDANT JAMES CURTIS WOLFBERG  
VCOURT TELEPHONIC APPEARANCE BY ATTORNEY DREW WILLIAMS FOR THE CROSS COMPLAINANT/CROSS DEFENDANT DECORATIVE PAVING, INC.  
VCOURT TELEPHONIC APPEARANCE BY ATTORNEY JOSEPH FRENECH FOR THE CROSS COMPLAINANT/CROSS DEFENDANT SAFECO DOOR & HARDWARE. INC.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

VOCOURT TELEPHONIC APPEARANCE BY ATTORNEY HANNAH SCHARTIZER FOR THE DEFENDANT/CROSS COMPLAINANT/CROSS DEFENDANT CITY OF NOVATO HEARING BEFORE TRIAL

COUNSEL JAMES MCCORMICK STATES THE CASE DID NOT SETTLE, PARTIES ARE TAKING DEPOSITIONS, AND THE MEDIATOR INTENDS TO BE PRESENT AT THE SETTLEMENT CONFERENCE

COUNSEL KENNETH MCKENZIE REQUESTS CONTINUANCE OF SETTLEMENT CONFERENCE DATE

IT IS ORDERED: PLAINTIFF'S REQUEST TO CONTINUE SETTLEMENT CONFERENCE DATE IS DENIED. ALL PARTIES ARE ORDERED TO BE PRESENT. TRIAL SCHEDULE REMAINS AS SET.

COUNSEL JAMES MCCORMICK STATES HE WILL SUBMIT A CASE MANAGEMENT ORDER ENTERED BY: J. DALE

01/29/2019 NOTICE OF APPOINTMENT OF DISCOVERY FACILITATOR MATTHEW MANI.

02/06/2019 IT IS ORDERED: COMPLEX CASE MANAGEMENT ORDER NO. 5 JUDGE JAMES T. CHOU

02/25/2019 IT IS ORDERED: DECORATIVE PAVING, INC.'S REQUEST FOR ADJUSTER AND CLIENT TELEPHONIC APPEARANCE AT MANDATORY SETTLEMENT CONFERENCE; ORDER JUDGE JAMES T. CHOU

03/04/2019 MINUTE ORDER POSTED - Appearance: 03/04/2019 at 9:00AM for SETTLEMENT CONFERENCE

JUDGE JAMES T. CHOU ,REPORTER , DEP CLK J. DALE

APPEARANCE BY PANELIST BOB BLUM

APPEARANCE BY SPECIAL MASTER/MEDIATOR ROBERT A. BELLAGAMBA

ATTORNEY KEN MCKENSIE APPEARED FOR THE PLAINTIFF/CROSS-DEFENDANT VOLPE COMPANY, INC.

ATTORNEY KENNETH COBB APPEARED FOR THE PLAINTIFF/CROSS-DEFENDANT STEVEN E. BERLIN, INC.

ATTORNEY MATTHEW CONSTANTINO APPEARED FOR THE PLAINTIFF/CROSS-DEFENDANT TILBURY CONSTRUCTORS, INC.

ATTORNEY HANNAH SCHARTIGER AND JAMES GILPIN APPEARED FOR THE DEFENDANT/CROSS-COMPLAINANT/CROSS-DEFENDANT CITY OF NOVATO AND WITH REGAN RUSS THOMPSON

ATTORNEY JAMES MCCORMICK, JEFFREY HUTCHINSON, ALEX MOORE, AND CRAIG WALLACE APPEARED FOR FOR THE DEFENDANT/CROSS-COMPLAINANT/CROSS-DEFENDANT SAUSAL CORPORATION, AND WITH PRESIDENT JOSH WARD

ATTORNEY PAUL WALSH APPEARED FOR THE CROSS-COMPLAINANT/CROSS-DEFENDANT DECORATIVE PAVING, INC.

ATTORNEY PAUL SAMONI APPEARED FOR THE CROSS-COMPLAINANT/CROSS-DEFENDANT MIL LTD.

ATTORNEY DION COMINOS APPEARED FOR THE CROSS-COMPLAINANT/CROSS-DEFENDANT ROBINSON, MILLS & WILLIAMS, AND WITH PARTNER BART MCCLELLAND

ATTORNEY PATRICIA WALSH AND JOSEPH FENECH APPEARED FOR THE CROSS-COMPLAINANT/CROSS-DEFENDANT SAFECO DOOR & HARDWARE, INC., AND WITH CONTROLLER SINA AHMADI

ATTORNEY LYDIA KO APPEARED FOR THE CROSS-DEFENDANT NORTHERN PACIFIC DRYWALL, INC., AND WITH JUAN SILVA

MATTER ON CALENDAR FOR A JUDICIALLY SUPERVISED SETTLEMENT CONFERENCE

SETTLEMENT CONFERENCE HELD

CASE REPORTED NOT SETTLED

TRIAL REMAINS AS SET

ENTERED BY: J. DALE

03/05/2019 APPLICATION FOR DETERMINATION OF GOOD FAITH SETTLEMENT AS TO CROSS-DEFT. MICHAEL ALBERT CAMILLI DBA MAC PLUMBING. FORWARDED TO JUDGE CHOU WITH COURT FILE 3/19/2019

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC.	DATE FILED:	6/30/2014
PLAINTIFF(S)	CASE TYPE:	COMPLAINT
VS.	CASE SUBTYPE:	BREACH OF CONTRACT
SAUSAL CORPORATION ( COMPLEX )	DATE OF LAST ACTIVITY:	2/13/2020
DEFENDANT(S)	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

03/06/2019 JURY FEE DEPOSIT CRDF, JAMES WOLFBERG - 150.00

03/11/2019 HEARING CONFIRMED FOR: 03/29/2019 AT: 01:30 PM FOR APPEARANCE TYPE: ISCF IN DEPARTMENT: D19

03/11/2019 NOTICE OF HEARING MAILED AS TO ISSUE CONFERENCE

03/25/2019 TILBURY CONSTRUCTIONS, INC.'S APPLICATION FOR DETERMINATION OF GOOD FAITH SETTLEMENT FILED

03/25/2019 MINUTE ORDER POSTED

JUDGE JAMES T. CHOU ,REPORTER NOT REPORTED , DEP CLK J. DALE

ATTORNEY PAUL V. SAMONI APPEARED FOR THE CROSS-DEFENADNT MIL, LTD.

NO APPEARANCE BY OR FOR THE OTHER PARTIES

HEARING BEFORE TRIAL

CASE FILE NOT IN COURT

EX PARTE FILING FEE PAID IN CLERK'S OFFICE

EX PARTE MINUTE ORDER ON CROSS-DEFENDANT MIL, LTD'S EX PARTE APPLICATION FOR ORDER SHORTENING TIME ON MOTION FOR GOOD FAITH SETTLEMENT DETERMINATION

COUNSEL MR. SAMONI STATES NOTICE OF TODAY'S EX PARTE APPLICATION WAS GIVEN

MOTION(S) HEARD AND ARGUED.

MOTION GRANTED

IT IS ORDERED: CROSS-DEFENDANT MIL, LTD'S MOTION FOR GOOD FAITH SETTLEMENT DETERMINATION WILL BE HEARD AT THE ISSUE CONFERENCE DATE OF 03/29/2019 AT 1:30 P.M. IN COURTROOM B. OPPOSITION DUE BY NOON ON 03/28/2019. NO REPLY.

ORDER SIGNED BY COURT AND PROVIDED TO COUNSEL MR. SAMONI FOR FILING

ENTERED BY: J. DALE

03/25/2019 IT IS ORDERED: ORDER GRANTING EX PARTE APPLICATION FOR ORDER SHORTENING TIME ON MOTION FOR GOOD FAITH SETTLEMENT DETERMINATION GRANTED JUDGE JAMES T CHOU

03/26/2019 GOOD FAITH SETTLEMENT REC'D OBO CROSS-DEFT. MIL, LTD., DBA MYREX INDUSTRIES .

03/26/2019 PARTIAL DISMISSAL AS TO: CRDF, ALUMAWALL, INC. (1) WITH PREJUDICE TO CROSS-COMPLAINT OF SAUSAL CORPORATION

03/27/2019 PARTIAL DISMISSAL AS TO: CRDF, ZOES 1 - 50 WITHOUT PREJUDICE (8) TO CROSS-COMPLAINT OF CALIFORNIA AIR, INC.

03/27/2019 PARTIAL DISMISSAL AS TO: CRDF, STEVEN E. BERLIN, INC. (7) WITH PREJUDICE TO CROSS-COMPLAINT OF SOLANO COUNTY ROOFING

03/27/2019 PARTIAL DISMISSAL AS TO: CRDF, MIL. LTD. (9) WITH PREJUDICE

03/27/2019 PARTIAL DISMISSAL AS TO: CRDF, ALUMAWALL, INC. (7) TO CROSS-COMPLAINT OF SOLANO COUNTY ROOFING WITH PREJUDICE

03/27/2019 PARTIAL DISMISSAL AS TO: CRDF, POES 1 THROUGH 100 (9) WITHOUT PREJUDICE TO CROSS-COMPLAINT OF MIL LTD.

03/27/2019 PARTIAL DISMISSAL AS TO: CRDF, CALIFORNIA AIR, INC. (8) WITHOUT PREJUDICE

03/27/2019 PARTIAL DISMISSAL AS TO: CRDF, SOLANO COUNTY ROOFING (7) WITH PREJUDICE

03/27/2019 HEARING CONFIRMED FOR: 05/15/2019 AT: 01:30 PM FOR APPEARANCE TYPE: LMCV IN DEPARTMENT: D19

03/28/2019 JAMES CURTIS WOLFBERG DBA JW PAINTING'S APPLICATION FOR DETERMINATION OF GOOD FAITH SETTLEMENT; DECLARATION OF TIMOTHY C. MCNEILL FILED CC COPY TO DEPT. B BY JC

03/28/2019 NOTICE OF DEPOSIT OF ORIGINAL CERTIFIED RETURN RECEIPT CARDS RE FILING OF JAMES CURTIS WOLFBERG DBA JW PAINTING'S APPLICATION FOR GOOD FAITH SETTLEMENT

03/29/2019 MINUTE ORDER POSTED - Appearance: 03/29/2019 at 1:30PM for ISSUE CONFERENCE

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

JUDGE JAMES T. CHOU ,REPORTER NOT REPORTED , DEP CLK J. DALE

ATTORNEY JAMES K. COBB APPEARED FOR THE PLAINTIFF STEVEN E. BERLIN

ATTORNEY RICHARD T. BOWLES APPEARED FOR THE PLAINTIFF/CROSS-DEFENDANT VOLPE COMPANY, INC.

ATTORNEY CRAIG WALLACE, JAMES L. MCCORMICK, AND ALEXANDER R. MOORE APPEARED FOR THE DEFENDANT/CROSS-COMPLAINANT/CROSS-DEFENDANT SAUSAL CORPORATION

ATTORNEY ASHLEY E. ZAMBRANO APPEARED FOR THE DEFENDANT/CROSS-COMPLAINANT/CROSS-DEFENDANT CITY OF NOVATO

ATTORNEY PAUL V. SAMONI APPEARED FOR THE CROSS-COMPLAINANT/CROSS-DEFENDANT MIL., LTD.

ATTORNEY PATRICIA WALSH APPEARED FOR THE CROSS-COMPLAINANT/CROSS-DEFENDANT SAFECO DOOR & HARDWARE

ATTORNEY NATHANIEL DUNN APPEARED FOR THE CROSS-DEFENDANT CALIFORNIA AIR, INC.

ATTORNEY ALBERT P. BLAKE, JR. APPEARED FOR THE CROSS-DEFENDANT LANDAVAZO BROTHERS, INC.

ATTORNEY LYDIA KO APPEARED FOR THE CROSS-DEFENDANT NORTHERN PACIFIC DRYWALL, INC.

ATTORNEY PETER J. LINN APPEARED FOR THE CROSS-DEFENDANT STEVEN E. BERLIN, INC.

HEARING BEFORE TRIAL

MATTER ON CALENDAR FOR ISSUE CONFERENCE AND CROSS-COMPLAINANT/CROSS-DEFENDANT MIL, LTD.'S MOTION FOR GOOD FAITH SETTLEMENT DETERMINATION

COUNSEL CRAIG WALLACE REPORTS CLAIMS BY ALL PARTIES EXCEPT FOR VOLPE AND SAUSAL HAVE RESOLVED

NO OPPOSITIONS ARE MADE AS TO THE SETTLEMENTS AS INDICATED

DISCUSSION HELD AS TO SETTLEMENT TIMING IN RELATION TO THE JURY TRIAL

IT IS ORDERED: ALL COUNSEL AND PARTIES WHO HAVE SETTLED ARE ORDERED PRESENT ON 04/02/2019 AT 9:00 A.M. IN COURTROOM B FOR SETTLEMENTS TO BE PUT ON THE RECORD

MOTION GRANTED WITHOUT OBJECTION: MIL. LTD.'S MOTION FOR GOOD FAITH DETERMINATION

ORDER GRANTING MIL. LTD.'S MOTION FOR GOOD FAITH DETERMINATION SIGNED BY COURT AND PROVIDED TO COUNSEL PAUL SAMONI FOR FILING. MIL. LTD. IS EXCUSED FROM APPEARING ON 04/02/2019.

ALL PARTIES EXCEPT FOR VOLPE AND SAUSAL ARE EXCUSED FOR THE DAY

THE COURT PROCEEDS TO ISSUE CONFERENCE. COUNSEL REMAINING PRESENT IN THE COURTROOM ARE RICHARD BOWLES FOR PLAINTIFF VOLPE COMPANY, INC. AND CRAIG WALLACE FOR DEFENDANT SAUSAL CORPORATION

TRIAL SCHEDULE DISCUSSED

MOTIONS IN LIMINE DISCUSSED

DEFENDANT SAUSAL CORPORATION'S MOTION IN LIMINE NO. 1 RE: OBJECTION TO JURY TRIAL (CCP § 631(F)(5))

MOTION(S) HEARD AND ARGUED.

THE COURT STATES ITS TENTATIVE RULING TO DENY DEFENDANT'S MOTION IN LIMINE NO. 1

RULINGS ON MOTIONS IN LIMINE SET 04/02/2019 AT 9:00 A.M. IN COURTROOM B

DISCUSSION HELD RE: JURY SELECTION, EXHIBITS, AND JURY INSTRUCTIONS

COUNSEL STATE THE PARTIES ARE OPEN TO FURTHER SETTLEMENT DISCUSSIONS

THE COURT WILL SEEK A JUDICIAL OFFICER TO ACT AS A SETTLEMENT PANELIST SHOULD THE PARTIES REQUEST A SETTLEMENT CONFERENCE. PARTIES ARE TO SUBMIT THEIR NEUTRAL EVALUATION SHEETS VIA EMAIL.

DEFENDANT SAUSAL CORPORATIONS OPPOSITIONS TO PLAINTIFF VOLPE COMPANY'S MOTIONS IN LIMINE NOS. 1, 2, AND 3 FILED

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC.	DATE FILED:	6/30/2014
PLAINTIFF(S)	CASE TYPE:	COMPLAINT
VS.	CASE SUBTYPE:	BREACH OF CONTRACT
SAUSAL CORPORATION ( COMPLEX )	DATE OF LAST ACTIVITY:	2/13/2020
DEFENDANT(S)	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

HEARING CONTINUED TO: 04/03/2019 AT: 09:00 AM FOR APPEARANCE TYPE: ISCF IN DEPARTMENT: D19 FROM DATE: 03/29/2019 FROM TIME: 01:30 PM FROM APPEARANCE TYPE: ISCF FROM DEPARTMENT: D19  
 ENTERED BY: J. DALE

03/29/2019

IT IS ORDERED: ORDER GRANTING MIL, LTD'S MOTION FOR JUDICIAL DETERMINATION OF GOOD FAITH SETTLEMENT. SIGNED JUDGE CHOU

04/02/2019

MINUTE ORDER POSTED - Appearance: 04/02/2019 at 9:00AM for JURY TRIAL  
 JUDGE JAMES T. CHOU ,REPORTER DENNIS M. SOUZA (CSR # 3893, PRIVATELY RETAINED) , DEP CLK J. DALE  
 ATTORNEY JAMES K. COBB APPEARED FOR AND WITH THE PLAINTIFF STEVEN E. BERLIN  
 ATTORNEY RICHARD T. BOWLES AND KENNETH MCKENZIE APPEARED FOR THE PLAINTIFF/CROSS-DEFENDANT VOLPE COMPANY, INC.  
 ATTORNEY CRAIG WALLACE, JAMES L. MCCORMICK, MATT VOLKMANN, AND JOANNE LAM APPEARED FOR THE DEFENDANT/CROSS-COMPLAINANT/CROSS-DEFENDANT SAUSAL CORPORATION  
 ATTORNEY JAMES B. GILPIN APPEARED FOR THE DEFENDANT/CROSS-COMPLAINANT/CROSS-DEFENDANT CITY OF NOVATO  
 ATTORNEY JOSEPH M. FENECH APPEARED FOR THE CROSS-COMPLAINANT/CROSS-DEFENDANT SAFECO DOOR & HARDWARE  
 ATTORNEY NATHANIEL DUNN APPEARED FOR THE CROSS-DEFENDANT CALIFORNIA AIR, INC.  
 ATTORNEY ALBERT P. BLAKE, JR. APPEARED FOR THE CROSS-DEFENDANT LANDAVAZO BROTHERS, INC.  
 ATTORNEY LYDIA KO APPEARED FOR THE CROSS-DEFENDANT NORTHERN PACIFIC DRYWALL, INC.  
 ATTORNEY PETER J. LINN APPEARED FOR THE CROSS-DEFENDANT STEVEN E. BERLIN, INC.  
 ATTORNEY DREW WILLIAMS APPEARED FOR THE CROSS-COMPLAINANT/CROSS-DEFENDANT DECORATIVE PAINTING, INC.  
 ATTORNEY DION N. COMINOS APPEARED FOR THE CROSS-DEFENDANT RMW ARCHITECTURE & INTERIORS  
 ATTORNEY MICHAEL TCHENG APPEARED FOR THE CROSS-DEFENDANT SOLANO COUNTY ROOFING, INC.  
 ATTORNEY GINO CANO APPEARED FOR THE CROSS-DEFENDANT JAMES CURTIS WOLFBERG  
 ATTORNEY LAURA LOECK APPEARED FOR THE PLAINTIFF/CROSS-DEFENDANT TILSBURY CONSTRUCTORS, INC.  
 THIS MATTER COMING ON REGULARLY FOR FIRST (1ST) DAY OF JURY TRIAL  
 FIRST DAY JURY TRIAL COMMENCED  
 TRIAL COMMENCED. TRIAL MINUTES FORM INCORPORATED HEREIN BY REFERENCE  
 9:00 A.M.  
 THE PROSECTIVE JURORS ARE NOT PRESENT  
 DISCUSSIONS HELD REGARDING OBJECTIONS TO GOOD FAITH SETTLEMENTS AND REMAINING CAUSES OF ACTION FOR TRIAL  
 TERMS OF SETTLEMENTS STATED ON THE RECORD  
 ORDER GRANTING GOOD FAITH SETTLEMENT OF JAMES CURTIS WOLFBERG SIGNED BY COURT WITHOUT OBJECTION  
 ORDER GRANTING GOOD FAITH SETTLEMENT OF MAC PLUMBING SIGNED BY COURT WITHOUT OBJECTION  
 ORDER GRANTING GOOD FAITH SETTLEMENT OF SOLANO COUNTY ROOFING SIGNED BY COURT WITHOUT OBJECTION  
 ORDER GRANTING GOOD FAITH SETTLEMENT OF TILBURY CONSTRUCTORS, INC. SIGNED BY COURT WITHOUT OBJECTION  
 ALL DISMISSALS SHALL BE WITH PREJUDICE ONCE EXECUTED  
 IT IS ORDERED: ORDER TO SHOW CAUSE RE: DISMISSAL SET 05/02/2019 AT 9:00 A.N. IN COURTROOM B

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

ORDERS GRANTING GOOD FAITH SETTLEMENTS PROVIDED TO COUNSEL JAMES MCCORMICK FOR FILING SCHEDULING DISCUSSED

THE COURT INFORMS THE PARTIES JUDGE SWEET IS AVAILABLE TO HOLD A SETTLEMENT CONFERENCE AT 1:30 P.M. ON 04/03/2019

HEARING CONFIRMED FOR: 05/02/2019 AT: 09:00 AM FOR APPEARANCE TYPE: OSCH IN DEPARTMENT: D19

APPEARANCE DROPPED FOR 05/15/2019 AT: 01:30 PM FOR APPEARANCE TYPE: LMCV IN DEPARTMENT: D19  
DROP REASON: VACATED. ORDER GRANTING MOTION SIGNED WITHOUT OBJECTION

HEARING CONFIRMED FOR: 04/03/2019 AT: 01:30 PM FOR APPEARANCE TYPE: STLC IN DEPARTMENT: D19

RECESS DECLARED AT 9:34 A.M.

COURT RECONVENED AT 9:50 A.M.

ATTORNEY RICHARD T. BOWLES AND KENNETH MCKENZIE APPEARED FOR THE PLAINTIFF/CROSS-DEFENDANT VOLPE COMPANY, INC., AND WITH BRUCE VOLPE

ATTORNEY CRAIG WALLACE AND MATT VOLKMAN APPEARED FOR THE DEFENDANT/CROSS-COMPLAINANT SAUSAL CORPORATION, AND WITH RUSTY ABERNATHY

DISCUSSIONS HELD: TRIAL SCHEDULE AND STATEMENT OF THE CASE

COUNSEL STIPULATE TO EXCLUDE ATTORNEY FEES AND COSTS FROM EVIDENCE

COUNSEL STIPULATE TO MR. ABERNATHY AS THE REPRESENTATIVE OF SAUSAL CORPORATION AND TO JOSH WARD AS A MEMBER OF THE PUBLIC

THE COURT ADMONISHES COUNSEL AND THE PARTIES AS TO NO CONTACT WITH THE PROSPECTIVE JURORS

RECESS DECLARED AT 10:00 A.M.

COURT RECONVENED AT 10:28 A.M.

JURY PANEL #1

AT 10:28 A.M./P.M. A 75 PANEL OF PROSPECTIVE JURORS SWORN

THE COURT INFORMS THE PROSPECTIVE JURORS OF THE EXPECTED TRIAL SCHEDULE

HARDSHIPS AND DEFERRALS

COURT INFORMS PROSPECTIVE JURORS AS TO THE NATURE OF THE CAUSE

COUNSEL AND PARTIES INTRODUCED

NAMES OF PROSPECTIVE WITNESSES GIVEN

COURT INSTRUCTS JURY

11:00 A.M.

VOIR DIRE COMMENCES

JURORS ARE ADMONISHED BY THE COURT

RECESS DECLARED AT 11:04 A.M.

COURT RECONVENED AT 11:19 A.M.

JURY IS NOW PRESENT IN OPEN COURT

IMPANELMENT RESUMES

COURT REMINDED JURORS OF ADMONITION

RECESS DECLARED AT 12:15 P.M.

COURT RECONVENED AT 12:18 P.M.

HARDSHIPS

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

RECESS DECLARED AT 12:20 P.M.  
 COURT RECONVENED AT 1:42 P.M.  
 JURY PANEL #1  
 JURY IS NOW PRESENT IN OPEN COURT  
 JURY PANEL #2  
 AT 1:42 A.M./P.M. A 71 PANEL OF PROSPECTIVE JURORS SWORN  
 THE COURT INFORMS THE PROSPECTIVE JURORS OF PANEL #2 TRIAL SCHEDULE  
 HARDSHIPS AND DEFERRALS  
 COURT INFORMS PROSPECTIVE JURORS AS TO THE NATURE OF THE CAUSE  
 COUNSEL AND PARTIES INTRODUCED  
 NAMES OF PROSPECTIVE WITNESSES GIVEN  
 COURT INSTRUCTS JURY  
 2:15 P.M.  
 IMPANELMENT RESUMES  
 PEREMPTORY CHALLENGES BY COUNSEL  
 IMPANELMENT RESUMES  
 JURORS ARE ADMONISHED BY THE COURT  
 RECESS DECLARED AT 2:49 P.M.  
 COURT RECONVENED AT 3:05 P.M.  
 JURY IS NOW PRESENT IN OPEN COURT  
 IMPANELMENT RESUMES  
 PEREMPTORY CHALLENGES BY COUNSEL  
 3:35 P.M.  
 JURY SWORN  
 ALTERNATE JURORS SWORN  
 JURORS ARE ADMONISHED BY THE COURT  
 JURY RETIRES TO THURSDAY, 04/04/2019 AT 10:00 A.M.  
 IT IS ORDERED: JURY TRIAL DAY 2 SET 04/04/2019 AT 9:30 A.M. IN COURTROOM B  
 HEARING CONTINUED TO: 04/04/2019 AT: 09:00 AM FOR APPEARANCE TYPE: TRLS IN DEPARTMENT: D19 FROM  
 DATE: 04/02/2019 FROM TIME: 09:00 AM FROM APPEARANCE TYPE: TRLS FROM DEPARTMENT: D19  
 JURY NO LONGER PRESENT  
 THE COURT HEARS ARGUMENT ON DEFENDANT'S MOTIONS IN LIMINE  
 DEFENDANT'S MOTION IN LIMINE NO. 1 RE: OBJECTION TO JURY TRIAL  
 MOTION DENIED  
 DEFENDANT'S MOTION IN LIMINE NO. 3 TO EXCLUDE EVIDENCE OF SETTLEMENT NEGOTIATIONS, PRIOR  
 SETTLEMENTS AND MEDIATION  
 IT IS ORDERED: MOTION DENIED IN PART AND GRANTED IN PART AS STATED ON THE RECORD  
 DEFENDANT'S MOTION IN LIMINE NO. 4 TO EXCLUDE EVIDENCE OF INSURANCE  
 MOTION GRANTED



**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

DEFENDANT'S MOTION IN LIMINE NO. 5 TO EXCLUDE DOCUMENTS NOT PRODUCED IN EVIDENCE  
MOTION GRANTED

DEFENDANT'S MOTION IN LIMINE NO. 6 TO EXCLUDE EVIDENCE OF FINANCIAL STATUS AND NET WORTH  
MOTION GRANTED AS TO BOTH PARTIES

DEFENDANT'S MOTION IN LIMINE NO. 7 TO REQUIRE SEVENTY-TWO HOUR NOTICE OF PROPOSED TRIAL  
WITNESSES

IT IS ORDERED: PARTIES ARE TO PROVIDE 24 HOURS NOTICE

DEFENDANT'S MOTION IN LIMINE NO. 8 TO LIMIT EXPERT TESTIMONY TO SCOPE OF DISCLOSURE AND OPINIONS  
EXPRESSED IN DEPOSITION

MOTION GRANTED

IT IS ORDERED: PARTIES ARE WAIVED FOR CONTINUED ISSUE CONFERENCE AT 9:00 A.M. ON 04/03/2019.  
PARTIES ARE ORDERED TO APPEAR FOR THE SETTLEMENT CONFERENCE AT 1:30 P.M. ON 04/03/2019.

JURY INSTRUCTIONS DISCUSSED

COURT ADJOURNED AT 4:30 P.M.

ENTERED BY: J. DALE

- 04/02/2019 IT IS ORDERED: ORDER GRANTING SOLANO COUNTY ROOFING, INC.'S MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT JUDGE JAMES T. CHOU
- 04/02/2019 IT IS ORDERED: ORDER GRANTING APPLICATION FOR GOOD FIATH SETTLEMENT (MICHAEL ALBERT CAMILLI DBA M A C PLUMBING) JUDGE JAMES T. CHOU
- 04/02/2019 IT IS ORDERED: ORDER GRANTING TILBURY CONSTRUCTORS, INC.'S APPLICATION FOR DETERMINATION OF GOOD FAITH SETTLEMENT JUDGE JAMES T. CHOU
- 04/02/2019 IT IS ORDERED: ORDER GRANTING JAMES CURTIS WOLFBERG DBA J W PAINTING'S APPLICATION FOR DETERMINATION OF GOOD FAITH SETTLEMENT JUDGE JAMES T. CHOU
- 04/03/2019 MINUTE ORDER POSTED - Appearance: 04/03/2019 at 9:00AM for ISSUE CONFERENCE  
JUDGE JAMES T. CHOU ,REPORTER DENNIS M. SOUZA (CSR # 3893, PRIVATELY RETAINED) , DEP CLK J. DALE  
ATTORNEY RICHARD T. BOWLES AND KENNETH MCKENZIE APPEARED FOR THE PLAINTIFF/CROSS-DEFENDANT VOLPE COMPANY, INC.  
ATTORNEY CRAIG WALLACE AND MATT VOLKMANN APPEARED FOR THE DEFENDANT/CROSS-COMPLAINANT SAUSAL CORPORATION, AND WITH RUSTY ABERNATHY  
MATTER ON CALENDAR FOR FURTHER ISSUE CONFERENCE AND MOTIONS IN LIMINE  
THE COURT HEARS ARGUMENT ON DEFENDANT'S MOTIONS IN LIMINE  
DEFENDANT'S MOTION IN LIMINE NO. 9 TO EXCLUDE SPECULATIVE EXPERT OPINION  
MOTION GRANTED  
DEFENDANT'S MOTION IN LIMINE NO. 10 TO EXCLUDE DOCUMENTS AND EVIDENCE NOT OFFERED BY OR PRODUCED BY EXPERTS DURING DISCOVERY OR DEPOSITION  
MOTION GRANTED  
DEFENDANT'S MOTION IN LIMINE NO. 11 TO EXCLUDE EXPERT OPINION FROM WITNESSES NOT DISCLOSED AS EXPERTS  
MOTION GRANTED  
DEFENDANT'S MOTION IN LIMINE NO. 12 TO ALLOW JURY VIEW OF SUBJECT PROPERTY  
IT IS ORDERED: DEFENDANT'S MOTION IN LIMINE NO. 12 IS WITHDRAWN  
DEFENDANT'S MOTION IN LIMINE NO. 13 TO EXCLUDE LAY WITNESS TESTIMONY REGARDING THE STANDARD OF CASE APPLICABLE IN THE INDUSTRY AND LAY WITNESS TESTIMONY ON AREAS REQUIRING EXPERT TESTIMONY

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

IT IS ORDERED: RULING RESERVED

DEFENDANT'S MOTION IN LIMINE NO. 14 TO EXCLUDE NON-PARTY WITNESSES FROM THE COURTROOM PRIOR TO TESTIFYING

MOTION GRANTED

DEFENDANT'S MOTION IN LIMINE NO. 15 TO ALLOW FOR USE OF DEMONSTRATIVE EVIDENCE DURING OPENING STATEMENT

MOTION GRANTED AS MODIFIED FROM 72 HOURS NOTICE TO 24 HOURS

DEFENDANT'S MOTION IN LIMINE NO. 16 TO EXCLUDE EXPERT WITNESS TESTIMONY THAT RELIES ON HEARSAY

MOTION GRANTED AS MODIFIED TO COMPLY WITH "SANCHEZ"

DEFENDANT'S MOTION IN LIMINE NO. 17 TO EXCLUDE TESTIMONY REGARDING ALLOCATIONS TO SUBCONTRACTORS

IT IS ORDERED: DEFENDANT'S MOTION IN LIMINE NO. 17 IS WITHDRAWN

DEFENDANT'S MOTION IN LIMINE NO. 18 TO EXCLUDE TESTIMONY REGARDING BUILDING CODE REQUIREMENTS

IT IS ORDERED: RULING RESERVED

DEFENDANT'S MOTION IN LIMINE NO. 19 TO EXCLUDE REFERENCE TO CONSTRUCTION DEFICIENCIES NOT IDENTIFIED IN CITY OF NOVATO'S FINAL DEFECT REPORT

IT IS ORDERED: DEFENDANT'S MOTION IN LIMINE NO. 19 IS WITHDRAWN

DEFENDANT'S MOTION IN LIMINE NO. 2 TO RE: PRECLUDE STATEMENTS THAT SOME ACTIVITY WAS ILLEGAL OR A VIOLATION OF THE LAW

MOTION GRANTED WITHOUT PREJUDICE. NO WITNESS MAY RENDER AN OPINION ON WHETHER AN ACT WAS ILLEGAL, A VIOLATION OF THE LAW, OR A BREACH OF CONTRACT. THOSE ITEMS ARE TO BE DETERMINED BY THE JURY. COUNSEL MAY ADDRESS THE ISSUES IN CLOSING ARGUMENT.

ORAL REQUEST BY BOTH PARTIES THAT THE COURT RULE ON 4107

BRIEFING DISCUSSED

IT IS ORDERED: 4107 APPLIES

RECESS DECLARED AT 10:29 A.M.

COURT RECONVENED AT 10:46 A.M.

THE COURT HEARS ARGUMENT ON PLAINTIFF'S MOTIONS IN LIMINE

PLAINTIFF'S MOTION IN LIMINE NO. 1 TO EXCLUDE FROM TRIAL ANY AND ALL EVIDENCE OR ARGUMENT THAT VOLPE IMPACTED THE PROJECT BY BREACHING ITS SUBCONTRACT

IT IS ORDERED: PLAINTIFF'S MOTION IN LIMINE NO. 1 IS GRANTED IN PART AND DENIED IN PART AS STATED ON THE RECORD. DEFENDANT'S PROPOSED EXHIBIT #368 WILL NOT BE ADMITTED IN WHOLE. SOME ITEMS (ITEMS STATED ON THE RECORD) ARE TOO VAGUE AND ARE PRECLUDED. ITEMS THAT WILL BE ALLOWED IN MUST BE ESTABLISHED THROUGH EVIDENCE AND CORROBORATED TESTIMONY.

PLAINTIFF'S MOTION IN LIMINE NO. 2 TO EXCLUDE FROM TRIAL ANY AND ALL EVIDENCE OR ARGUMENT REGARDING VOLPE'S SUBMISSION OF CERTIFIED PAYROLL

IT IS ORDERED: PLAINTIFF'S MOTION IN LIMINE NO. 2 IS GRANTED IN PART. THE CERTIFIED PAYROLL CAN ONLY BE USED FOR CHANGE ORDERS.

PLAINTIFF'S MOTION IN LIMINE NO. 3 TO EXCLUDE FROM TRIAL ANY AND ALL EVIDENCE OR ARGUMENT REGARDING SAUSAL'S ISSUANCE OF 48-HOUR NOTICES TO VOLPE

MOTION DENIED WITHOUT PREJUDICE TO OBJECTIONS AT TRIAL

PARTIES TO SUBMIT SUPPLEMENTAL BRIEFING BY TOMORROW MORNING

TRIAL SCHEDULE DISCUSSED

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

IT IS ORDERED: ALL COUNSEL AND PARTIES ARE ORDERED TO RETURN AT 1:30 P.M. FOR THE MANDATORY SETTLEMENT CONFERENCE

COURT ADJOURNED AT 11:50 A.M.

ENTERED BY: J. DALE

04/03/2019 REQUEST FOR DEFAULT FILED, AS TO: CRCO, MIL. LTD.

04/03/2019 MINUTE ORDER POSTED - Appearance: 04/03/2019 at 1:30PM for SETTLEMENT CONFERENCE

JUDGE JAMES T. CHOU ,REPORTER NOT REPORTED , DEP CLK J. DALE

ATTORNEY RICHARD T. BOWLES AND KENNETH MCKENZIE APPEARED FOR THE PLAINTIFF/CROSS-DEFENDANT VOLPE COMPANY, INC., AND WITH BRUCE VOLPE

ATTORNEY CRAIG WALLACE AND MATT VOLKMANN APPEARED FOR THE DEFENDANT/CROSS-COMPLAINANT SAUSAL CORPORATION, AND WITH RUSTY ABERNATHY AND JOSH WARD

APPEARANCE BY PANELIST HON. ANDREW E. SWEET, JUDGE OF THE SUPERIOR COURT, COUNTY OF MARIN MATTER ON CALENDAR FOR A JUDICIALLY SUPERVISED SETTLEMENT CONFERENCE

SETTLEMENT CONFERENCE HELD

CASE REPORTED NOT SETTLED

COURT ADJOURNED AT 4:00 P.M.

ENTERED BY: J. DALE

04/04/2019 MINUTE ORDER POSTED - Appearance: 04/04/2019 at 9:30AM for JURY TRIAL

JUDGE JAMES T. CHOU ,REPORTER DENNIS M. SOUZA (CSR # 3893, PRIVATELY RETAINED) , DEP CLK J. DALE

ATTORNEY RICHARD T. BOWLES AND KENNETH MCKENZIE APPEARED FOR THE PLAINTIFF/CROSS-DEFENDANT VOLPE COMPANY, INC., AND WITH BRUCE VOLPE

ATTORNEY CRAIG WALLACE AND MATT VOLKMANN APPEARED FOR THE DEFENDANT/CROSS-COMPLAINANT SAUSAL CORPORATION, AND WITH RUSTY ABERNATHY

THIS MATTER COMING ON REGULARLY FOR SECOND (2ND) DAY OF JURY TRIAL

DOCUMENTS FILED: PLAINTIFF'S BENCH BRIEF REGARDING SAUSAL CORPORATION'S BREACH OF CONTRACT AND STATUTORY VIOLATION BY HIRING ANOTHER SUBCONTRACTOR TO PERFORM VOLPE CONTRACT WORK IN VIOLATION OF PUBLIC CONTRACT CODE § 4107; PLAINTIFF'S DECLARATION OF KENNETH B. MCKENZIE IN SUPPORT OF PLAINTIFF'S BENCH BRIEF [ETC.]; AND, DEFENDANT'S BRIEF RE: PUBLIC CONTRACT CODE SECTION 4107.

9:38 A.M.

TRIAL COMMENCED. TRIAL MINUTES FORM INCORPORATED HEREIN BY REFERENCE

COURT AND COUNSEL DISCUSS PLAINTIFF'S WITNESSES BLAINEY AND JOHNSON OUT OF PRESENCE OF THE JURY

IT IS ORDERED: THE COURT WILL ALLOW THE WITNESSES TO TESTIFY AS PERCIPIENT WITNESSES SUBJECT TO OBJECTION

MOTION DENIED : DEFENDANT'S REQUEST TO DEPOSE THE WITNESSES

PLAINTIFF AND DEFENDANT REQUEST FINAL RULING ON VIOLATION OF PUBLIC CONTRACT CODE § 4107 AND WAIVE ANY IRREGULARITIES

THE COURT WILL TAKE THE MATTER UNDER SUBMISSION

RECESS DECLARED AT 9:57 A.M.

COURT RECONVENED AT 10:07 A.M.

JURY IS NOW PRESENT IN OPEN COURT

COURT INSTRUCTS JURY

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
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SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
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REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

10:26 A.M.

OPENING STATEMENT MADE ON BEHALF OF THE PLAINTIFF

COURT REMINDED JURORS OF ADMONITION

RECESS DECLARED AT 11:25 A.M.

STIPULATION AND ORDER FOR RELEASE OF EXHIBITS FILED

COURT RECONVENED AT 11:37 A.M.

JURY IS NOW PRESENT IN OPEN COURT

OPENING STATEMENT MADE ON BEHALF OF THE DEFENDANT

COURT REMINDED JURORS OF ADMONITION

12:04 P.M. - JURY RETIRES FOR LUNCH BREAK

COURT AND COUNSEL DISCUSS OUT OF PRESENCE OF THE JURY

PLAINTIFF/CROSS-DEFENDANT ORALLY MOVES FOR NON-SUIT ON CROSS-COMPLAINT

MOTION(S) HEARD AND ARGUED.

MOTION DENIED WITHOUT PREJUDICE AS PREMATURE. THE COURT HAS NOT YET HEARD ANY EVIDENCE ON WHICH TO RULE.

COURT AND COUNSEL DISCUSS COURT'S PREVIOUS RULINGS OUT OF PRESENCE OF THE JURY

RECESS DECLARED AT 12:08 P.M.

COURT RECONVENED AT 1:33 P.M.

JURY IS NOW PRESENT IN OPEN COURT

WITNESS(ES) SWORN AND TESTIFIED: BRUCE VOLPE (1:33 P.M.)

1:33 P.M. - WITNESS BRUCE VOLPE TESTIFIES ON DIRECT EXAMINATION BY PLAINTIFF'S COUNSEL RICHARD BOWLES

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #1: VOLPE SEPTEMBER BILLING

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION: #2: LETTER CITY OF NOVATO TO ABERNATHY 09/02/2014

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION: #3: SAUSAL CORPORATION PROPOSED CHANGE ORDER 05/13/2014

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #4: 48 HOUR NOTICE

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #5: EMAIL ABERNATHY AND VOLPE 08/06/2013

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #6: STAGING AREA LIMITS OF WORK

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #6A: STAGING AREA LIMITS OF WORK (POSTER BOARD)

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #7: FAX ABERNATHY AND VOLPE 10/11/2013

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #8: FAX ABERNATHY AND VOLPE 10/18/2013

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #9: SHORT FORM CONTRACT - VOLPE AND SAUSAL

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #10: SET OF BUILDING PLANS 05/31/2013

COURT REMINDED JURORS OF ADMONITION

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(S)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(S)	CASE SUBTYPE:	BREACH OF CONTRACT
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	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

RECESS DECLARED AT 2:34 P.M.

COURT RECONVENED AT 2:47 P.M.

JURY IS NOW PRESENT IN OPEN COURT

2:47 P.M. - WITNESS BRUCE VOLPE, HERETOFORE SWORN, RESUMES TESTIMONY ON DIRECT EXAMINATION BY PLAINTIFF'S COUNSEL RICHARD BOWLES

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #10A: SET OF BUILDING PLANS 05/31/2013 (POSTER SIZE)

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #11: TITLE PROJECT MANUAL

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #12: VOLPE COMPANY INC.'S ADDITIONAL WORK ORDERS & LIEN RELEASES

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #13: EMAIL ABERNATHY AND VOLPE 10/05/2012

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #14: EMAIL ABERNATHY AND VOLPE 06/13/2013

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #15: NOVATO BREAKDOWN  
PLAINTIFF'S EXHIBIT #15 ADMITTED OVER DEFENSE OBJECTION

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION: #16: CORRECTED NOVATO BREAKDOWN

COURT REMINDED JURORS OF ADMONITION

3:43 P.M. - JURY RETIRES TO THE JURY ROOM

COURT AND COUNSEL DISCUSS DEFENSE OBJECTION TO PLAINTIFF'S EXHIBIT #16 OUT OF PRESENCE OF THE JURY

IT IS ORDERED: DEFENSE OBJECTION IS OVERRULED. PLAINTIFF TO BLOCK OUT PORTIONS OF ITS EXHIBIT #16 AS STATED ON THE RECORD. THE EXHIBIT WILL BE ADMITTED NOT FOR THE TRUTH OF THE MATTER.

RECESS DECLARED AT 3:47 P.M.

COURT RECONVENED AT 3:55 P.M.

JURY IS NOW PRESENT IN OPEN COURT

PLAINTIFF'S EXHIBIT(S) #16 PREVIOUSLY IDENTIFIED ADMITTED IN EVIDENCE

3:55 P.M. - WITNESS BRUCE VOLPE, HERETOFORE SWORN, RESUMES TESTIMONY ON DIRECT EXAMINATION BY PLAINTIFF'S COUNSEL RICHARD BOWLES

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION: #17: EMAIL CHAIN ABERNATHY AND VOLPE 09/10/2013

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: 18: FAX SAUSAL AND VOLPE 09/30/2013

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #19: REQUEST FOR INFORMATION RE: UNSUITABLE SOIL IN PARKING LOT (PAGE 1)

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #19: REQUEST FOR INFORMATION RE: UNSUITABLE SOIL IN PARKING LOT (PAGES 2-5)

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #20: EMAIL 48 HOUR NOTICE

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #19: REQUEST FOR INFORMATION RE: UNSUITABLE SOIL IN PARKING LOT (PAGES 8-13)

COURT REMINDED JURORS OF ADMONITION

4:33 P.M. - JURY RETIRES TO MONDAY, 04/08/2019 AT 10:00 A.M.

COURT AND COUNSEL DISCUSS PLAINTIFF'S EXHIBIT #17 AND SUBMITTED MATTER OUT OF PRESENCE OF THE JURY

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
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	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

IT IS ORDERED: JURY TRIAL DAY 3 SET 04/08/2019 AT 9:30 A.M. IN COURTROOM B  
COURT ADJOURNED AT 4:34 P.M.

HEARING CONTINUED TO: 04/08/2019 AT: 09:00 AM FOR APPEARANCE TYPE: TRLS IN DEPARTMENT: D19 FROM DATE: 04/04/2019 FROM TIME: 09:30 AM FROM APPEARANCE TYPE: TRLS FROM DEPARTMENT: D19  
ENTERED BY: J. DALE

04/08/2019

MINUTE ORDER POSTED - Appearance: 04/08/2019 at 9:00AM for JURY TRIAL

JUDGE JAMES T. CHOU ,REPORTER PRIVATELY RETAINED COURT REPORTER DENNIS M. SOUZA - CSR# 3893 , DEP CLK S. HENDRYX

ATTORNEY KENNETH MCKENZIE AND RICHARD BOWLES APPEARED FOR PLAINTIFF / CROSS-DEFENDANT VOLPE COMPANY, INC.

ATTORNEY CRAIG WALLACE AND MATT VOLKMANN APPEARED FOR DEFENDANT / CROSS-COMPLAINANT SAUSAL CORPORATION

NO APPEARANCE BY OR FOR THE OTHER PARTIES

THIS MATTER COMING ON REGULARLY FOR THIRD DAY OF JURY TRIAL

TRIAL COMMENCED. TRIAL MINUTES FORM INCORPORATED HEREIN BY REFERENCE

AT 9:46 A.M.

THE JURY IS NOT PRESENT IN COURT.

COUNSEL ARGUE THE DISPUTE SURROUNDING CALIFORNIA PUBLIC CONTRACT CODE 4107.

IT IS ORDERED: THE COURT DENIES THE REQUEST TO RULE ON THE 4107 ISSUE. THE COURT FINDS IT IS AN ISSUE THAT THE JURY SHOULD DECIDE.

RECESS DECLARED AT 10:22 A.M.

COURT RECONVENED AT 10:34 A.M.

JURY IS NOW PRESENT IN OPEN COURT

AT 10:34 A.M.

HERETOFORE SWORN, BRUCE VOLPE RESUMES TESTIMONY ON DIRECT EXAMINATION BY MR. BOWLES AT 10:34 A.M.

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION: #21 - AERIAL VIEW OF SITE (PHOTO) #21A - AERIAL VIEW OF SITE (POSTERBOARD)

PLAINTIFF'S EXHIBIT(S) #21, #21A PREVIOUSLY IDENTIFIED ADMITTED IN EVIDENCE

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #22 - 7/12/12 FAX LETTER TO MR. VOLPE #23 - 9-20-2013 EMAIL FROM MR. VOLPE

THE JURY IS EXCUSED FOR A BREAK AT 11:24 A.M.

COURT AND COUNSEL DISCUSS PLAINTIFF'S TAB 531.

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #24 - EMAIL FROM MR. ABERNATHY TO B. VOLPE DATED 10-23-2013 (\*FIRST HALF OF PAGE ONLY)

RECESS DECLARED AT 11:29 A.M.

COURT RECONVENED AT 11:38 A.M.

JURY IS NOW PRESENT IN OPEN COURT

MR. VOLPE RESUMES TESTIMONY ON DIRECT EXAMINATION BY MR. BOWLES.

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #25 - EMAIL FROM B. VOLPE TO R. ABERNATHY 10-22-2013 #26 - EMAILS BETWEEN B. VOLPE AND R. ABERNATHY 10-24-2013 #27 - REQUEST FOR INFORMATION 0115 #28 - CHANGE ORDERS

JURORS ARE ADMONISHED BY THE COURT

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(S)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(S)	CASE SUBTYPE:	BREACH OF CONTRACT
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	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

THE JURY IS EXCUSED FOR THE LUNCH BREAK AT 12:15 P.M.

MR. BOWLES POINTS THE COURT TO A PORTION OF DEFENDANT'S OPENING STATEMENT THAT WILL ALLOW A CERTAIN LINE OF QUESTIONING.

MR. BOWLES' REQUEST IS DENIED.

RECESS DECLARED AT 12:19 P.M.

COURT RECONVENED AT 1:35 P.M.

JURY IS NOW PRESENT IN OPEN COURT

MR. VOLPE RESUMES TESTIMONY ON DIRECT EXAMINATION BY MR. BOWLES.

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #29 - CHANGE ORDER TRANSMITTAL NO. 01336 #30 - CHANGE ORDER - PCO 102-105 #31 - CHANGE ORDER TO VOLPE COMPANY 3-5-2014 #32 - CHANGE ORDER - EXTRA AB FOR BACKFILL #33 - CHANGE ORDER 12-4-13, # NO100413 #34 - CHANGE ORDER NO. 11313 #35 - CHANGE ORDER WITH CREDIT

JURORS ARE ADMONISHED BY THE COURT

THE JURY IS EXCUSED FOR A BREAK AT 2:14 P.M.

DEFENSE COUNSEL STATES OBJECTIONS TO PLAINTIFF'S EXHIBIT TABS 600, 601, AND 602 ON THE RECORD.

RECESS DECLARED AT 2:19 P.M.

COURT RECONVENED AT 2:30 P.M.

JURY IS NOW PRESENT IN OPEN COURT

MR. VOLPE RESUMES TESTIMONY ON DIRECT EXAMINATION BY MR. BOWLES.

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #36 - CHANGE ORDER FOR LOST CONCRETE - FIRST TWO PAGES ONLY #37 - CHANGE ORDER NO.081713 #38 - PHOTO #39 - PHOTO #40 - PHOTO #41 - PHOTO #42 - PHOTO

MR. VOLPE TESTIFIES ON CROSS-EXAMINATION BY MR. WALLACE AT 2:44 P.M.

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #A - CERTIFIED PAYROLL REPORTS #B - VOLPE DAILY REPORTS #C - EMAIL FROM MR. ABERNATHY TO MR. VOLPE 9-10-13

JURORS ARE ADMONISHED BY THE COURT

RECESS DECLARED AT 3:34 P.M.

COURT RECONVENED AT 3:48 P.M.

JURY IS NOW PRESENT IN OPEN COURT

MR. VOLPE RESUMES TESTIMONY ON CROSS-EXAMINATION BY MR. WALLACE.

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #D - 48 HOUR NOTICE TO CURE 5-10-13

JURORS ARE ADMONISHED BY THE COURT

THE JURY IS EXCUSED FOR THE DAY AT 4:31 P.M.

COUNSEL PROVIDE THE COURT WITH TIME ESTIMATES.

COURT ADJOURNED AT 4:36 P.M.

HEARING CONTINUED TO: 04/09/2019 AT: 09:30 AM FOR APPEARANCE TYPE: TRLS IN DEPARTMENT: D19 FROM DATE: 04/08/2019 FROM TIME: 09:00 AM FROM APPEARANCE TYPE: TRLS FROM DEPARTMENT: D19

ENTERED BY: SH

04/09/2019

MINUTE ORDER POSTED - Appearance: 04/09/2019 at 9:30AM for JURY TRIAL

JUDGE JAMES CHOU ,REPORTER PRIVATELY RETAINED COURT REPORTER DENNIS SOUZA - CSR#3893 , DEP CLK S. HENDRYX

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
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ATTORNEY KENNETH MCKENZIE AND RICHARD BOWLES APPEARED FOR PLAINTIFF / CROSS-DEFENDANT VOLPE COMPANY, INC., WITH BRUCE VOLPE

ATTORNEY CRAIG WALLACE AND MATT VOLKMANN APPEARED FOR DEFENDANT / CROSS-COMPLAINANT SAUSAL CORPORATION

THIS MATTER COMING ON REGULARLY FOR FOURTH DAY OF JURY TRIAL

TRIAL COMMENCED. TRIAL MINUTES FORM INCORPORATED HEREIN BY REFERENCE

AT 10:25 A.M.

THE JURY IS NOT PRESENT IN COURT.

COUNSEL ARGUE THE ADMISSIBILITY OF PLAINTIFF'S EXHIBIT \$17.

IT IS ORDERED: PLAINTIFF'S EXHIBIT #17 WILL BE ADMITTED - PAGES ONE THROUGH FIVE ONLY.

PLAINTIFF'S EXHIBIT(S) #17 (PAGES 1-5) PREVIOUSLY IDENTIFIED ADMITTED IN EVIDENCE

JURY IS NOW PRESENT IN OPEN COURT

AT 10:38 A.M.

HERETOFORE SWORN, MR. VOLPE RESUMES TESTIMONY ON CROSS-EXAMINATION BY MR. WALLACE.

MR. VOLPE TESTIFIES ON RE-DIRECT EXAMINATION BY MR. BOWLES AT 11:18 A.M.

RECESS DECLARED AT 11:35 A.M.

COURT RECONVENED AT 11:45 A.M.

JURY IS NOW PRESENT IN OPEN COURT

MR. VOLPE RESUMES TESTIMONY ON RE-DIRECT EXAMINATION BY MR. BOWLES.

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #43 - EMAIL FROM B. VOLPE TO R. ABERNATHY 8-9-13 #44 - EMAIL FROM R. ABERNATHY TO B. VOLPE 8-29-13

JURORS ARE ADMONISHED BY THE COURT

THE JURY IS RELEASED FOR THE LUNCH BREAK AT 12:18 P.M.

THE COURT ADDRESSES AN OBJECTION BY MR. WALLACE.

RECESS DECLARED AT 12:19 P.M.

COURT RECONVENED AT 1:32 P.M.

JURY IS NOW PRESENT IN OPEN COURT

PLAINTIFF'S EXHIBIT #16 IS REPLACED WITH A REDACTED VERSION BY AGREEMENT OF THE PARTIES AND ORDER OF THE COURT. THE EXHIBIT WAS ADMITTED ON 4/4/19.

MR. VOLPE RESUMES TESTIMONY ON RE-DIRECT EXAMINATION BY MR. BOWLES.

MR. VOLPE TESTIFIES ON RE-CROSS EXAMINATION BY MR. WALLACE AT 1:56 P.M.

MR. VOLPE IS EXCUSED AT 2:04 P.M.

WITNESS(ES) SWORN AND TESTIFIED: RUSTY ABERNATHY AT 2:04 P.M., CALLED UNDER EVIDENCE CODE 776 BY PLAINTIFF.

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #45 - 2 PAGE EMAIL FROM MICHAEL FRANK TO RUSTY ABERNATHY 10-18-13

THE JURY IS EXCUSED FOR A BREAK AT 2:32 P.M.

COURT AND COUNSEL DISCUSS TRANSCRIPTS

RECESS DECLARED AT 2:35 P.M.

COURT RECONVENED AT 2:46 P.M.

THE JURY IS NOT PRESENT IN COURT.



**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(S)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(S)	CASE SUBTYPE:	BREACH OF CONTRACT
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	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

COURT AND COUNSEL DISCUSS TRANSCRIPTS.

JURY IS NOW PRESENT IN OPEN COURT

MR. ABERNATHY RESUMES TESTIMONY ON EXAMINATION BY MR. BOWLES AT 2:59 P.M.

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #46 - SAUSAL BID FORM #47 - LETTER OF TRANSMITTAL #48 - EMAIL FROM B. VOLPE TO R. ABERNATHY 2-14-13 #49 -APPLICATION AND CERTIFICATE FOR PAYMENT PERIOD TO 8/31/2013 #50 -APPLICATION AND CERTIFICATE FOR PAYMENT PERIOD TO 9/30/2013 #51 -APPLICATION AND CERTIFICATE FOR PAYMENT PERIOD TO 10/31/2013 #52 -APPLICATION AND CERTIFICATE FOR PAYMENT PERIOD TO 11/30/2013

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #53 - APPLICATION AND CERTIFICATE FOR PAYMENT PERIOD TO 12/31/2013

RECESS DECLARED AT 3:51 P.M.

COURT RECONVENED AT 4:01 P.M.

JURY IS NOW PRESENT IN OPEN COURT

MR. ABERNATHY RESUMES TESTIMONY ON EXAMINATION BY MR. BOWLES.

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #54 - EMAIL FROM B. VOLPE TO R. ABERNATHY 9-4-13

JURORS ARE ADMONISHED BY THE COURT

THE JURY IS EXCUSED FOR THE DAY UNTIL 10:00 A.M. ON 4/11/19 AT 4:32 P.M.

COURT AND COUNSEL DISCUSS TRIAL SCHEDULE

COURT ADJOURNED AT 4:36 P.M.

HEARING CONTINUED TO: 04/11/2019 AT: 10:00 AM FOR APPEARANCE TYPE: TRLS IN DEPARTMENT: D19 FROM DATE: 04/09/2019 FROM TIME: 09:30 AM FROM APPEARANCE TYPE: TRLS FROM DEPARTMENT: D19

04/11/2019

MINUTE ORDER POSTED - Appearance: 04/11/2019 at 10:00AM for JURY TRIAL

JUDGE JAMES T. CHOU ,REPORTER PRIVATELY RETAINED COURT REPORTER DENNIS SOUZA - CSR#3893 , DEP CLK S. HENDRYX

ATTORNEY RICHARD BOWLES AND KENNETH MCKENZIE APPEARED FOR PLAINTIFF / CROSS-DEFENDANT VOLPE COMPANY, INC., WITH BRUCE VOLPE

ATTORNEY CRAIG WALLACE AND MATT VOLKMANN APPEARED FOR DEFENDANT / CROSS-COMPLAINANT SAUSAL CORPORATION

THIS MATTER COMING ON REGULARLY FOR FIFTH DAY OF JURY TRIAL

TRIAL COMMENCED. TRIAL MINUTES FORM INCORPORATED HEREIN BY REFERENCE

AT 10:01 A.M.

JURY IS NOW PRESENT IN OPEN COURT

WITNESS(ES) SWORN AND TESTIFIED: JULIAN SKINNER, CALLED UNDER EVIDENCE CODE 776 BY THE PLAINTIFF, UNDER EXAMINATION BY KENNETH MCKENZIE AT 10:02 A.M.

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #55 - EMAIL FROM BILL JOHAL TO JIM@SAUSAL DATED 7-9-12 #56 - EMAIL FROM JULIAN SKINNER TO MARIA BRYANT DATED 2-27-14 #2 - LETTER CITY OF NOVATO TO ABERNATHY 09/02/2014 (PARAGRAPHS ONE AND TWO UNDER ITEM ONE OF FIRST PAGE ONLY)

MR. SKINNER IS THANKED AND EXCUSED AT 10:43 A.M.

WITNESS(ES) SWORN AND TESTIFIED: MARIA BRYANT, FOR PLAINTIFF AT 10:45 A.M.

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #57 - CITY OF NOVATO MEETING MINUTES 8-9-12 #58 - BRYANT DAILY REPORTS

JURORS ARE ADMONISHED BY THE COURT

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

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SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(S)	CASE SUBTYPE:	BREACH OF CONTRACT
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REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

RECESS DECLARED AT 11:07 A.M.  
 COURT RECONVENED AT 11:20 A.M.  
 JURY IS NOW PRESENT IN OPEN COURT  
 MS. BRYANT RESUMES TESTIMONY ON DIRECT EXAMINATION BY MR. BOWLES.  
 PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #24A - TWO PAGES - EMAILS WITHIN TAB 531 - PAGES MARKED 8-1 AND 7  
 JURORS ARE ADMONISHED BY THE COURT  
 THE JURY IS RELEASED FOR THE LUNCH RECESS AT 12:15 P.M.  
 COURT AND COUNSEL DISCUSS THE TRIAL SCHEDULE.  
 RECESS DECLARED AT 12:16 P.M.  
 COURT RECONVENED AT 1:33 P.M.  
 JURY IS NOW PRESENT IN OPEN COURT  
 MS. BRYANT RESUMES TESTIMONY ON DIRECT EXAMINATION BY MR. BOWLES.  
 PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #59 - EMAIL FROM JOSIE CAMACLANG TO MARIA BRYANT 10-9-13 #60 - EMAIL FROM JOSIE CAMACLANG TO SLOD@STRUCTURALENGINEERSINC.COM 10-1-13  
 MS. BRYANT TESTIFIES ON CROSS-EXAMINATION BY MR. VOLKMANN AT 1:54 P.M.  
 MS. BRYANT TESTIFIES ON RE-DIRECT EXAMINATION BY MR. BOWLES AT 2:31 P.M.  
 JURORS ARE ADMONISHED BY THE COURT  
 THE JURY IS RELEASED FOR A BREAK AT 2:38 P.M.  
 COURT AND COUNSEL DISCUSS THE DEPOSITION TESTIMONY OF RUSTY ABERNATHY.  
 RECESS DECLARED AT 2:49 P.M.  
 COURT RECONVENED AT 3:01 P.M.  
 JURY IS NOW PRESENT IN OPEN COURT  
 MS. BRYANT RESUMES TESTIMONY ON RE-DIRECT EXAMINATION BY MR. BOWLES.  
 MS. BRYANT IS EXCUSED AT 3:15 P.M.  
 WITNESS(ES) SWORN AND TESTIFIED: RUSSELL THOMPSON, FOR THE PLAINTIFF, AT 3:16 P.M.  
 MR. THOMPSON TESTIFIES ON CROSS-EXAMINATION BY MR. WALLACE AT 3:25 P.M.  
 MR. THOMPSON IS EXCUSED AT 3:36 P.M.  
 HERETOFORE SWORN, RUSTY ABERNATHY RESUMES TESTIMONY ON EXAMINATION BY MR. BOWLES AT 3:36 P.M.  
 PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #61 - SAUSAL CORPORATION CHANGE ORDERS #19C - SAUSAL CORPORATION CHANGE ORDER AND NIELSON CHANGE ORDER (2 PAGES) #62 - SAUSAL CORPORATION PROPOSED CHANGE ORDER  
 JURORS ARE ADMONISHED BY THE COURT  
 THE JURY IS EXCUSED FOR THE DAY AT 4:31 P.M.  
 COURT AND COUNSEL DISCUSS MR. ABERNATHY'S DEPOSITION TESTIMONY AND THE TRIAL SCHEDULE.  
 COURT ADJOURNED AT 4:36 P.M.  
 ENTERED BY: SH  
 HEARING CONTINUED TO: 04/15/2019 AT: 09:00 AM FOR APPEARANCE TYPE: TRLS IN DEPARTMENT: D19 FROM DATE: 04/11/2019 FROM TIME: 10:00 AM FROM APPEARANCE TYPE: TRLS FROM DEPARTMENT: D19

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

04/12/2019 CHECK NO. 24141 IN THE AMOUNT OF \$504.32 RECEIVED FROM BOWLES & VERNA LLP ON BEHALF OF PLAINTIFF VOLPE COMPANY FOR JURY FEES 4/4/19 THROUGH 4/11/19. RECEIPT #0002744.

04/15/2019 MINUTE ORDER POSTED - Appearance: 04/15/2019 at 9:30AM for JURY TRIAL  
 JUDGE JAMES T. CHOU ,REPORTER PRIVATELY RETAINED COURT REPORTER DENNIS SOUZA - CSR#3893 , DEP CLK C. HAHN  
 ATTORNEY RICHARD BOWLES AND KENNETH MCKENZIE APPEARED FOR PLAINTIFF / CROSS-DEFENDANT VOLPE COMPANY, INC., WITH BRUCE VOLPE  
 ATTORNEY CRAIG WALLACE AND MATT VOLKMANN APPEARED FOR DEFENDANT / CROSS-COMPLAINANT SAUSAL CORPORATION  
 THIS MATTER COMING ON REGULARLY FOR SIXTH DAY OF JURY TRIAL  
 COURT AND COUNSEL DISCUSS DISCUSS MR. BOWLES' MOTION FOR READ-BACK OF DEPOSITION TRANSCRIPTS AS DESCRIBED ON THE RECORD. COUNSEL MR. WALLACE OBJECTS, ARGUING THAT SUCH READ-BACK WOULD BE OUT OF CONTEXT, CUMULATIVE AND PREJUDICIAL TO DEFENDANTS.  
 MOTION FOR READ-BACK IS GRANTED IN PART AS STATED ON THE RECORD.  
 COUNSEL MR. BOWLES MOVES FOR THE COURT TO TAKE JUDICIAL NOTICE OF THE PAYMENT OF \$1,885,000.00 BY "THE CITY" TO SAUSAL CORPORATION; COUNSEL MR. WALLACE OBJECTS.  
 THE COURT STATES IT SHALL TAKE THE ISSUE OF MR. BOWLES' MOTION UNDER SUBMISSION.  
 JURY IS NOW PRESENT IN OPEN COURT  
 TRIAL COMMENCED. TRIAL MINUTES FORM INCORPORATED HEREIN BY REFERENCE  
 AT 10:17 A.M.  
 HERETOFORE SWORN, RUSTY ABERNATHY RESUMES TESTIMONY ON EXAMINATION BY MR. BOWLES AT 10:17 A.M.  
 PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #63 - TWO PAGES - WORK LOG AND PUBLIC HOLIDAYS 03/29/2013 - 09/18/2013 & RAIN LOG 10/22/2012 - 01/05/2013  
 PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #64 - ONE PAGE VOLPE WORK DOCUMENT DATED 10/15/2013.  
 JURORS ARE ADMONISHED BY THE COURT  
 RECESS DECLARED AT 11:22 A.M.  
 COURT RECONVENED AT 11:33 A.M.  
 JURY IS NOW PRESENT IN OPEN COURT  
 FURTHER TESTIMONY FROM RUSTY ABERNATHY WHO RESUMES THE WITNESS STAND AND STILL UNDER OATH AT 11:33 A.M.  
 FURTHER DIRECT EXAMINATION BY COUNSEL RICHARD BOWLES.  
 PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #65 - EMAIL FROM BRUCE VOLPE DATED 7/22/2013 & CHANGE ORDER DATED 7/19/2013 - 2 PAGES.  
 PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #66 - CHANGE ORDER - 2 PAGES  
 PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #67 - SAUSAL CORPORATION APPROVED PROPOSAL LOG - 1 PAGE  
 DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #E - SAUSAL CORPORATION DAILY REPORTS - 111 PAGES  
 JURORS ARE ADMONISHED BY THE COURT  
 THE JURY IS RELEASED FOR THE LUNCH RECESS AT 12:14 P.M.  
 RECESS DECLARED AT 12:14 P.M.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

COURT RECONVENED AT 1:33 P.M.

JURY IS NOW PRESENT IN OPEN COURT

THE PLAINTIFF RESTS.

WITNESS(ES) SWORN AND TESTIFIED: RUSTY ABERNATHY AT 1:34 PM; WITNESS CALLED BY DEFENDANT'S COUNSEL CRAIG WALLACE.

DIRECT EXAMINATION BY MR. WALLACE.

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #F - APPLICATION AND CERTIFICATION FOR PAYMENT - 11 PAGES

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #G - APPLICATION AND CERTIFICATION FOR PAYMENT - ONE PAGE

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #H - LETTER FROM SAUSAL CORP TO VOLPE COMPANY - 1 PAGE

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #I - SAUSAL CORPORATION SUBMITTALS DUE - 2 PAGES

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #J - SAUSAL CORPORATION SUBMITTALS DUE - 1 PAGE

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #K - NORTHERN ELECTRIC INVOICE - 5 PAGES

JURORS ARE ADMONISHED BY THE COURT

RECESS DECLARED AT 2:39 P.M.

COURT RECONVENED AT 2:53 P.M.

JURY IS NOW PRESENT IN OPEN COURT

FURTHER TESTIMONY FROM RUSTY ABERNATHY WHO RESUMES THE WITNESS STAND AND STILL UNDER OATH AT 2:53 P.M.

FURTHER DIRECT EXAMINATION BY COUNSEL CRAIG WALLACE.

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #L - EMAIL FROM RUSTY ABERNATHY TO BRUCE VOLPE DATED 8/13/13 WITH SUBCONTRACTOR EARNED VALUES REPORT ATTACHED - 2 PAGES

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #M - AHC GLASS INVOICE DATED 9/20/13 - 2 PAGES

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #N - MARIN CARPET SERVICE, INC. INVOICE DATED 9/26/13 - 2 PAGES

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #O - EMAIL FROM RUSTY ABERNATHY TO BRUCE VOLPE DATED 8/9/13 - 2 PAGES

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #P - EMAIL FROM RUSTY ABERNATHY TO BRUCE VOLPE DATED 8/29/13 - 2 PAGES

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #Q - EMAIL FROM RUSTY ABERNATHY TO BRUCE VOLPE DATED 9/4/13 - 1 PAGE

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #R - EMAIL FROM RUSTY ABERNATHY TO BRUCE VOLPE DATED 8/6/13 - 1 PAGE

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #S - EMAIL FROM RUSTY ABERNATHY TO BRUCE VOLPE DATED 9/25/13 - 1 PAGE

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #T - SAUSAL CORPORATION FAX TRANSMITTAL DATED 9/30/13 - 1 PAGE

JURORS ARE ADMONISHED BY THE COURT

RECESS DECLARED AT 3:51 P.M.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

COURT RECONVENED AT 4:04 P.M.

JURY IS NOW PRESENT IN OPEN COURT

FURTHER TESTIMONY FROM RUSTY ABERNATHY WHO RESUMES THE WITNESS STAND AND STILL UNDER OATH AT 4:04 P.M.

FURTHER DIRECT EXAMINATION BY COUNSEL CRAIG WALLACE.

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #U - EMAIL FROM RUSTY ABERNATHY TO BRUCE VOLPE DATED 10/11/13 - 3 PAGES

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #V - SAUSAL CORPORATION FAX TRANSMITTAL DATED 10/18/13 - 1 PAGE

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #W - EMAIL FROM BRUCE VOLPE TO RUSTY ABERNATHY DATED 10/24/13 - 1 PAGE

JURORS ARE ADMONISHED BY THE COURT

THE JURY IS EXCUSED FOR THE DAY AT 4:32 P.M.

COURT AND COUNSEL DISCUSS THE TRIAL SCHEDULE.

COURT ADJOURNED AT 4:36 P.M.

HEARING CONTINUED TO: 04/16/2019 AT: 09:30 AM FOR APPEARANCE TYPE: TRLS IN DEPARTMENT: D19 FROM DATE: 04/15/2019 FROM TIME: 09:30 AM FROM APPEARANCE TYPE: TRLS FROM DEPARTMENT: D19

ENTERED BY: C HAHN

04/16/2019

MINUTE ORDER POSTED - Appearance: 04/16/2019 at 9:30AM for JURY TRIAL

JUDGE JAMES T. CHOU ,REPORTER DENNIS M. SOUZA (CSR # 3893, PRIVATELY RETAINED) , DEP CLK J. DALE ATTORNEY RICHARD T. BOWLES AND KENNETH MCKENZIE APPEARED FOR THE PLAINTIFF/CROSS-DEFENDANT VOLPE COMPANY, INC., AND WITH BRUCE VOLPE

ATTORNEY CRAIG WALLACE AND MATT VOLKMAN APPEARED FOR THE DEFENDANT/CROSS-COMPLAINANT SAUSAL CORPORATION, AND WITH RUSTY ABERNATHY

THIS MATTER COMING ON REGULARLY FOR SEVENTH (7TH) DAY OF JURY TRIAL

9:45 A.M.

TRIAL COMMENCED. TRIAL MINUTES FORM INCORPORATED HEREIN BY REFERENCE

COURT AND COUNSEL DISCUSS TRIAL SCHEDULE AND SETTLEMENT BETWEEN SAUSAL AND THE CITY OUT OF PRESENCE OF THE JURY

THE COURT STATES ITS TENTATIVE RULING ON BRINGING IN THE SETTLEMENT BETWEEN SAUSAL AND THE CITY THAT THE PREJUDICIAL EFFECT OUTWEIGHS THE PROBATIVE VALUE. THE COURT WILL REVIEW SUBMITTED TRANSCRIPTS ON THE ISSUE.

RECESS DECLARED AT 9:57 A.M.

COURT RECONVENED AT 10:04 A.M.

JURY IS NOW PRESENT IN OPEN COURT

10:04 A.M. - WITNESS RUSTY ABERNATHY, HERETOFORE SWORN, RESUMES TESTIMONY ON DIRECT EXAMINATION BY DEFENSE COUNSEL CRAIG WALLACE

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: X: SAUSAL'S SUBCONTRACT CHANGE ORDER 10/31/2013

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: Y: SAUSAL'S SUBCONTRACT CHANGE ORDER 11/30/2013

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: Z: SAUSAL'S SUBCONTRACT CHANGE ORDER 12/31/2013

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(S)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(S)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: AA: SHORT FORM STANDARD CONTRACT 08/10/2012

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #BB: SAUSAL CORPORATION SUBCONTRACTOR EARNED VALUES REPORTS (7 PAGES)

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #CC: DETAILED SUBCONTRACT STATUS REPORT

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: DD: SAUSAL CORPORATION SCHEDULE OF PAYMENTS MADE TO VOLPE AND COPIES OF CHECKS (20 PRINTED PAGES)

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION: #EE: EMAIL BRYANT TO ABERNATHY 02/03/2014

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION: #FF: EMAIL BRYANT TO ABERNATHY 02/11/2014

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: GG: CHANGE ORDERS, WORK AUTHORIZATION, FIELD ORDERS

COURT REMINDED JURORS OF ADMONITION

RECESS DECLARED AT 11:04 A.M.

COURT RECONVENED AT 11:17 A.M.

JURY IS NOW PRESENT IN OPEN COURT

11:17 A.M. - WITNESS RUSTY ABERNATHY, HERETOFORE SWORN, RESUMES TESTIMONY ON DIRECT EXAMINATION BY DEFENSE COUNSEL CRAIG WALLACE

11:33 A.M. - WITNESS RUSTY ABERNATHY, HERETOFORE SWORN, TESTIFIES ON CROSS-EXAMINATION BY PLAINTIFF'S COUNSEL RICHARD BOWLES

COURT REMINDED JURORS OF ADMONITION

12:17 A.M. - JURY RETIRES FOR LUNCH BREAK

COURT AND COUNSEL DISCUSS DEFENSE REQUEST FOR ADMISSION OF DEFENDANT'S EXHIBITS #EE AND #FF OUT OF PRESENCE OF THE JURY

MOTION DENIED

RECESS DECLARED AT 12:23 P.M.

COURT RECONVENED AT 1:34 P.M.

JURY IS NOW PRESENT IN OPEN COURT

1:34 P.M. - WITNESS RUSTY ABERNATHY, HERETOFORE SWORN, RESUMES TESTIMONY ON CROSS-EXAMINATION BY PLAINTIFF'S COUNSEL RICHARD BOWLES

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION: #68: NOVATO VOLPE (PAGE 1)

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #68A: SCHEDULE OF VALUES (NOVATO VOLPE PAGES 2 AND 3)

COURT REMINDED JURORS OF ADMONITION

RECESS DECLARED AT 2:33 P.M.

COURT RECONVENED AT 2:45 P.M.

JURY IS NOW PRESENT IN OPEN COURT

2:45 P.M. - WITNESS RUSTY ABERNATHY, HERETOFORE SWORN, RESUMES TESTIMONY ON CROSS-EXAMINATION BY PLAINTIFF'S COUNSEL RICHARD BOWLES

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #69: SUBCONTRACT CHANGE ORDER 10/31/2013

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #70: SUBCONTRACT CHANGE ORDER 11/30/2013

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION: #71: VOLPE INSTALL 8IN PERFORATED DRAIN

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

3:32 P.M. - WITNESS RUSTY ABERNATHY TESTIFIES ON REDIRECT EXAMINATION BY DEFENSE COUNSEL CRAIG WALLACE

WITNESS EXCUSED

COURT REMINDED JURORS OF ADMONITION

RECESS DECLARED AT 3:34 P.M.

COURT RECONVENED AT 3:46 P.M.

JURY IS NOW PRESENT IN OPEN COURT

WITNESS(ES) SWORN AND TESTIFIED: RAYMOND BAKER (3:46 P.M.)

3:46 P.M. - WITNESS RAYMOND BAKER TESTIFIES ON DIRECT EXAMINATION BY DEFENSE COUNSEL CRAIG WALLACE

4:12 P.M. - WITNESS RAYMOND BAKER TESTIFIES ON CROSS-EXAMINATION BY PLAINTIFF'S COUNSEL KENNETH MCKENZIE

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION: #72: SCHEDULE DELAYS

JURY INFORMED OF EXPECTED TRIAL SCHEDULE

4:35 P.M. - JURY RETIRES TO 04/17/2019 AT 10:00 A.M.

COURT AND COUNSEL DISCUSS JURY INSTRUCTIONS OUT OF PRESENCE OF THE JURY

IT IS ORDERED: JURY TRIAL DAY EIGHT (8) SET 04/17/2019 AT 9:30 A.M. IN COURTROOM B

HEARING CONTINUED TO: 04/17/2019 AT: 09:00 AM FOR APPEARANCE TYPE: TRLS IN DEPARTMENT: D19 FROM DATE: 04/16/2019 FROM TIME: 09:30 AM FROM APPEARANCE TYPE: TRLS FROM DEPARTMENT: D19

COURT ADJOURNED AT 4:40 P.M.

ENTERED BY: J. DALE

04/17/2019

MINUTE ORDER POSTED - Appearance: 04/17/2019 at 9:30AM for JURY TRIAL

JUDGE JAMES T. CHOU ,REPORTER DENNIS M. SOUZA (CSR # 3893, PRIVATELY RETAINED) , DEP CLK J. DALE ATTORNEY RICHARD T. BOWLES AND KENNETH MCKENZIE APPEARED FOR THE PLAINTIFF/CROSS-DEFENDANT VOLPE COMPANY, INC., AND WITH BRUCE VOLPE

ATTORNEY CRAIG WALLACE AND MATT VOLKMANN APPEARED FOR THE DEFENDANT/CROSS-COMPLAINANT SAUSAL CORPORATION, AND WITH RUSTY ABERNATHY

THIS MATTER COMING ON REGULARLY FOR EIGHTH (8TH) DAY OF JURY TRIAL

9:45 A.M.

TRIAL COMMENCED. TRIAL MINUTES FORM INCORPORATED HEREIN BY REFERENCE

COURT AND COUNSEL DISCUSS JURY INSTRUCTIONS OUT OF PRESENCE OF THE JURY

RECESS DECLARED AT 9:50 A.M.

COURT RECONVENED AT 10:09 A.M.

JURY IS NOW PRESENT IN OPEN COURT

10:09 A.M. - WITNESS RAYMOND BAKER, HERETOFORE SWORN, RESUMES TESTIMONY ON CROSS-EXAMINATION BY PLAINTIFF'S COUNSEL KENNETH MCKENZIE

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #73: EMAIL ABERNATHY TO BAKER 10/19/2013

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION: #74: VOLPE WORK ORDERS

10:59 A.M. - WITNESS RAYMOND BAKER TESTIFIES ON REDIRECT EXAMINATION BY DEFENSE COUNSEL CRAIG WALLACE

WITNESS EXCUSED

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(S)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(S)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

COURT REMINDED JURORS OF ADMONITION

RECESS DECLARED AT 11:04 A.M.

COURT RECONVENED AT 11:17 A.M.

JURY IS NOW PRESENT IN OPEN COURT

PLAINTIFF'S EXHIBIT(S) #74 PREVIOUSLY IDENTIFIED ADMITTED IN EVIDENCE

WITNESS(ES) SWORN AND TESTIFIED: STEVEN HOSLETT (11:20 A.M.)

11:20 A.M. - WITNESS STEVEN HOSLETT TESTIFIES ON DIRECT EXAMINATION BY DEFENSE COUNSEL CRAIG WALLACE

WITNESS STEVEN HOSLETT IS ACCEPTED AS AN EXPERT IN FORENSIC ACCOUNTING

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION: #HH: SAUSAL CORPORATION VOLPE SUB-CONTRACT ACCOUNTING AND BACKCHARGE SUMMARY

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION: #II: SAUSAL CORPORATION SUMMARY OF PAYMENTS TO VOLPE AND VOLPE SUB-CONTRACTORS

DEFENDANT'S EXHIBIT(S) MARKED FOR IDENTIFICATION AND ADMITTED IN EVIDENCE: #JJ: SAUSAL CORPORATION SUMMARY OF WORK PERFORMED BY G.D. NIELSON CONSTRUCTION OCTOBER TO DECEMBER 2013

11:54 A.M. - WITNESS STEVEN HOSLETT TESTIFIES ON CROSS-EXAMINATION BY PLAINTIFF'S COUNSEL RICHARD BOWLES

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION: #75: STEVEN HOSLETT'S REPORT

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION: #72: SAUSAL CORPORATION AMOUNTS DUE (OVERPAID) VOLPE - VARIOUS SCENARIOS

COURT REMINDED JURORS OF ADMONITION

12:14 P.M. - JURY RETIRES TO JURY ROOM

COURT AND COUNSEL DISCUSS DEFENSE OBJECTION TO PLAINTIFF'S EXHIBIT #76 OUT OF PRESENCE OF THE JURY

IT IS ORDERED: DEFENSE OBJECTION TO PLAINTIFF'S #76 IS OVERRULED. IT MAY BE SHOWN TO THE JURY.

RECESS DECLARED AT 12:17 P.M.

COURT RECONVENED AT 12:25 P.M.

JURY IS NOW PRESENT IN OPEN COURT

12:25 P.M. - WITNESS STEVEN HOSLETT, HERETOFORE SWORN, RESUMES TESTIMONY ON CROSS-EXAMINATION BY PLAINTIFF'S COUNSEL RICHARD BOWLES

WITNESS EXCUSED

DEFENDANT RESTS

WITNESS(ES) SWORN AND TESTIFIED: BRUCE VOLPE (12:40 P.M.)

12:40 P.M. - WITNESS BRUCE VOLPE RECALLED IN PLAINTIFF'S REBUTTAL AND TESTIFIES ON DIRECT EXAMINATION BY PLAINTIFF'S COUNSEL RICHARD BOWLES

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION: #77: APPLICATION AND CERTIFICATE FOR PAYMENT 10/2013

PLAINTIFF'S EXHIBIT(S) MARKED FOR IDENTIFICATION: #78: APPLICATION AND CERTIFICATE FOR PAYMENT 11/2013

PLAINTIFF'S EXHIBIT(S) #68 PREVIOUSLY IDENTIFIED ADMITTED IN EVIDENCE

COURT REMINDED JURORS OF ADMONITION

1:03 P.M. - JURY RETIRES TO 04/18/2019 AT 10:00 A.M. THE JURY IS NOT PRESENT HEREAFTER.



**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(S)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(S)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

RECESS DECLARED AT 1:03 P.M.

COURT RECONVENED AT 2:35 P.M.

COURT AND COUNSEL DISCUSS EXHIBITS

IT IS ORDERED: PLAINTIFF'S #71 IS EXCLUDED

PLAINTIFF'S EXHIBIT(S) #77 PREVIOUSLY IDENTIFIED ADMITTED IN EVIDENCE

PLAINTIFF'S EXHIBIT(S) #78 (AS MODIFIED) PREVIOUSLY IDENTIFIED ADMITTED IN EVIDENCE

DEFENDANT'S EXHIBIT(S) #HH PREVIOUSLY IDENTIFIED ADMITTED IN EVIDENCE

PLAINTIFF'S EXHIBIT(S) #76 PREVIOUSLY IDENTIFIED ADMITTED IN EVIDENCE

COURT AND COUNSEL DISCUSS JURY INSTRUCTIONS

RECESS DECLARED AT 4:22 P.M.

COURT RECONVENED AT 4:45 P.M.

COURT AND COUNSEL DISCUSS JURY INSTRUCTIONS

IT IS ORDERED: JURY TRIAL DAY NINE (9) SET 04/18/2019 AT 9:00 A.M. IN COURTROOM B

HEARING CONTINUED TO: 04/18/2019 AT: 09:30 AM FOR APPEARANCE TYPE: TRLS IN DEPARTMENT: D19 FROM DATE: 04/17/2019 FROM TIME: 09:30 AM FROM APPEARANCE TYPE: TRLS FROM DEPARTMENT: D19

COURT ADJOURNED AT 5:10 P.M.

ENTERED BY: J. DALE

04/18/2019 DAILY JURY FEES FOR DAYS 1-9 RECEIVED FROM SMITH CURRIE HANCOCK LLP ON BEHALF OF THE DEFENDANT IN THE AMOUNT OF \$1,008.64. CHECK # 1186. RECEIPT # 0002917.

04/18/2019 MINUTE ORDER POSTED - Appearance: 04/18/2019 at 9:00AM for JURY TRIAL  
 JUDGE JAMES T. CHOU ,REPORTER DENNIS M. SOUZA (CSR # 3893, PRIVATELY RETAINED) , DEP CLK J. DALE  
 ATTORNEY RICHARD T. BOWLES AND KENNETH MCKENZIE APPEARED FOR THE PLAINTIFF/CROSS-DEFENDANT VOLPE COMPANY, INC., AND WITH BRUCE VOLPE  
 ATTORNEY CRAIG WALLACE AND MATT VOLKMANN APPEARED FOR THE DEFENDANT/CROSS-COMPLAINANT SAUSAL CORPORATION, AND WITH RUSTY ABERNATHY  
 THIS MATTER COMING ON REGULARLY FOR NINETH (9TH) DAY OF JURY TRIAL  
 9:08 A.M.

TRIAL COMMENCED. TRIAL MINUTES FORM INCORPORATED HEREIN BY REFERENCE

THE JURY IS NOT PRESENT IN THE COURTROOM

COURT AND COUNSEL DISCUSS JURY INSTRUCTIONS

COURT AND COUNSEL DISCUSS VERDICT FORMS

10:00 A.M.

PLAINTIFF'S MOTION FOR DIRECTED VERDICT

MOTION(S) HEARD AND ARGUED.

MOTION DENIED

RECESS DECLARED AT 10:08 A.M.

COURT RECONVENED AT 10:19 A.M.

JURY IS NOW PRESENT IN OPEN COURT

JURY INFORMED OF THE EXHIBITS THAT WERE ADMITTED YESTERDAY WHILE THE JURY WAS NOT PRESENT

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

10:19 A.M. - WITNESS BRUCE VOLPE, HERETOFORE SWORN AND RECALLED ON REBUTTAL, RESUMES DIRECT EXAMINATION BY PLAINTIFF'S COUNSEL RICHARD BOWLES

10:23 A.M. - WITNESS BRUCE VOLPE TESTIFIES ON CROSS-EXAMINATION BY DEFENSE COUNSEL CRAIG WALLACE

WITNESS EXCUSED

PLAINTIFF RESTS REBUTTAL

MATTER SUBMITTED

10: 34 A.M.

COURT INSTRUCTS JURY

COURT REMINDED JURORS OF ADMONITION

RECESS DECLARED AT 11:12 A.M.

COURT RECONVENED AT 11:28 A.M.

JURY IS NOW PRESENT IN OPEN COURT

COURT INSTRUCTS JURY

11:28 A.M. - CLOSING ARGUMENT ON BEHALF OF THE PLAINTIFF/CROSS-DEFENDANT

COURT REMINDED JURORS OF ADMONITION

12:17 P.M. - JURY RETIRES FOR LUNCH

COURT AND COUNSEL DISCUSS EXHIBITS OUT OF PRESENCE OF THE JURY

PLAINTIFF'S EXHIBIT(S) #2 WITHDRAWN

PLAINTIFF'S EXHIBIT(S) ADMITTED IN EVIDENCE: #24 (IN ITS ENTIRETY)

RECESS DECLARED AT 12:20 P.M.

COURT RECONVENED AT 1:34 P.M.

RESUMED CLOSING ARGUMENT ON BEHALF OF THE PLAINTIFF/CROSS-DEFENDANT

2:12 P.M. - CLOSING ARGUMENT ON BEHALF DEFENDANT/CROSS-COMPLAINANT

COURT REMINDED JURORS OF ADMONITION

RECESS DECLARED AT 2:41 P.M.

COURT RECONVENED AT 2:52 P.M.

JURY IS NOW PRESENT IN OPEN COURT

RESUMED CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT/CROSS-COMPLAINANT

COURT REMINDED JURORS OF ADMONITION

RECESS DECLARED AT 3:43 P.M.

COURT RECONVENED AT 3:52 P.M.

JURY IS NOW PRESENT IN OPEN COURT

FINAL ARGUMENT ON BEHALF OF THE PLAINTIFF/CROSS-DEFENDANT

4:16 P.M. - FINAL ARGUMENT ON BEHALF OF THE DEFENDANT/CROSS-COMPLAINANT

BAILIFF J. RANDALL IS DULY SWORN TO TAKE CHARGE OF THE JURY

COUNSEL STIPULATE TO EXCUSE THE JURY FOR DELIBERATION WITHOUT FURTHER ADMONITION/INSTRUCTION

THE JURY RETIRES TO 04/19/2019 AT 9:00 A.M.

THE COURT ADMONISHES AND INSTRUCTS THE ALTERNATE JURORS

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(S)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(S)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

IT IS ORDERED: JURY TRIAL DAY TEN (10) SET 04/19/2019 AT 9:00 A.M. IN COURTROOM B

PLAINTIFF'S COUNSEL AND DEFENSE COUNSEL APPROVE EXHIBITS AND VERDICT FORM FOR SUBMISSION TO JURY

COURT ADJOURNED AT 4:25 P.M.

HEARING CONTINUED TO: 04/19/2019 AT: 09:00 AM FOR APPEARANCE TYPE: TRLS IN DEPARTMENT: D19 FROM DATE: 04/18/2019 FROM TIME: 09:00 AM FROM APPEARANCE TYPE: TRLS FROM DEPARTMENT: D19

ENTERED BY: J. DALE

04/19/2019

MINUTE ORDER POSTED - Appearance: 04/19/2019 at 9:00AM for JURY TRIAL

JUDGE JAMES T. CHOU ,REPORTER DENNIS M. SOUZA (CSR # 3893, PRIVATELY RETAINED) , DEP CLK J. DALE

ATTORNEY RICHARD T. BOWLES AND KENNETH MCKENZIE APPEARED FOR THE PLAINTIFF/CROSS-DEFENDANT VOLPE COMPANY, INC., AND WITH BRUCE VOLPE

ATTORNEY CRAIG WALLACE AND MATT VOLKMANN APPEARED FOR THE DEFENDANT/CROSS-COMPLAINANT SAUSAL CORPORATION, AND WITH RUSTY ABERNATHY

THIS MATTER COMING ON REGULARLY FOR TENTH (10TH) DAY OF JURY TRIAL

TRIAL COMMENCED. TRIAL MINUTES FORM INCORPORATED HEREIN BY REFERENCE

9:00 A.M./P.M. JURY RETIRES TO DELIBERATE UPON A VERDICT

10:44 A.M.

COURT AND COUNSEL DISCUSS JURY NOTE #1 OUT OF PRESENCE OF THE JURY

COUNSEL STIPULATE TO JUDGE MAKNG CORRECTIONS TO PAGE 4 OF THE VERDICT FORM AND TO CLERK GUIDING THE REPLACEMENT OF PAGE 4 BY THE JURORS.

SPECIAL VERDICT PAGE 4 REPLACED

11:12 A.M.

COURT AND COUNSEL DISCUSS SPECIAL VERDICT FORM OUT OF PRESENCE OF THE JURY

COUNSEL STIPULATE TO ISSUANCE OF CORRECTED SPECIAL VERDICT FORM. THE JURY SHALL KEEP THE ORIGINAL SPECIAL VERDICT FORM, STRIKE IT WITH AN X IN RED INK, AND PROCEED WITH THE CORRECTED FORM.

SPECIAL VERDICT FORMS REPLACED

11:58 A.M.

COURT AND COUNSEL DISCUSS JURY NOTES #2 AND #3 OUT OF PRESENCE OF THE JURY

COUNSEL STIPULATE TO JUDGE ADVISING THE JURY AS TO CORRECTIONS/CLARIFICATIONS TO THE CURRENT SPECIAL VERDICT FORM

JURY IS NOW PRESENT IN OPEN COURT

12:30 A.M./P.M. JURY RETURNS WITH VERDICT

CLERK READS VERDICT INTO THE RECORD

JURY POLLED

IT IS ORDERED: THE SPECIAL VERDICT IS ORDERED RECORDED

THE COURT GIVES FINAL INSTRUCTIONS AND ADMONITIONS TO THE JURY

JURORS THANKED AND EXCUSED

THE TWELVE JURORS NAMES AS FOLLOWS: EDWARD CUNNINGHAM, PORSHA HATCHER, LAUREN KIINO, TODD WALKER, CATHLEEN COWLES, CYNTHIA SWIFT, DORON DREKSLER, EMILY SPRING, KENNETH AHNEMANN, HANNAH PANGER, LEE DARBY, AND KATHLEEN THORNTON

PARTIES THANKED AND EXCUSED

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

JUDGMENT FOR PLAINTIFF/CROSS-DEFENDANT VOLPE COMPANY, INC. AGAINST DEFENDANT/CROSS-COMPLAINANT SAUSAL CORPORATION.

COURT ADJOURNED AT 12:45 P.M.

JUDGMENT IN CONFORMITY TO THE VERDICT FILED

NOTICE OF ENTRY OF JUDGMENT FILED AND MAILED TO THE PARTIES WITH PROOF OF SERVICE

CASE DISPOSED BY JURY TRIAL - AFTER EVIDENCE

CASE DISPOSED IN ENTIRETY

ENTERED BY: J. DALE

04/22/2019 IT IS ORDERED: ORDER GRANTING JAMES CURTIS WOLFBERG DBA JW PAINTING'S APPLICATION FOR DETERMINATION OF GOOD FAITH SETTLEMENT JUDGE JAMES T. CHOU (COPIES LEFT IN WILL CALL UNDER ONE LEGAL)

04/22/2019 PLAINTIFF'S AND DEFENDANT'S EXHIBITS SUBMITTED TO RECORDS MANAGEMENT

04/25/2019 (COPIES OF ORDER LEFT IN WILL CALL UNDER ONE LEGAL)

05/02/2019 MINUTE ORDER POSTED - Appearance: 05/02/2019 at 9:00AM for OSC RE: DISMISSAL

JUDGE JAMES T. CHOU ,REPORTER NOT REPORTED , DEP CLK J. DALE

VCOURT TELEPHONIC APPEARANCE BY ATTORNEY JAMES L. MCCORMICK FOR THE DEFENDANT/CROSS-COMPLAINANT/CROSS-DEFENDANT SAUSAL CORPROATION

VCOURT TELEPHONIC APPEARANCE BY ATTORNEY MATTHEW S. CONSTANTINO FOR THE PLAINTIFF/CROSS-DEFENDANT TILBURY CONSTRUCTORS, INC.

VCOURT TELEPHONIC APPEARANCE BY ATTORNEY HANNAH SCHARTIGER FOR THE CROSS-COMPLAINANT/CROSS-DEFENDANT CITY OF NOVATO

VCOURT TELEPHONIC APPEARANCE BY ATTORNEY PAUL B. WALSH FOR THE CROSS-COMPLAINANT/CROSS-DEFENDANT DECORATIVE PAVIING, INC.

VCOURT TELEPHONIC APPEARANCE BY ATTORNEY LYDIA V. KO FOR THE CROSS-DEFENDANT NORTHERN PACIFIC DRYWALL, INC.

HEARING AFTER TRIAL

STATUS OF SETTLEMENT AGREEMENTS DISCUSSED

COUNSEL MR. MCCORMICK REQUESTS 30 DAY CONTINUANCE

NO OBJECTIONS

IT IS ORDERED: ORDER TO SHOW CAUSE RE: DISMISSAL OF SETTLED PARTIES CONTINUED TO 06/05/2019 AT 9:00 A.M. IN COURTROOM B

HEARING CONTINUED TO: 06/05/2019 AT: 09:00 AM FOR APPEARANCE TYPE: OSCH IN DEPARTMENT: D19 FROM DATE: 05/02/2019 FROM TIME: 09:00 AM FROM APPEARANCE TYPE: OSCH FROM DEPARTMENT: D19

ENTERED BY: J. DALE

05/02/2019 HEARING CONFIRMED FOR: 06/19/2019 AT: 01:30 PM FOR APPEARANCE TYPE: LMCV IN DEPARTMENT: D19

05/10/2019 MINUTE ORDER POSTED

JUDGE JAMES T. CHOU ,REPORTER NOT REPORTED , DEP CLK J. DALE

ATTORNEY KARISSA L. FOX APPEARED FOR THE DEFENDANT SAUSAL CORPORATION, AND SPECIALLY ON BEHALF OF THE OTHER PARTIES

HEARING AFTER TRIAL

EX PARTE MINUTE ORDER ON STIPULATED EX PARTE APPLICATION TO RESET THE JUNE 19, 2019 HEARINGS FOR THE PARTIES' POST-TRIAL MOTIONS

THE COURT INFORMS COUNSEL IT IS NOT AVAILABLE FOR THE NEWLY PROPOSED HEARING DATE

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC.	DATE FILED:	6/30/2014
PLAINTIFF(S)	CASE TYPE:	COMPLAINT
VS.	CASE SUBTYPE:	BREACH OF CONTRACT
SAUSAL CORPORATION ( COMPLEX )	DATE OF LAST ACTIVITY:	2/13/2020
DEFENDANT(S)	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

**COURT AND COUNSEL DISCUSS CALENDARING**

IT IS ORDERED: THE POST-TRIAL MOTIONS SET 06/19/2019 ARE CONTINUED TO 06/26/2019 AT 1:30 P.M. IN COURTROOM B WITHOUT PREJUDICE TO FURTHER EX PARTE ORDER

APPEARANCE MOVED TO: 06/26/2019 AT: 01:30 PM FOR APPEARANCE TYPE: LMCV IN DEPARTMENT: D19 MOVE REASON: EX PARTE 05/10/2019 FROM DATE: 06/19/2019 FROM TIME: 01:30 PM FROM APPEARANCE TYPE: LMCV FROM DEPARTMENT: D19

MATTER RECALLED AT 9:39 A.M. ALL APPEARANCES AS PREVIOUSLY STATED.

COUNSEL MS. FOX STATES THE PARTIES HAVE AGREED TO 06/21/2019 IF THE COURT IS AVAILABLE  
MOTION GRANTED

IT IS ORDERED: THE POST-TRIAL MOTIONS ARE CONTINUED TO 06/21/2019 AT 9:30 A.M. IN COURTROOM B

APPEARANCE MOVED TO: 06/21/2019 AT: 09:30 AM FOR APPEARANCE TYPE: LMCV IN DEPARTMENT: D19 MOVE REASON: EX PARTE 05/10/2019 FROM DATE: 06/26/2019 FROM TIME: 01:30 PM FROM APPEARANCE TYPE: LMCV FROM DEPARTMENT: D19

ENTERED BY: J. DALE

05/10/2019 STIPULATION AND ORDER STIPULATION AND ORDER RESETTING HEARINGS JUDGE JAMES T. CHOU FILED

05/13/2019 DAILY JURY FEES RECEIVED FROM SMITH, CURRIE & HANCOCK LLP ON BEHALF OF DEFENDANT LIBERTY MUTUAL INSURANCE COMPANY IN THE AMOUNT OF \$109.38. CHECK #183628. RECEIPT #0003740.

05/13/2019 OPPOSITION/RESPONSE TO MOTION FILED BY DEFT. AND CROSS-COMPLAINANT SOUSAL CORP.

05/14/2019 MINUTE ORDER POSTED

JUDGE JAMES T. CHOU ,REPORTER NOT REPORTED , DEP CLK P. OKUBO (NOT PRESENT)

EX PARTE MINUTE ORDER

ORDER FROM CHAMBERS AFTER TELEPHONIC CONFERENCE.

IT IS ORDERED:

HEARING ON PLAINTIFF VOLPE COMPANY INC.'S MOTION TO MODIFY JUDGMENT TO INCLUDE PREJUDGMENT INTEREST AND AMOUNT OF PROMPT PAY PENALTIES AND DEFENDANT SAUSAL CORPORATION'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT; OR ALTERNATIVELY, MOTION FOR NEW TRIAL ARE MOVED FROM JUNE 21, 2019 TO BE HEARD ON JULY 2, 2019 AT 10:00 A.M. IN DEPARTMENT B.

THE COURT WILL ISSUE A TENTATIVE RULING ON JULY 1, 2019 PURSUANT TO MARIN COUNTY SUPERIOR COURT UNIFORM LOCAL RULES - CIVIL 1.10.

APPEARANCE MOVED TO: 07/02/2019 AT: 10:00 AM FOR APPEARANCE TYPE: LMCV IN DEPARTMENT: D19 MOVE REASON: PER ORDER OF THE COURT ON 5/14/19 FROM DATE: 06/21/2019 FROM TIME: 09:30 AM FROM APPEARANCE TYPE: LMCV FROM DEPARTMENT: D19

ENTERED BY: P. OKUBO

NOTICE OF HEARING MAILED TO COUNSEL FOR PARTIES VOLPE COMPANY INC. AND SAUSAL CORPORTION.

05/20/2019 HEARING CONFIRMED FOR: 07/10/2019 AT: 01:30 PM FOR APPEARANCE TYPE: LMCV IN DEPARTMENT: D19

05/21/2019 REPLY TO MOTION /RFOR FILED. BY PLTF.

05/31/2019 RESPONSE BY COUNSEL FOR SAUSAL CORPORATION TO ORDER TO SHOW CAUSE RE: DISMISSAL.

06/03/2019 PARTIAL DISMISSAL AS TO: CRDF, LANDAVAZO BROTHERS, INC. (1) TO 3RD AMENDED CROSS-COMPLAINT OF SAUSAL CORPORATION WITH PREJUDICE

06/03/2019 PARTIAL DISMISSAL AS TO: CRDF, ALBERT CAMILLA (1) TO 3RD AMENDED CROSS-COMPLAINT OF SAUSAL CORPORATION WITH PREJUDICE

06/03/2019 PARTIAL DISMISSAL AS TO: CRDF, SOLANO COUNTY ROOFING, INC. (1) TO 3RD AMENDED CROSS-COMPLAINT OF SAUSAL CORPORATION WITH PREJUDICE

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

06/03/2019 PARTIAL DISMISSAL AS TO: CRDF, TILBURY CONSTRUCTORS, INC. (1) TO 3RD AMENDED CROSS-COMPLAINT OF SAUSAL CORPORATION WITH PREJUDICE

06/05/2019 MINUTE ORDER POSTED - Appearance: 06/05/2019 at 9:00AM for OSC RE: DISMISSAL  
 JUDGE JAMES T. CHOU ,REPORTER NOT REPORTED , DEP CLK J. DALE  
 VCOURT TELEPHONIC APPEARANCE BY ATTORNEY JAMES MCCORMICK FOR THE DEFENDANT/CROSS-COMPLAINANT/CROSS-DEFENDANT SAUSAL CORPORATION  
 VCOURT TELEPHONIC APPEARANCE BY ATTORNEY HANNAH SCHATIGER FOR THE DEFENDANT/CROSS-COMPLAINANT/CROSS-DEFENDANT CITY OF NOVATO  
 VCOURT TELEPHONIC APPEARANCE BY ATTORNEY LYDIA KO FOR CROSS-DEFENDANT NORTHERN PACIFIC DRYWALL, INC.  
 VCOURT TELEPHONIC APPEARANCE BY ATTORNEY MATTHEW CONSTANTINO FOR CROSS-DEFENDANT TILBURY CONSTRUCTOR'S INC.  
 VCOURT TELEPHONIC APPEARANCE BY ATTORNEY PAUL WALSH FOR THE CROSS-DEFENDANT DECORATIVE PAINTING, INC.  
 HEARING AFTER TRIAL  
 STATUS OF SETTLEMENTS DISCUSSED  
 COUNSEL MCCORMICK STATES TWO SETTLEMENT AGREEMENTS HAVE NOT YET BEEN EXECUTED AND REQUESTS 30-45 DAY CONTINUANCE  
 COUNSEL SCHATIGER CONCURS ON BEHALF OF THE CITY  
 IT IS ORDERED: ORDER TO SHOW CAUSE RE: DISMISSAL OF SETTLED PARTIES IS CONTINUED TO 08/02/2019 AT 9:00 A.M. IN COURTROOM B  
 HEARING CONTINUED TO: 08/02/2019 AT: 09:00 AM FOR APPEARANCE TYPE: OSCH IN DEPARTMENT: D19 FROM DATE: 06/05/2019 FROM TIME: 09:00 AM FROM APPEARANCE TYPE: OSCH FROM DEPARTMENT: D19  
 ENTERED BY: J. DALE

06/05/2019 OPPOSITION/RESPONSE TO MOTION FILED BY DEFENDANT VOLPE COMPANY, INC.

06/05/2019 OPPOSITION/RESPONSE TO MOTION FILED BY DEFENDANT VOLPE COMPANY INC.

06/17/2019 NOTICE OF APPEAL BY SAUSAL CORPORATION FROM JUDGMENT ENTERED 4/19/19. \$100/\$775

06/18/2019 HEARING CONFIRMED FOR: 08/21/2019 AT: 01:30 PM FOR APPEARANCE TYPE: LMCV IN DEPARTMENT: D19

06/21/2019 OPPOSITION/RESPONSE TO MOTION FILED BY DEFT SAUSAL CORPORATION

06/26/2019 OPPOSITION/RESPONSE TO MOTION FILED BY PLTF. VOLPE COMPANY, INC. TO TAX COSTS

06/26/2019 PER ATD 27591; \$16.70 OVERPAYMENT OF JURRY FEES REFUNDED TO BOWLES AND VERNA LLP

07/02/2019 MINUTE ORDER POSTED - Appearance: 07/02/2019 at 10:00AM for MOTION  
 JUDGE JAMES CHOU ,REPORTER CHRISTINE GILSON , DEP CLK T. JONES  
 ATTORNEY RICHARD BOWLES AND KENNETH MCKENZIE APPEARED FOR PLAINTIFF VOLPE COMPANY, INC., A CALIFORNIA CORPORATION  
 ATTORNEY CRAIG WALLACE APPEARED FOR DEFENDANT SAUSAL CORPORATION  
 NO APPEARANCE BY OR FOR THE OTHER PARTIES  
 HEARING AFTER TRIAL  
 THIS MATTER COMES BEFORE THE COURT FOR ARGUMENT ON THE TENTATIVE RULING.  
 MOTION(S) HEARD AND ARGUED.  
 IT IS ORDERED:  
 CASE UNDER SUBMISSION

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

ENTERED BY: T. JONES

07/02/2019

MINUTE ORDER POSTED

JUDGE JAMES CHOU ,REPORTER NOT REPORTED , DEP CLK T. JONES

NO APPEARANCE BY OR FOR THE PARTIES

EX PARTE MINUTE ORDER \*\*\*\*\*IN CHAMBERS MINUTE ORDER\*\*\*\*\*

THE COURT HAS ISSUED AN ORDER AFTER HEARING REGARDING THE 7/3/19 MOTIONS TAKEN UNDER SUBMISSION AFTER ORAL ARGUMENT ON THE TENTATIVE RULING.

IT IS ORDERED:

DEFENDANTS SAUSAL CORPORATION'S MOTION FOR A NEW TRIAL IS DENIED. DEFENDANTS' MOTION FOR JUDGMENT NOTWITHSTANDING THE JURY'S VERDICT IS DENIED. PLAINTIFF VOLPE'S MOTION FOR PRE-JUDGMENT INTEREST IS GRANTED IN PART. PLAINTIFF'S MOTION FOR A PROMPT PAYMENT PENALTY IS GRANTED IN PART.

DEFENDANTS' OBJECTIONS TO THE RICHARD BOWLES DECLARATION (BOWLES DECLARATION) BASED UPON HEARSAY (EVID. CODE §1200), LACK OF FOUNDATION (EVID. CODE §403) AND LACK OF PERSONAL KNOWLEDGE (EVID. CODE §702) ARE OVERRULED. WHILE THE COURT HAS CONSIDERED THE BOWLES DECLARATION, THE COURT WILL RELY ON ITS OWN INDEPENDENT RECOLLECTION OF THE TESTIMONY, EVIDENCE, AND RULINGS RELEVANT TO THESE MOTIONS.

INTRODUCTION

THIS JURY TRIAL INVOLVED A CONTRACT DISPUTE BETWEEN SUBCONTRACTOR VOLPE COMPANY AND SAUSAL CORPORATION ARISING OUT OF CONSTRUCTION OF AN ADMINISTRATIVE BUILDING FOR THE CITY OF NOVATO (THE CITY). ON APRIL 19, 2019 THE JURY RETURNED UNANIMOUS VERDICTS IN FAVOR OF PLAINTIFF AFTER A 10 DAY TRIAL. ON THAT SAME DAY THE COURT ENTERED JUDGMENT BASED ON THE VERDICT IN FAVOR OF PLAINTIFF IN THE AMOUNT OF \$380,116.30. DEFENDANTS HAVE TIMELY MOVED FOR A NEW TRIAL AND JUDGMENT NOTWITHSTANDING THE JURY'S VERDICT.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

PLAINTIFF MOVES TO MODIFY THE JUDGMENT TO INCLUDE PRE-JUDGMENT INTEREST OF \$201,539.75 PURSUANT TO CIVIL CODE SECTIONS 3287 AND 3289 IN ADDITION TO THE \$380,116.30 IN CONTRACT DAMAGES THE JURY AWARDED PLAINTIFF AND IMPOSE A PROMPT PAYMENT PENALTY OF 2 PERCENT PER MONTH ON THE MONIES THE CITY PAID TO DEFENDANTS FOR PLAINTIFF'S CONTRACT WORK (\$263,552.50), FOR A PENALTY AMOUNT OF \$335,414.48.

ANALYSIS

MOTION FOR NEW TRIAL

UNDER CODE OF CIVIL PROCEDURE SECTION 657, THE COURT MAY GRANT A NEW TRIAL FOR ANY OF THE FOLLOWING CAUSES, MATERIALLY AFFECTING THE SUBSTANTIAL RIGHTS OF A PARTY:

1. IRREGULARITY IN THE PROCEEDINGS OF THE COURT, JURY OR ADVERSE PARTY, OR ANY ORDER OF THE COURT OR ABUSE OF DISCRETION BY WHICH EITHER PARTY WAS PREVENTED FROM HAVING A FAIR TRIAL.
2. MISCONDUCT OF THE JURY; AND WHENEVER ANY ONE OR MORE OF THE JURORS HAVE BEEN INDUCED TO ASSENT TO ANY GENERAL OR SPECIAL VERDICT, OR TO A FINDING ON ANY QUESTION SUBMITTED TO THEM BY THE COURT, BY A RESORT TO THE DETERMINATION OF CHANCE, SUCH MISCONDUCT MAY BE PROVED BY THE AFFIDAVIT OF ANY ONE OF THE JURORS.
3. ACCIDENT OR SURPRISE, WHICH ORDINARY PRUDENCE COULD NOT HAVE GUARDED AGAINST.
4. NEWLY DISCOVERED EVIDENCE, MATERIAL FOR THE PARTY MAKING THE APPLICATION, WHICH HE COULD NOT, WITH REASONABLE DILIGENCE, HAVE DISCOVERED AND PRODUCED AT THE TRIAL.
5. EXCESSIVE OR INADEQUATE DAMAGES.
6. INSUFFICIENCY OF THE EVIDENCE TO JUSTIFY THE VERDICT OR OTHER DECISION, OR THE VERDICT OR OTHER DECISION IS AGAINST LAW.
7. ERROR IN LAW, OCCURRING AT THE TRIAL AND EXCEPTED TO BY THE PARTY MAKING THE APPLICATION.



**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC.	DATE FILED:	6/30/2014
PLAINTIFF(S)	CASE TYPE:	COMPLAINT
VS.	CASE SUBTYPE:	BREACH OF CONTRACT
SAUSAL CORPORATION ( COMPLEX )	DATE OF LAST ACTIVITY:	2/13/2020
DEFENDANT(S)	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

DEFENDANTS MAKE THREE ARGUMENTS IN THEIR MOTION FOR A NEW TRIAL: 1) THE COURT ERRED AND ACTED WITHOUT JURISDICTION WHEN IT ALLOWED PLAINTIFF TO ARGUE AT TRIAL THAT DEFENDANTS VIOLATED THE PROVISIONS OF PUBLIC CONTRACT CODE SECTION 4107 (IRREGULARITY IN THE PROCEEDINGS-CODE CIV. PROC §657(1) AND ERROR IN LAW-CODE CIV. PROC § 657(7)); 2) THE JURY ERRED IN AWARDING THE AMOUNT OF DAMAGES IT DID (EXCESSIVE DAMAGES- CODE CIV. PROC §657(5));AND 3) THE EVIDENCE PRESENTED AT TRIAL DID NOT SUPPORT THE JURY'S AWARD OF PROMPT PAYMENT PENALTIES (INSUFFICIENT EVIDENCE-CODE CIV. PROC. § 657(6)).

**PUBLIC CONTRACT CODE SECTION 4107**

WITH RESPECT TO DEFENDANTS' FIRST ARGUMENT, AT TRIAL, IN MOTIONS IN LIMINE, THE PARTIES EXTENSIVELY BRIEFED AND ARGUED THE APPLICABILITY OF PUBLIC CONTRACT CODE SECTION 4107 (HEREAFTER SECTION 4107). DEFENDANTS FURTHER ARGUE THAT ENFORCEMENT OF SECTION 4107 IS LIMITED TO ISSUES OF BID-SHOPPING AND BID-PEDDLING. ADDITIONALLY, DEFENDANTS ARGUE THAT EVEN IF THE JURY'S CONSIDERATION OF WHETHER DEFENDANTS WERE BOUND BY SECTION 4107 WAS PROPERLY BEFORE THEM, DEFENDANTS HAD NO LEGAL OBLIGATION TO ENSURE THAT THE CITY OF NOVATO FULLY COMPLIED WITH THE STATUTE. DEFENDANTS FURTHER ARGUE THAT PLAINTIFF FAILED TO EXHAUST ADMINISTRATIVE REMEDIES BEFORE BRINGING THIS LAWSUIT. DEFENDANTS MAKE THIS LAST ARGUMENT IN CONTESTING WHETHER THE COURT EVEN HAD THE JURISDICTION TO SUBMIT THE ISSUES RELATED TO SECTION 4107 TO THE JURY FOR CONSIDERATION.

COURT ORDERS ERRONEOUSLY ADMITTING EVIDENCE THAT ARE AN ABUSE OF DISCRETION WHICH PREVENT A PARTY FROM HAVING A FAIR TRIAL MAY CONSTITUTE AN "IRREGULARITY IN THE PROCEEDINGS" OF THE COURT OR AN "ERROR IN LAW" UNDER CODE OF CIVIL PROCEDURE SECTION 657(1) AND (7). (SEE TOWNSEND V. GONZALEZ (1957) 150 CAL. APP. 2D 241, 249-250; PEOPLE EX REL. DEPT. OF TRANSP. V. CLAUSER/WELLS PARTNERSHIP (2002) 95 CAL. APP. 4TH 1066, 1084-1086; RICHARD V. SCOTT (1978) 79 CAL. APP. 3D 57, 63.) A TRIAL COURT MAY GRANT A NEW TRIAL IF "ITS ORIGINAL RULING, AS A MATTER OF LAW, WAS ERRONEOUS." (RAMIREZ V. USAA CASUALTY INS. CO. (1991) 234 CAL.APP.3D 391, 397; SEE 8 WITKIN, SUPRA, ATTACK ON JUDGMENT IN TRIAL COURT, § 44, PP. 629-631.)" (COLLINS V. SUTTER MEMORIAL HOSPITAL (2011) 196 CAL.APP.4TH 1, 17-18.) THUS, IN RULING ON THIS MOTION, THE COURT HAS CONSIDERED WHETHER IT ERRED IN SUBMITTING THE ISSUE OF DEFENDANTS' COMPLIANCE WITH SECTION 4107 TO THE JURY. (SEE BRISTOW V. FERGUSON (1981) 121 CAL.APP.3D 823, 826.)

TO GRANT A NEW TRIAL BASED UPON AN ERROR OF LAW A COURT MUST FIND THAT THE ERROR WAS PREJUDICIAL, E.G., AMOUNTING TO A "MISCARRIAGE OF JUSTICE" UNDER CAL. CONST. ART. 6, § 13. (BRISTOW, SUPRA, 121 CAL.APP.3D AT P. 826 ["BUT THE TRIAL COURT, NO LESS THAN THE APPELLATE COURT, IS EXPRESSLY ENJOINED BY ARTICLE VI, SECTION 4 1/2 [NOW § 13], OF OUR CONSTITUTION FROM GRANTING A NEW TRIAL FOR ERROR OF LAW UNLESS SUCH ERROR IS PREJUDICIAL.]" AT TRIAL, AND AGAIN IN DEFENDANTS' MOTION FOR A NEW TRIAL, THIS COURT CONCLUDES THAT IT PROPERLY FOUND THAT DEFENDANTS' OBLIGATIONS UNDER SECTION 4107 SHOULD BE CONSIDERED BY THE JURY. (SEE TITAN ELECTRIC CORP. V. LOS ANGELES UNIFIED SCHOOL DIST. (2008) 160 CAL. APP. 4TH 188, 2004-05 (FINDING THAT UNDER THE PLAIN TERMS OF THE STATUTE, THE PROCEDURE OF SECTION 4107 IS OBLIGATORY IN THE SENSE THAT THE PRIME CONTRACTOR AND THE AWARDING AUTHORITY ARE REQUIRED TO FOLLOW IT...)) MOREOVER, THIS COURT FINDS THAT SECTION 4107 IS NOT LIMITED TO ISSUES RELATED TO BID-SHOPPING AND BID-PEDDLING. IN FACT, A SUBCONTRACTOR MAY SUE A CONTRACTOR FOR DAMAGES UNDER SECTION 4107 WHEN A SUBCONTRACTOR'S ABILITY TO PERFORM IS AFFECTED BY THE CONTRACTOR'S FAILURE TO COMPLY FULLY WITH THE STATUTE. (SEE TITAN ELECTRIC CORP. V. LOS ANGELES UNIFIED SCHOOL DIST., SUPRA, 160 CAL. APP. 4TH AT 203; SOUTHERN CALIFORNIA ACOUSTICS CO. V. C.V. HOLDER, INC. (1969) 71CAL. 2D. 719, 727.) THE COURT ALSO FINDS THAT DEFENDANTS' ARGUMENTS THAT IT HAD NO LEGAL OBLIGATION TO ENSURE THE CITY FULLY COMPLIED WITH SECTION 4107 AND PLAINTIFF FAILED TO EXHAUST ADMINISTRATIVE REMEDIES ARE WITHOUT MERIT AND THEREFORE DO NOT PROVIDE THE BASIS FOR ITS MOTION FOR A NEW TRIAL. THE COURT NOTES THAT THE CONTRACT BETWEEN THE CITY AND DEFENDANTS SPECIFICALLY STATED THAT PARTIES TO THE CONTRACT WERE OBLIGATED TO COMPLY WITH ALL REQUIREMENTS OF SECTION 4107. DEFENDANTS' ARGUMENT PRESENTED AT THE HEARING ON THESE MOTIONS THAT PLAINTIFF'S FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES PRECLUDED PLAINTIFF FROM INVOKING THE REMEDIES OF SECTION 4107 IS NOT PERSUASIVE. AFTER REWEIGHING THE EVIDENCE, THE COURT IS NOT CONVINCED FROM THE RECORD THAT THE JURY CLEARLY SHOULD HAVE REACHED A DIFFERENT VERDICT OR THAT THE EVIDENCE WAS INSUFFICIENT TO JUSTIFY THE VERDICT REACHED.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC.	DATE FILED:	6/30/2014
PLAINTIFF(S)	CASE TYPE:	COMPLAINT
VS.	CASE SUBTYPE:	BREACH OF CONTRACT
SAUSAL CORPORATION ( COMPLEX )	DATE OF LAST ACTIVITY:	2/13/2020
DEFENDANT(S)	DATE/TIME RUN:	04/07/2020 12:37 PM
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**EXCESSIVE DAMAGES**

"A NEW TRIAL SHALL NOT BE GRANTED UPON THE GROUND OF . . . EXCESSIVE OR INADEQUATE DAMAGES, UNLESS AFTER WEIGHING THE EVIDENCE THE COURT IS CONVINCED FROM THE ENTIRE RECORD, INCLUDING REASONABLE INFERENCES THEREFROM, THAT THE COURT OR JURY CLEARLY SHOULD HAVE REACHED A DIFFERENT VERDICT OR DECISION." (CODE CIV. PROC. § 657(5).)

THIS GROUND IN EFFECT ASKS FOR A LIMITED NEW TRIAL--I.E., A NEW TRIAL LIMITED TO THE ISSUES OF DAMAGES (FINDINGS RE LIABILITY, ETC. TO BE KEPT INTACT). (WEGNER ET AL., CAL. PRAC. GUIDE (TRG 2018) CIV. TRIALS & EV. § 18:158, P. 18-44.) LIKE THE GROUND FOR INSUFFICIENCY OF THE EVIDENCE, THE TRIAL COURT SITS AS THE 13TH JUROR, WHO HAS THE POWER AND RESPONSIBILITY TO REWEIGH THE EVIDENCE. HOWEVER, "[T]HE JUDGE IS NOT PERMITTED TO SUBSTITUTE HIS JUDGMENT FOR THAT OF THE JURY ON THE QUESTION OF DAMAGES UNLESS IT APPEARS FROM THE RECORD THAT THE JURY VERDICT WAS IMPROPER." (BIGBOY V. COUNTY OF SAN DIEGO (1984) 154 CAL.APP.3D 397, 406, CITED BY WEGNER, OP. CIT., AT § 18:159; AND SEE TOSCANO V. GREENE MUSIC (2004) 124 CAL. APP. 4TH 685, 695-696.)

DEFENDANTS ARGUE THE JURY'S DAMAGES AWARD OF \$380,116.30 WAS EXCESSIVE BECAUSE THE AWARD FAILED TO TAKE INTO CONSIDERATION CLAIMS OF DOUBLE BILLING BY PLAINTIFF AND IMPROPER BILLING FOR CHANGE ORDERS THAT WERE ACTUALLY PART OF PLAINTIFF'S BASE CONTRACT WITH DEFENDANTS. DEFENDANTS EXTENSIVELY AND QUITE THOROUGHLY MADE ALL OF THESE ARGUMENTS TO THE JURY THROUGHOUT THE TRIAL. THE JURY CONSIDERED DEFENDANTS' ARGUMENTS, REJECTED THEM, AND UNANIMOUSLY FOUND IN FAVOR OF PLAINTIFF. HAVING CONSIDERED AND WEIGHED THE EVIDENCE PRESENTED, INCLUDING ALL REASONABLE INFERENCES THEREFROM, THE COURT CANNOT CONCLUDE THAT THE JURY CLEARLY SHOULD HAVE REACHED A DIFFERENT RESULT. MOREOVER, THE RECORD DOES NOT SUPPORT A FINDING THAT THE JURY'S VERDICT WAS IMPROPER.

**PROMPT PAYMENT PENALTIES**

A MOTION FOR NEW TRIAL MAY BE GRANTED ON THE GROUND OF: "6. INSUFFICIENCY OF THE EVIDENCE TO JUSTIFY THE VERDICT OR OTHER DECISION . . ." (§ 657(6).)

A NEW TRIAL SHALL NOT BE GRANTED UPON THE GROUND OF INSUFFICIENCY OF THE EVIDENCE TO JUSTIFY THE VERDICT OR OTHER DECISION, . . . UNLESS AFTER WEIGHING THE EVIDENCE THE COURT IS CONVINCED FROM THE ENTIRE RECORD, INCLUDING REASONABLE INFERENCES THEREFROM, THAT THE COURT OR JURY CLEARLY SHOULD HAVE REACHED A DIFFERENT VERDICT OR DECISION.

"[T]HE TRIAL JUDGE MAY, IN GRANTING SUCH A MOTION, DRAW INFERENCES AND RESOLVE CONFLICTS IN THE EVIDENCE DIFFERENT FROM THAT OF THE JURY. (WIDENER V. PACIFIC GAS & ELECTRIC CO. (1977) 75 CAL.APP.3D 415, [ "IN PASSING UPON A MOTION FOR A NEW TRIAL MADE UPON THE GROUND OF INSUFFICIENCY OF THE EVIDENCE THE TRIAL JUDGE IS REQUIRED TO WEIGH THE EVIDENCE; AND IN DOING SO HE MAY DISBELIEVE WITNESSES AND DRAW INFERENCES CONTRARY TO THOSE SUPPORTING THE VERDICT."].)" (FOUNTAIN VALLEY CHATEAU BLANC HOMEOWNER'S ASSN. V. DEPARTMENT OF VETERANS AFFAIRS (1998) 67 CAL.APP.4TH 743, 751-752.)

"IN WEIGHING AND EVALUATING THE EVIDENCE, THE COURT IS A TRIER-OF-FACT AND IS NOT BOUND BY FACTUAL RESOLUTIONS MADE BY THE JURY. THE COURT MAY GRANT A NEW TRIAL EVEN THOUGH THERE IS SUFFICIENT EVIDENCE TO SUSTAIN THE JURY'S VERDICT ON APPEAL, SO LONG AS THE COURT DETERMINES THE WEIGHT OF THE EVIDENCE IS AGAINST THE VERDICT." (CANDIDO V. HUITT (1984) 151 CAL.APP.3D 918, 923.)

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
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DEFENDANTS' ARGUE THE "UNDISPUTED" EVIDENCE PRESENTED AT THE TRIAL ESTABLISHED THAT DEFENDANTS' COMPLIED WITH THE PROMPT PAYMENT STATUTES. THIS STATEMENT IS AT ODDS WITH THE OVERWHELMING EVIDENCE AND THE JURY'S UNANIMOUS CONCLUSION THAT THE CITY HAD IN FACT PAID DEFENDANTS FOR WORK PERFORMED BY PLAINTIFF AND THAT DEFENDANTS HAD NOT PAID PLAINTIFF FOR SUCH WORK. THE COURT HAS CONSIDERED AND WEIGHED THE EVIDENCE PRESENTED AT TRIAL. IT HAS EVALUATED THE CREDIBILITY OF THE WITNESSES PRESENTED AND HAS DRAWN ALL REASONABLE INFERENCES FROM THE RECORD AS A WHOLE. HAVING DONE SO, THIS COURT, HAS NO BASIS TO FIND THAT THE "JURY CLEARLY SHOULD HAVE REACHED A DIFFERENT VERDICT OR DECISION."  
FOR THE FOREGOING REASONS, PLAINTIFFS' MOTION FOR NEW TRIAL IS DENIED.

DEFENDANTS' MOTION FOR JUDGMENT NOTWITHSTANDING THE JURY'S VERDICT

A COURT MAY GRANT A MOTION FOR JUDGMENT NOTWITHSTANDING THE JURY'S VERDICT PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 629 WHEN IT DETERMINES THAT INSUFFICIENT EVIDENCE SUPPORTED THE VERDICT.

CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 629 (A) PROVIDES:

THE COURT, BEFORE THE EXPIRATION OF ITS POWER TO RULE ON A MOTION FOR A NEW TRIAL, EITHER OF ITS OWN MOTION, AFTER FIVE DAYS' NOTICE, OR ON MOTION OF A PARTY AGAINST WHOM A VERDICT HAS BEEN RENDERED, SHALL RENDER JUDGMENT IN FAVOR OF THE AGGRIEVED PARTY NOTWITHSTANDING THE VERDICT WHENEVER A MOTION FOR A DIRECTED VERDICT FOR THE AGGRIEVED PARTY SHOULD HAVE BEEN GRANTED HAD A PREVIOUS MOTION BEEN MADE.

" 'A MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT MAY BE GRANTED ONLY IF IT APPEARS FROM THE EVIDENCE, VIEWED IN THE LIGHT MOST FAVORABLE TO THE PARTY SECURING THE VERDICT, THAT THERE IS NO SUBSTANTIAL EVIDENCE IN SUPPORT. [CITATION.]' (SWEATMAN V. DEPARTMENT OF VETERANS AFFAIRS (2001) 25 CAL.4TH 62, 68.)" (GRAIL SEMICONDUCTOR, INC. V. MITSUBISHI ELECTRIC & ELECTRONICS USA, INC. (2014) 225 CAL.APP.4TH 786, 794.)

"SUBSTANTIAL EVIDENCE MAY BE CONTRADICTED OR UNCONTRADICTED. (HAUTER V. ZOGARTS (1975) 14 CAL.3D 104, 110.) " 'SUBSTANTIAL EVIDENCE' IS EVIDENCE OF PONDERABLE LEGAL SIGNIFICANCE, EVIDENCE THAT IS REASONABLE, CREDIBLE AND OF SOLID VALUE." (RODDENBERRY V. RODDENBERRY (1996) 44 CAL.APP.4TH 634, 651.)" (IIG WIRELESS, INC. V. YI (2018) 22 CAL.APP.5TH 630, 639-640.)

THE EVIDENCE SUPPORTING THE VERDICT IS PRESUMED TRUE AND THERE IS NO WEIGHING OF EVIDENCE OR CREDIBILITY. "CONFLICTS IN THE EVIDENCE ARE RESOLVED AGAINST THE MOVING DEFENDANT AND IN FAVOR OF THE PLAINTIFF; ALL REASONABLE INFERENCES TO BE DRAWN FROM THE EVIDENCE ARE DRAWN AGAINST THE MOVING DEFENDANT AND IN FAVOR OF THE PLAINTIFF." (FOUNTAIN VALLEY, SUPRA, 67 CAL.APP.4TH AT PP. 750-751.) THIS IS A DIFFERENT STANDARD FROM A MOTION FOR A NEW TRIAL, WHOSE FUNCTION IS TO ALLOW A RE-EXAMINATION OF AN ISSUE OF FACT. (IBID.)

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

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IN THIS CASE, DEFENDANTS DISAGREE WITH THE JURY'S FINDING THAT DEFENDANTS DID NOT COMPLY WITH THE PROMPT PAYMENT REQUIREMENTS OF BUSINESS AND PROFESSIONS CODE SECTION 7108.5. DEFENDANTS ASSERT THAT THE EVIDENCE AT TRIAL CLEARLY ESTABLISHED THAT DEFENDANTS PROPERLY WITHHELD MONEY FROM PLAINTIFF AS A RESULT OF A GOOD FAITH DISPUTE BETWEEN THE TWO. DEFENDANTS RELY PRIMARILY ON UNITED RIGGERS AND ERECTORS INC. V. COAST IRON & STEEL CO. (2018) 4 CAL. 5TH 1082 AND FEI ENTERPRISES, INC. V. YOON (2011) 194 CAL. APP. 4TH 790 IN MAKING THE ARGUMENT THAT THEY WERE ENTITLED TO WITHHOLD MONEY AS AN OFFSET TO PAY FOR WORK DONE BY ANOTHER SUBCONTRACTOR, NIELSON, AS A RESULT OF PLAINTIFF'S PERCEIVED REPEATED FAILURES TO PERFORM. DEFENDANTS ARGUE THAT UNITED RIGGERS SUPPORTS THEIR POSITION THAT DEFENDANTS PROPERLY WITHHELD MONEY FROM PLAINTIFF BECAUSE OF THE INADEQUACY OF PLAINTIFF'S WORK- IT WAS UNTIMELY AND INCOMPLETE, AND THAT SUCH WITHHOLDINGS WERE CONTEMPLATED BY THE CONTRACT BETWEEN PLAINTIFF AND DEFENDANTS. DEFENDANTS FURTHER ARGUE THAT FEI ENTERPRISES INC. STANDS FOR THE PROPOSITION THAT WHERE AN OBJECTIVE GOOD FAITH DISPUTE EXISTS BETWEEN A CONTRACTOR AND SUBCONTRACTOR, THE CONTRACTOR MAY PROPERLY WITHHOLD PAYMENT. THIS IS A CORRECT STATEMENT OF THE LAW (FEI ENTERPRISES INC., SUPRA, 194 CAL. APP. 4TH AT 807.) DEFENDANTS MADE THESE ARGUMENTS TO THE JURY. PLAINTIFF ADAMANTLY DISPUTED THESE CONTENTIONS THAT DEFENDANTS, IN ANY WAY, WERE PERMITTED TO WITHHOLD ANY PAYMENTS TO PLAINTIFF. THE JURY CONSIDERED DEFENDANTS' ARGUMENTS AND REJECTED THEM WHICH THEY, AS THE FINDERS OF FACT, WERE ENTITLED TO DO. DEFENDANTS ARGUE THAT THERE WAS INSUFFICIENT EVIDENCE TO ESTABLISH THAT DEFENDANTS HAD IN FACT BEEN PAID BY THE CITY FOR PLAINTIFF'S WORK. THIS CONCLUSION IS NOT SUPPORTED BY THE RECORD. AT TRIAL, PLAINTIFF OFFERED SUBSTANTIAL EVIDENCE INCLUDING, BUT NOT LIMITED TO, THE TESTIMONY OF PLAINTIFF, RUSTY ABERNATHY, MARIA BRYANT AND EXHIBITS SUCH AS APPLICATIONS FOR PAYMENT, AND REQUESTS FOR PAYMENT PURSUANT TO PROPOSED CHANGE ORDERS SUBMITTED BY PLAINTIFF TO DEFENDANTS FOR WORK PERFORMED. PLAINTIFF ALSO PRESENTED AT TRIAL EVIDENCE THAT DEFENDANTS SUBMITTED REQUESTS FOR PAYMENT FROM THE CITY FOR SUCH WORK COMPLETED BY PLAINTIFF AND DEFENDANTS' BILLING RECORDS SUBMITTED TO THE CITY INCLUDING TRIAL EXHIBITS 581-584. PLAINTIFF NOTES THAT ABERNATHY TESTIFIED THAT DEFENDANTS SUBMITTED MONTHLY BILLS TO THE CITY WHICH WERE GENERALLY PAID WITHIN 30 DAYS OF RECEIPT AND THAT HE WAS NOT AWARE OF ANY ISSUES OF DEFENDANTS NOT RECEIVING MONTHLY PAYMENTS FROM THE CITY THROUGH THE END OF 2013. (BOWLES DECLARATION, EX E.) DEFENDANTS IN THEIR REPLY NOTE THAT THIS IS "ONLY EVIDENCE OF SOME OF PAYMENT BY NOVATO TO SAUSAL." CLEARLY, DEFENDANTS HOTLY DISPUTE THE MEANING OF PLAINTIFFS' EVIDENCE. HOWEVER, IT DOES NOT CHANGE THE FACT THAT THE JURY HAD SUBSTANTIAL EVIDENCE UPON WHICH TO RELY IN FINDING AS IT DID.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

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HAVING REVIEWED THE RECORD PRESENTED, THE COURT CONCLUDES THERE WAS SUBSTANTIAL EVIDENCE TO SUPPORT THE JURY'S FINDINGS. BOTH PARTIES PRESENTED SIGNIFICANT EVIDENCE IN SUPPORT OF THEIR RESPECTIVE POSITIONS. BOTH SIDES CONDUCTED THOROUGH EXAMINATIONS OF ALL WITNESSES WHO TESTIFIED. THE PARTIES EACH PROVIDED THE JURY WITH THEIR RESPECTIVE POSITIONS AND IT APPEARS TO THE COURT THAT THE JURY THOUGHTFULLY AND CAREFULLY CONSIDERED DEFENDANTS' ARGUMENTS AND REJECTED THEM IN THEIR ENTIRETY. SUBSTANTIAL EVIDENCE, VIEWED IN THE LIGHT MOST FAVORABLE TO PLAINTIFFS, SUPPORTED THE JURY'S FINDING THAT DEFENDANTS UNREASONABLY WITHHELD MONIES FROM PLAINTIFF, ENTITLING HIM TO PROMPT PAYMENT DAMAGES. SUBSTANTIAL EVIDENCE, VIEWED IN THE LIGHT MOST FAVORABLE TO PLAINTIFFS, SUPPORTED THE JURY'S CONCLUSION THAT THE CITY HAD IN FACT PAID DEFENDANTS FOR PLAINTIFF'S WORK AND DEFENDANTS IN TURN HAD FAILED TO PAY PLAINTIFFS FOR SUCH WORK.

FOR THESE REASONS, DEFENDANTS' MOTION FOR JUDGMENT NOTWITHSTANDING THE JURY'S VERDICT IS DENIED.

PLAINTIFF'S MOTION FOR PRE-JUDGMENT INTEREST AND PROMPT PAYMENT PENALTIES  
 PLAINTIFF'S POST-JUDGMENT MOTIONS FOR PREJUDGMENT INTEREST ON THE JUDGMENT FOR CONTRACT DAMAGES PURSUANT TO CIVIL CODE SECTIONS 3287 AND 3289; AND PROMPT PAYMENT PENALTIES PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 7108.5, ARE GRANTED IN THE AMOUNTS INDICATED BELOW. AS NOTED ABOVE, ON APRIL 19, 2019 THE JURY RETURNED A UNANIMOUS VERDICT ON PLAINTIFF'S BREACH OF CONSTRUCTION CONTRACT ACTION FINDING DEFENDANTS OWED PLAINTIFF \$380,116.30 FOR FAILURE TO PAY FOR ITS BASE CONTRACT WORK AND ITS WORK ON CHANGE ORDERS APPROVED BY DEFENDANTS. A PERSON ENTITLED TO RECOVER "DAMAGES CERTAIN OR CAPABLE OF BEING MADE CERTAIN BY CALCULATION" IS ALSO ENTITLED TO RECOVER INTEREST FROM THE DAY THE RIGHT TO RECOVER ARISES, "EXCEPT WHEN THE DEBTOR IS PREVENTED BY LAW, OR BY THE ACT OF THE CREDITOR FROM PAYING THE DEBT." (§ 3287(A); LUCKY UNITED PROPERTIES INVESTMENT, INC. V. LEE (2013) 213 CAL.APP.4TH 635, 653.) CONTENDING THIS AMOUNT WAS CERTAIN AND VESTED AS OF THE DECEMBER 31, 2013 – THE DATE ITS WORK WAS COMPLETED AND PLAINTIFF BILLED DEFENDANTS FOR HIS SERVICES – PLAINTIFF SEEKS TO RECOVER INTEREST ON THAT JUDGMENT CALCULATED AT 10 PERCENT PER ANNUM FROM THAT DATE UNTIL THE DATE OF THE JUDGMENT, FOR A TOTAL PRE-JUDGMENT INTEREST AWARD OF \$201,539.75. (§§ 3287(A), 3289.)

**PRE-JUDGMENT INTEREST**

A.

FIRST, PLAINTIFF'S REQUEST FOR AN AWARD OF PRE-JUDGMENT INTEREST WAS PROPERLY AND TIMELY MADE AS A MOTION TO MODIFY THE JUDGMENT, AND THE MOTION CONTAINS ALL THE INFORMATION REQUIRED TO SUPPORT A MOTION FOR A NEW TRIAL PURSUANT TO CODE CIV. PROC. § 657. (SEE WATSON BOWMAN ACME CORP. V. RGW CONSTRUCTION, INC. (2016) 2 CAL.APP.5TH 279, 298-299 [MOTION FOR PRE-JUDGMENT INTEREST MUST BE FILED WITHIN THE TIME TO FILE A MOTION FOR A NEW TRIAL AND MUST CONFORM TO THE PROCEDURES FOR A MOTION FOR NEW TRIAL UNDER § 657]; SEE ALSO NORTH OAKLAND MEDICAL CLINIC V. ROGERS (1998) 65 CAL.APP.4TH 824, 831 [A REQUEST FOR PRE-JUDGMENT INTEREST UNDER CIVIL CODE § 3287 BY "A SUCCESSFUL PLAINTIFF MUST BE MADE BY WAY OF MOTION PRIOR TO ENTRY OF JUDGMENT, OR THE REQUEST MUST BE MADE IN THE FORM OF A MOTION FOR NEW TRIAL NO LATER THAN THE TIME ALLOWED FOR FILING SUCH A MOTION. (CODE CIV. PROC., § 659.)"])

B.

NEXT, PLAINTIFF ASSERTS THAT THE AMOUNT FOR UNPAID WORK AS FOUND BY THE JURY (\$380,116.30) WAS KNOWN TO DEFENDANTS AND WAS CAPABLE OF CALCULATION AS OF DECEMBER 31, 2013, AND THUS WAS "CERTAIN OR CAPABLE OF BEING MADE CERTAIN" THEREBY ENTITLING THE COMPANY TO PRE-JUDGMENT INTEREST ON THE ENTIRE AMOUNT FROM THAT DATE. THE COURT AGREES. WHERE THERE IS A DISPUTE AS TO LIABILITY, BUT THERE IS NO FACTUAL DISPUTE AS TO THE AMOUNT OF DAMAGES, THE "CERTAINTY" REQUIREMENT IS SATISFIED. (UZYEL V. KADISHA (2010) 188 CAL.APP.4TH 866, 919.) BUT, WHERE THE AMOUNT OF THE DAMAGES OWED CANNOT BE RESOLVED EXCEPT BY VERDICT OR JUDGMENT BASED ON CONFLICTING EVIDENCE, PRE-JUDGMENT INTEREST CANNOT BE AWARDED ON THAT AMOUNT. (WISPER CORP. V. CALIFORNIA COMMERCE BANK (1996) 49 CAL.APP.4TH 948, 960.) " 'THE RATIONALE OF SUCH RULE IS THAT WHERE A DEFENDANT DOES NOT KNOW WHAT AMOUNT HE OWES AND CANNOT ASCERTAIN IT EXCEPT BY ACCORD OR JUDICIAL PROCESS, HE CANNOT BE IN DEFAULT FOR NOT PAYING IT.' [CITATIONS.]" (IVERSON V. SPANG INDUSTRIES, INC. (1975) 45 CAL.APP.3D 303, 311-312.)

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

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“DAMAGES ARE DEEMED CERTAIN OR CAPABLE OF BEING MADE CERTAIN WITHIN SECTION 3287, SUBDIVISION (A), WHERE THERE IS ESSENTIALLY NO DISPUTE BETWEEN THE PARTIES CONCERNING THE BASIS OF IMPOSITION OF DAMAGES THAT ARE RECOVERABLE BUT WHERE THE DISPUTE CENTERS ON THE ISSUE OF LIABILITY GIVING RISE TO THE DAMAGE. (FIREMAN'S FUND INS. CO. V. ALLSTATE INS. CO. (1991) 234 CAL.APP.3D 1154, 1172–1173.) TWO TESTS APPLY IN DECIDING THE CERTAINTY REQUIRED BY SECTION 3287, SUBDIVISION (A): (1) WHETHER THE DEBTOR KNOWS THE AMOUNT OWED OR (2) WHETHER THE DEBTOR WOULD BE ABLE TO COMPUTE THE DAMAGES, I.E., WHETHER THEY ARE REASONABLY CALCULABLE. (ID., AT P. 1173.) DENIAL OF LIABILITY ON THE MAIN THEORY DOES NOT MAKE THE DAMAGE UNCERTAIN WITHIN THE MEANING OF SECTION 3287. (CREDIT MANAGERS' ASSN. V. BRUBAKER (1991) 233 CAL.APP.3D 1587, 1595. 417.)” (STEIN V. SOUTHERN CAL. EDISON CO. (1992) 7 CAL.APP.4TH 565, 571–572.)

ASSERTING THAT IT COULD NOT CALCULATE THE AMOUNT OWED PRIOR TO TRIAL, DEFENDANTS DIRECT THE COURT TO THE TESTIMONY OF ABERNATHY WHO TESTIFIED THAT BOTH HE AND MARIA BRYANT HAD DISPUTED THE TRUTHFULNESS OF SEVERAL BILLING ITEMS CONTAINED IN FOUR CHANGE ORDERS – PCO NOS. 102, 103, 104 & 105 TOTALING \$98,103.46. (OPPO. P. 2-5.)

ABERNATHY TESTIFIED THAT WHEN HE COMPARED PLAINTIFF'S WORK TAGS TO THE CORRESPONDING CERTIFIED PAYROLL RECORDS AND/OR DAILY REPORTS HE DISCOVERED THAT THE HOURS CLAIMED WERE INFLATED. THESE QUESTIONABLE CHARGES INCLUDED: BILLINGS FOR MORE HOURS THAN A PARTICULAR EMPLOYEE WORKED ON THAT DAY; CLAIMS FOR WORK BY MORE EMPLOYEES THAN WERE ACTUALLY ON SITE; WORK BILLED IN THESE CHANGE ORDERS FOR WHICH PLAINTIFF WAS ALREADY BEING PAID AS PART OF THE BASE CONTRACT WORK; AND HOURS BILLED BY A SUPERVISOR FOR PURELY “SUPERVISORY” ACTIVITIES BUT WHO WAS NOT ENTITLED TO EXTRA PAY BECAUSE HIS COMPENSATION WAS INCLUDED IN THE “OVERHEAD” OF THE CONTRACT PRICE. (SEE VOLKMANN DECL. EX. 9, PP. 43-71.)

HERE, THE COURT FINDS THAT THE PAYMENT AMOUNTS DEMANDED BY PLAINTIFF FOR THE CHANGE ORDER WORK SUBMITTED TO DEFENDANTS IN PCO NOS. 102-105 INVOLVED SUMS WHICH THE PARTIES HAD CONTRACTED FOR AND WHICH COULD BE MADE CERTAIN BY CALCULATION. “IF THE AMOUNT OWING CAN BE CALCULATED AND DETERMINED FROM STATEMENTS RENDERED BY PLAINTIFF TO THE DEFENDANT AND THE STATEMENTS ARE FOUND TO BE TRUE AND CORRECT, IT IS A MATTER OF MERE CALCULATION WITHIN THE STATUTE. [CITATION.]” (MACOMBER V. STATE (1967) 250 CAL.APP.2D 391, 401.)

IN ARRIVING AT THE AMOUNT OF THE DAMAGES FOR BREACH OF THE SUBCONTRACT, THE JURY NEEDED ONLY TO DETERMINE IF THE INVOICES WERE TRUE AND CORRECT AND IF THEY CONTAINED SUFFICIENT INFORMATION FROM WHICH DEFENDANTS COULD CALCULATE THE AMOUNT OF PROGRESS PAYMENTS OWED TO PLAINTIFF. THE JURY FOUND PLAINTIFF'S BILLINGS WERE ACCURATE AND TRUTHFUL, AND UNLESS AN EXCEPTION TO PAYMENT EXISTS UNDER SECTION 3287, PLAINTIFF IS ENTITLED TO PRE-JUDGMENT INTEREST ON THESE FOUR CHANGE ORDERS. (SEE MAURICE L. BEIN, INC. V. HOUSING AUTHORITY OF CITY OF LOS ANGELES (1958) 157 CAL.APP.2D 670, 686 (“IT HAS FREQUENTLY BEEN HELD THAT THE DEFENDANT WILL BE CHARGED WITH INTEREST FOR HIS FAILURE TO PAY THE PLAINTIFF'S CLAIM WHERE HE HAS BEEN SUPPLIED BY INVOICE OR STATEMENT WITH THE DATA NECESSARY TO DETERMINE THE AMOUNT DUE. (14 CAL.JUR.2D 704, § 79.)”].)

C.

NEXT, DEFENDANTS CONTEND THAT \$77,184.78 IN ADDITIONAL CHANGE ORDERS CONTAINED IN THE DAMAGES AWARDED BY THE JURY, CONTAINED BILLINGS FOR WORK WHICH HAD ALREADY BEEN PERFORMED AND WHICH WERE BILLED UNDER THE FOUR CHANGE ORDERS DISCUSSED ABOVE. (MPA P. 5.) DEFENDANTS IDENTIFY TWO PRIMARY CHANGE ORDERS: \$46,164.65 AND \$20,028.18, AND CONTEND PLAINTIFF “DOUBLE-BILLED FOR THE SAME TIME AND WORK AS WAS BILLED IN THE FOUR PCO'S.” (OPPO. P. 5:1-12.)

AS DISCUSSED ABOVE, THE PAYMENTS SOUGHT BY PLAINTIFF WERE SUPPORTED BY INFORMATION CONTAINED IN HIS WORK TAGS, FROM WHICH DEFENDANTS COULD CALCULATE THE AMOUNTS OWED BASED ON THE TERMS AGREED IN THE CONTRACT. THERE WAS NO DISPUTE AS TO HOW MUCH PLAINTIFF WAS OWED IF THE JURY FOUND THESE INVOICES LEGITIMATELY DOCUMENTED THE HOURS WORKED AND THE WORK PERFORMED. BY RETURNING A VERDICT FINDING DEFENDANTS WERE LIABLE FOR THESE UNPAID EXTRA CHARGES, THE JURY NECESSARILY FOUND THAT PLAINTIFF HAD ACCURATELY REPORTED THE WORK HIS COMPANY PERFORMED IN THE INVOICES.

THE COURT CONCLUDES THESE DAMAGES WERE CERTAIN OR COULD BE MADE CERTAIN BY CALCULATION, ENTITLING PLAINTIFF TO PRE-JUDGMENT INTEREST ON THIS SUM, UNLESS IT CAN BE SAID THAT PLAINTIFF'S AFFIRMATIVE CONDUCT HAS PREVENTED DEFENDANTS FROM PAYING THESE CHARGES, POST. (SEE § 3278(A).)

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

D.

CITING SECTION 3287(A), DEFENDANTS NEXT ARGUE THAT PRE-JUDGMENT INTEREST IS NOT ALLOWED SINCE PLAINTIFF HAD PREVENTED IT FROM PAYING THE DEBT BECAUSE PLAINTIFF REFUSED TO PROVIDE THE INFORMATION REQUESTED BY THE CITY TO CONFIRM THE WORK PERFORMED UNDER CHANGE ORDERS PCO NOS. 102-105. (MPA P. 5.)

SECTION 3287(A) PROVIDES IN PART THAT THE PARTY WHO RECOVERS DAMAGES THAT ARE CERTAIN CANNOT RECEIVE PRE-JUDGMENT INTEREST "WHEN THE DEBTOR IS PREVENTED BY LAW, OR BY THE ACT OF THE CREDITOR FROM PAYING THE DEBT."

ABERNATHY TESTIFIED THAT THESE CHANGE ORDERS WERE SENT BACK TO PLAINTIFF FOR ADDITIONAL INFORMATION, BUT PLAINTIFF DID NOT RESPOND, THE CHANGE ORDERS WERE NEVER APPROVED BY THE CITY, AND THE CITY DID NOT PAY DEFENDANTS FOR THIS WORK. (VOLKMANN EX. 9, PP. 49-51.)

HOWEVER, THE JURY FOUND AND THERE IS SUBSTANTIAL EVIDENCE TO SUPPORT ITS FINDING, THAT PLAINTIFF HAD EXPLAINED ANY DISCREPANCIES TO ABERNATHY, BUT THAT ABERNATHY CONTINUED TO DISPUTE THE EXPLANATION. AS SUCH, THE COURT FINDS PLAINTIFF DID NOT PREVENT DEFENDANTS FROM MAKING THE PROGRESS PAYMENTS FOR THIS EXTRA WORK AND SECTION 3287(A) DOES NOT BAR PLAINTIFF'S RECOVERY OF PRE-JUDGMENT INTEREST ON THESE DAMAGES \$98,103.46.

DEFENDANTS DO NOT MAKE A SIMILAR ARGUMENT THAT PLAINTIFF'S AFFIRMATIVE CONDUCT HAS BARRED IT FROM RECOVERING PRE-JUDGMENT INTEREST FOR THE \$77,184.78 IN UNPAID EXTRA WORK AWARDED BY THE JURY, SUPRA.

E.

NEXT, DEFENDANTS ARGUE THAT UNDER THE "PAY WHEN PAID" PROVISION OF THE SUBCONTRACT, ITS OBLIGATION TO PAY PLAINTIFF THE COMPENSATION FOR THE WORK PERFORMED AS SET OUT IN THE FOUR PCO CHANGE ORDERS AND THE TWO OTHER LARGE CHANGE ORDERS, ANTE, AND WAS NOT DUE UNTIL THE DATE OF THE JUDGMENT ISSUED ON APRIL 19, 2019. (OPPO. P. 6.)

DEFENDANTS RELY ON SECTION 2 OF THE SUBCONTRACT WHICH PROVIDES THAT THE DEFENDANTS AGREE TO PAY PLAINTIFF FOR "STRICT PERFORMANCE OF HIS WORK" IN MONTHLY PROGRESS PAYMENTS AND THAT "PROGRESS PAYMENTS TO [VOLPE] SHALL BE MADE ONLY WITH SUMS RECEIVED BY CONTRACTOR FROM OWNER FOR WORK PERFORMED BY SUBCONTRACTOR AS REFLECTED IN CONTRACTOR'S APPLICATIONS FOR PAYMENT." (BOWLES DECLARATION EX. A, P. 1, EMPHASIS ADDED.)

IN PERTINENT PART, SECTION 2 FURTHER PROVIDES:

IF OWNER OR OTHER RESPONSIBLE PARTY DELAYS IN MAKING ANY PAYMENT TO CONTRACTOR FROM WHICH PAYMENT SUBCONTRACTOR IS TO BE PAID, CONTRACTOR AND ITS SURETIES SHALL HAVE A REASONABLE TIME TO MAKE PAYMENT TO SUBCONTRACTOR. "REASONABLE" TIME SHALL BE DETERMINED ACCORDING TO THE RELEVANT CIRCUMSTANCES, BUT IN NO EVENT SHALL BE LESS THAN THE TIME THE CONTRACTOR, THE CONTRACTOR'S SURETIES AND SUBCONTRACTOR REQUIRE TO PURSUE TO CONCLUSION THEIR LEGAL REMEDIES AGAINST OWNER OR OTHER RESPONSIBLE PARTY TO OBTAIN PAYMENT, . . .

(BOWLES DECLARATION EX. A, P. 1.)

IN HIS TRIAL TESTIMONY, ABERNATHY CONCEDED HE WITHHELD SOME PAYMENTS OWING TO PLAINTIFF AS AN OFFSET FOR PROGRESS PAYMENTS DEFENDANTS OWED TO THE SUBSTITUTE SUBCONTRACTOR NIELSEN, WHO WAS HIRED TO COMPLETE SOME OF THE PLAINTIFF'S CONTRACT WORK AND RELATED CHANGE ORDERS. (EX. 10, P. 27.) ABERNATHY DOES NOT CLEARLY IDENTIFY THE NATURE OF THE WORK PERFORMED BY PLAINTIFF FOR WHICH THESE PAYMENTS WERE INTENDED.

HOWEVER, THE TESTIMONY AT TRIAL, BELIEVED BY THE JURY, ESTABLISHED THAT PLAINTIFF WAS NOT PAID FOR HIS WORK ON THESE CHANGE ORDERS, WHILE THE JURY EXPRESSLY FOUND IN ITS SPECIAL VERDICT NO. 11 THAT THE DEFENDANTS HAD WITHHELD \$263,552.50 IN PAYMENTS FROM THE CITY FOR WORK PERFORMED BY PLAINTIFF AS OF DECEMBER 31, 2013, AN AMOUNT LARGE ENOUGH TO INCLUDE THESE UNPAID PROGRESS PAYMENTS. DEFENDANTS HAVE NOT ADEQUATELY SHOWN THAT NO PORTION OF THE \$263,552.50 IT WITHHELD WAS AVAILABLE FOR USE TO PAY THE \$98,103.46 AND \$77,184.78 IN CHANGE ORDERS INVOICED BY PLAINTIFF.

UNDER THESE CIRCUMSTANCES THE COURT CANNOT CONCLUDE THAT DEFENDANTS ARE ENTITLED TO RELY ON THE CITY'S DELAY IN PROVIDING DEFENDANTS WITH PROGRESS PAYMENTS FOR THESE SPECIFIC MATTERS, IN ORDER TO DELAY THE START FOR CALCULATING PRE-JUDGMENT INTEREST TO THE DATE OF THE VERDICT.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
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SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
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F.  
DEFENDANTS CONTEND THAT THE SUBCONTRACT REQUIRES THE CITY TO RETAIN AN AMOUNT EQUIVALENT TO 7.5 PERCENT OF THE CONTRACT PRICE PENDING COMPLETION OF PLAINTIFF'S WORK, AND THAT DEFENDANTS WERE NOT OBLIGATED TO PAY PLAINTIFF THE 7.5 PERCENT RETENTION AMOUNT (I.E., \$28,508.74) UNTIL IT WAS PAID THAT MONEY BY THE CITY. (OPPO. P. 7) PLAINTIFF DOES NOT DISPUTE DEFENDANTS' INTERPRETATION OF THE PARTIES' AGREEMENTS BUT DOES TAKE ISSUE WITH THE 7.5 PERCENT RETENTION AMOUNT PRESENTED BY DEFENDANTS. PLAINTIFF POINTS TO THE SUBCONTRACT BETWEEN PLAINTIFF AND DEFENDANTS WHICH STATES THAT THE RETENTION AMOUNT IS LIMITED TO 5 PERCENT OF AMOUNTS OWED ON COMPLETED WORK. PLAINTIFF NOTES THAT ABERNATHY TESTIFIED ABOUT THE 5 PERCENT RETENTION AMOUNT AND FURTHER TESTIFIED THAT DEFENDANTS WITHHELD ADDITIONAL AMOUNTS IN EXCESS OF THAT 5 PERCENT. PLAINTIFF URGES THAT THE COURT SHOULD ONLY CONSIDER THE RETENTION AMOUNTS CONTEMPLATED BY THE SUBCONTRACT. PLAINTIFF'S ARGUMENT IS NOT PERSUASIVE. TESTIMONY PRESENTED AT TRIAL ESTABLISHED THAT DEFENDANTS HAD NOT BEEN PAID BY THE CITY RETENTIONS AMOUNTING TO 7.5 PERCENT. THIS IS THE AMOUNT THE COURT WILL CONSIDER EXCLUDING FROM PRE-PAYMENT INTEREST CALCULATIONS. DEFENDANTS ARGUE THAT THE CITY DID NOT PAY DEFENDANTS THE RETENTION AMOUNT UNTIL THEY HAD REACHED A SETTLEMENT AGREEMENT IN THIS ACTION ON APRIL 2, 2019, AND AS A RESULT THE PRE-JUDGMENT INTEREST ON THIS AMOUNT CAN ONLY BEGIN TO RUN FROM THAT DATE. THE COURT FINDS THIS ARGUMENT PERSUASIVE, AND THE PRE-JUDGMENT INTEREST ON THAT AMOUNT BEGINS TO RUN FROM THAT DATE.

G.  
NEXT, DEFENDANTS ARGUE THE UNDISPUTED EVIDENCE AT TRIAL SHOWS THAT DEFENDANTS PAID \$25,418 TO SOME OF DEFENDANTS' SUPPLIERS, WHICH AMOUNT SHOULD HAVE, BUT WAS NOT, DEDUCTED FROM THE TOTAL AMOUNT OF DAMAGES (\$380,116.50) FOUND TO BE OWING TO PLAINTIFF. (OPPO. P. 7-8) DEFENDANTS PRESENTED CANCELLED CHECKS IT ISSUED DIRECTLY TO BLUE LINE RENTAL (\$8,049), RELIABLE CRANE AND RIGGING (\$516) AND ALL STAR RENTS (\$16,853.) THE CHECK ISSUED TO ALL STAR RENTS IS MADE JOINTLY PAYABLE TO PLAINTIFF, ALTHOUGH PLAINTIFF DID NOT ENDORSE THE CHECK WHEN CASHED. (VOLKMANN EX. 1, PP. SAU172193, SAU172197, SAU1721988.)  
PLAINTIFF DOES NOT DENY THESE PAYMENTS WERE MADE ON HIS BEHALF.  
THE SUM OF \$25,418 IS NOT SUBJECT TO AN AWARD OF PRE-JUDGMENT INTEREST.

PROMPT PAYMENT PENALTIES  
NEXT PLAINTIFF REQUESTS THE COURT IMPOSE PROMPT PAYMENT PENALTIES ON THE AMOUNT OF PROGRESS PAYMENTS THE JURY FOUND THAT DEFENDANTS IMPROPERLY WITHHELD \$263,552.50. CALIFORNIA PUBLIC CONTRACT CODE SECTIONS 7107, 10262.5 AND BUSINESS AND PROFESSIONS CODE SECTION 7108.5 WERE ENACTED TO ENFORCE A SUBCONTRACTOR'S RIGHT TO RECEIVE TIMELY REMITTANCE OF PROGRESS AND RETENTION PAYMENTS FROM THE PRIME CONTRACTOR BY AUTHORIZING A STATUTORY PENALTY OF 2 PERCENT OF THE UNPAID AMOUNT PER MONTH, AND BY FEE-SHIFTING PROVISIONS THAT MAKE THE LOSING PARTY RESPONSIBLE FOR ATTORNEY'S FEES IF A LAWSUIT IS REQUIRED TO ENFORCE THE RIGHT TO TIMELY PAYMENT. (PUBLIC CONTRACT CODE § 7107 (B), (C) [RETENTION PROCEEDS UNDER ANY PUBLIC IMPROVEMENT PROJECT] § 10262.5(A) [PROGRESS PAYMENT ON STATE CONTRACT]; BUS. & PROF. CODE, § 7108.5 (A), (B), (C) [APPLIES TO ALL PRIVATE AND PUBLIC WORKS OF IMPROVEMENT EXCEPT THOSE WORKS UNDER PUBLIC CONTRACT CODE § 10262; SEE UNITED RIGGERS & ERECTORS, INC., SUPRA, 4 CAL. 5TH AT 1088.]



**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
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SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
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THE STATUTES ALSO PROVIDE AN EXCUSE FOR DELAY IN PAYMENT WHEN A "GOOD FAITH DISPUTE" ARISES BETWEEN THE DIRECT CONTRACTOR AND THE SUBCONTRACTOR OVER SOME OR ALL OF THE AMOUNT DUE ON A PROGRESS OR RETENTION PAYMENT. IN THIS SITUATION, THE CONTRACTOR MAY WITHHOLD UP TO 150 PERCENT OF THE AMOUNT IN DISPUTE FROM THE SUBCONTRACTOR. (PUBLIC CONTRACT CODE §§ 7107(C), 10262.5(A); BUS. & PROF. CODE, § 7108.5(A); UNITED RIGGERS, SUPRA, 4 CAL. 5TH AT P. 1088.) TO EXCUSE THE TIMELY PAYMENT, THE "GOOD FAITH DISPUTE" MUST BE DIRECTLY RELATED TO THE SPECIFIC WORK FOR WHICH THE MONIES ARE BEING WITHHELD. (UNITED RIGGERS, SUPRA, 4 CAL. 5TH AT P. 1098-1099.) IN THIS CASE, THE JURY WAS SO INSTRUCTED. (SEE BOWLES DECLARATION EX. D.)

THE JURY RETURNED A SPECIAL VERDICT, FINDING IN PART: 1 – DEFENDANTS WITHHELD FROM PLAINTIFF \$263,552.50 THAT THE CITY PAID TO DEFENDANTS FOR PLAINTIFF'S WORK ON THE PROJECT AS OF DECEMBER 31, 2013 (QUESTION 11); AND 2 – DEFENDANTS DID NOT WITHHOLD THE MONEY "BASED ON A GOOD FAITH DISPUTE DIRECTLY RELATED TO THE PERFORMANCE OF THE WORK FOR WHICH THE MONEY HAD BEEN PAID BY THE CITY OF NOVATO." (QUESTION 12; BOWLES DECLARATION EX. A.)

FIRST, DEFENDANTS OBJECT TO IMPOSITION OF PROMPT PAYMENT PENALTIES ARGUING PLAINTIFF REQUESTED THE SPECIAL VERDICT BASED ON THE PUBLIC CONTRACT CODE SECTION 10262.5, SUPRA, WHICH APPLIES ONLY TO STATE OF CALIFORNIA CONTRACTS, AND NOT TO THE CITY'S PROJECT. (OPPO. P. 8-9.) WHILE THAT IS AN ACCURATE STATEMENT OF THE STATUTE, PLAINTIFF HAD RELIED ON BOTH STATUTES TO SUPPORT HIS CLAIM TO PROMPT PAYMENT PENALTIES AS ILLUSTRATED BY ITS ISSUE CONFERENCE STATEMENT, AND BY ITS SUBMISSION OF PROPOSED SPECIAL JURY INSTRUCTIONS. (SEE BOWLES SUPP. DECLARATION EX. A, B.) THE LANGUAGE IN THE SPECIAL JURY INSTRUCTION IS CONSISTENT WITH BUSINESS AND PROFESSIONS CODE SECTION 7108.5, AND THE JURY WAS PROPERLY INSTRUCTED.

NEXT, DEFENDANTS CONTEND THAT THE EVIDENCE PRESENTED AT TRIAL ESTABLISHES IT HAD A "GOOD FAITH DISPUTE" OVER THE PROGRESS PAYMENT APPLICATIONS SUBMITTED BY PLAINTIFF TO JUSTIFY WITHHOLDING UP TO 150 PERCENT OF THE DISPUTED AMOUNTS. FOR THE DISCUSSION OF FACTS AND LAW ON THIS ISSUE, IT DIRECTS THE COURT'S ATTENTION TO ITS MOTION FOR JUDGMENT NOTWITHSTANDING THE JURY'S VERDICT.

BECAUSE THIS COURT HAS DENIED DEFENDANTS' MOTION FOR JUDGMENT NOTWITHSTANDING THE JURY'S VERDICT, CONCLUDING THAT SUBSTANTIAL EVIDENCE EXISTS TO SUPPORT THE JURY'S FINDING THAT DEFENDANTS DID NOT HAVE A "GOOD FAITH DISPUTE" TO JUSTIFY IT TO WITHHOLD THESE PROGRESS PAYMENTS FROM PLAINTIFF, DEFENDANTS' ARGUMENT FOR NOT IMPOSING THESE PROMPT PAYMENT PENALTIES IS REJECTED.

IN SUMMARY THE COURT FINDS PLAINTIFF IS ENTITLED TO PRE-JUDGMENT INTEREST AND PROMPT PAYMENT PENALTIES AS FOLLOWS.

**PRE-JUDGMENT INTEREST –**

PLAINTIFF IS ENTITLED TO AN AWARD OF PRE-JUDGMENT INTEREST ON THE AMOUNT OF DAMAGES FOR WORK PERFORMED ON THE PROJECT FOR WHICH IT WAS NOT PAID, EXCEPT THE SUM OF \$25,418 FOR UNDISPUTED PAYMENTS MADE TO PLAINTIFF'S SUPPLIERS IS NOT SUBJECT TO AN AWARD OF PRE-JUDGMENT INTEREST; AND THE RETENTION AMOUNT OF \$28,508.74 NOT PAID TO PLAINTIFF, DOES NOT START TO ACCRUE INTEREST UNTIL APRIL 2, 2019, THE DATE THAT DEFENDANTS RECEIVED THIS MONEY FROM THE CITY.

PRE-JUDGMENT INTEREST IS AWARDED ON THE REMAINING DAMAGES SUBJECT TO PRE-JUDGMENT INTEREST ( \$380,116.30 - \$25,418 = \$346,698.30) AT THE LEGAL RATE OF 10 PERCENT FROM DECEMBER 31, 2013, THE DATE THIS AMOUNT WAS CERTAIN OR COULD BE MADE CERTAIN BY CALCULATION.

**PROMPT PAYMENT PENALTY –**

PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 7108.5, PLAINTIFF IS ENTITLED TO COLLECT PENALTIES ON THE AMOUNT OF PROGRESS PAYMENTS DUE HIM THAT THE JURY FOUND WERE WITHHELD WITHOUT A GOOD FAITH DISPUTE (\$263,552.50) AT THE STATUTORY RATE OF 2 PERCENT PER MONTH, FROM DECEMBER 31, 2013 THROUGH THE DATE OF JUDGMENT APRIL 19, 2019.

CASE NO LONGER UNDER SUBMISSION

ORDER AFTER HEARING IS MAILED TO ATTORNEYS RICHARD BOWLES, KENNETH MCKENZIE, AND CRAIG WALLACE.

ENTERED BY: T. JONES

07/10/2019 MINUTE ORDER POSTED - Appearance: 07/10/2019 at 1:30PM for MOTION TO TAX COSTS

JUDGE JAMES CHOU ,REPORTER NOT REPORTED , DEP CLK T. JONES

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC.	DATE FILED:	6/30/2014
PLAINTIFF(S)	CASE TYPE:	COMPLAINT
VS.	CASE SUBTYPE:	BREACH OF CONTRACT
SAUSAL CORPORATION ( COMPLEX )	DATE OF LAST ACTIVITY:	2/13/2020
DEFENDANT(S)	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

NO APPEARANCE BY OR FOR THE PARTIES

HEARING BEFORE TRIAL

IT IS ORDERED: MOTION TO TAX COSTS IS CONTINUED UNTIL 8/21/19 AT 1:30 PM IN DEPT. B.

ENTERED BY: T. JONES

- 07/12/2019 NOTICE OF CHANGE OF HANDLING ATTORNEY AND HANDLING OFFICE BY ATTORNEY KURT BRIDGMAN ON BEHALF OF CROSS-DEFENDANT /CROSS-COMPLAINANT SAFECO DOOR & HARDWARE DBA AHC GLASS
- 07/17/2019 FILED APPELLANT'S NOTICE DESIGNATING RECORD ON APPEAL
- 07/18/2019 REPORTER'S TRANSCRIPT DEPOSIT OF \$3395.00; SMITH, CURRIE & HANCOCK LLP, 2700 MARQUIS ONE TOWER, 245 PEACHTREE CTR AVE NE, ATLANTA, GA 30303-1227, 404-521-3800 OBO APPELLANT SAUSAL CORPORATION; CHECK 184620; TRUST RECEIPT 0002275
- 07/24/2019 PARTIAL DISMISSAL AS TO: CRDF, CALIFORNIA AIR, INC.
- 07/24/2019 PARTIAL DISMISSAL AS TO: CRDF, DECORATIVE PAVING, INC.
- 07/24/2019 PARTIAL DISMISSAL AS TO: CRDF, YVONNE HOLMES
- 07/24/2019 PARTIAL DISMISSAL AS TO: CRDF, MYREX INDUSTRIES, LTD
- 07/24/2019 PARTIAL DISMISSAL AS TO: CRDF, NORTHERN PACIFIC DRYWALL, INC.
- 07/24/2019 PARTIAL DISMISSAL AS TO: CRDF, RMW ARCHITECTURE & INTERIORS
- 07/24/2019 PARTIAL DISMISSAL AS TO: CRDF, SAFECO DOOR & HARDWARE, INC.
- 07/24/2019 PARTIAL DISMISSAL AS TO: CRDF, STEVEN E. BERLIN, INC.
- 07/24/2019 PARTIAL DISMISSAL AS TO: CRDF, VOLPE COMPANY, INC., CALIF. CORP. (1)
- 07/24/2019 PARTIAL DISMISSAL AS TO: CRDF, JAMES WOLFBERG
- 07/24/2019 PARTIAL DISMISSAL AS TO: CRCO, SAFECO DOOR & HARDWARE, INC. WITH PREJUDICE . EACH PARTY TO BEAR THEIR OWN FEES AND COSTS
- 07/26/2019 NOTICE OF ASSOCIATION OF COUNSEL KURT BRIDGMAN HEREBY ASSOCIATES MICHAEL BURKE AS CO-COUNSEL ON BEHALF OF CROSS-COMPLAINANT/CROSS-DEFENDANT SAFECO DOOR & HARDWARE DBA AHC GLASS
- 07/29/2019 JUDGMENT FOR AMENDED JUDGMENT: JUDGMENT ENTERED ON 4/19/19 IS HEREBY AMENDED AS FOLLOWS: VOLPE IS AWARDED JUDGMENT AGAINST SAUSAL , EFFECTIVE 4/19/19, IN THE AMOUNT OF \$888,499.34, WHICH AMOUNT WILL ACCRUE INTEREST AT 10 PERCENT FROM AND AFTER 4/19/19 UNTIL PAID. AGAINST STATUTORY COSTS, ATTORNEY'S FEES AND LITIGATION EXPENSES AS PROVIDED UNDER CALIFORNIA LAW TO BE DETERMINED AS SCHEDULED. JUDGE JAMES T. CHOU
- 07/30/2019 APPEARANCE DROPPED FOR 08/02/2019 AT: 09:00 AM FOR APPEARANCE TYPE: OSCH IN DEPARTMENT: D19 DROP REASON: DISMISSALS FILED
- 08/02/2019 NOTICE OF ENTRY OF JUDGMENT MAILED TO ALL PARTIES; COPY FILED W/POS BY MAIL. BY ATTORNEY KENNETH MCKENZIE ON BEHALF OF PLAINTIFF VOLPE CORPORATION, MAILED ON 8/2/19
- 08/06/2019 PARTIAL DISMISSAL AS TO: CRCO, DECORATIVE PAVING, INC., WITH PREJUDICE (6)
- 08/06/2019 PARTIAL DISMISSAL AS TO: CRDF, TOES 1 THROUGH 10, WITH PREJUDICE (6) TO CROSS-COMPLAINT OF DECORATIVE PAVING, INC.
- 08/12/2019 NOTICE OF APPEAL BY SAUSAL CORPORATION FROM AMENDED JUDGMENT FILED 7/29/19. NO FEE.
- 08/14/2019 REPLY TO MOTION /RFOR FILED. BY ATTORNEY OBO PLAINTIFF/CROSS-DEFENDANT VOLPE COMPANY, INC. FOR MOTION FOR ATTORNEY'S FEES ON 08/21/2019.
- 08/19/2019 PARTIAL DISMISSAL AS TO: PLTF, STEVEN E. BERLIN, INC, A CALIFORNIA CORPORATION (CIV1502674) WITH PREJUDICE
- 08/19/2019 PARTIAL DISMISSAL AS TO: DEFT, CITY OF NOVATO (CIV1502674) WITH PREJUDICE

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
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08/19/2019 PARTIAL DISMISSAL AS TO: DEFT, LIBERTY MUTUAL INSURANCE COMPANY, A SURETY (CIV1502674) WITH PREJUDICE

08/19/2019 PARTIAL DISMISSAL AS TO: DEFT, SAUSAL CORPORATION, A CALIFORNIA CORPORATION (CIV1502674) WITH PREJUDICE

08/21/2019 MINUTE ORDER POSTED - Appearance: 08/21/2019 at 1:30PM for MOTION FOR ATTORNEY FEES  
 JUDGE JAMES CHOU ,REPORTER NOT REPORTED , DEP CLK T. JONES  
 NO APPEARANCE BY OR FOR THE PARTIES  
 HEARING AFTER TRIAL  
 THE MATTER IS NOT HEARD OR REPORTED. THE TENTATIVE RULING IS FINAL.  
 RULING

**MOTION FOR ATTORNEY'S FEES:**

THE COURT CONTINUES THE MOTION FOR ATTORNEY'S FEES UNTIL SEPTEMBER 25, 2019. THE COURT REQUESTS SUPPLEMENTAL BRIEFING FROM VOLPE COMPANY, INC. ("VOLPE") WITH EVIDENCE DOCUMENTING THE HOURS EXPENDED ON SPECIFIC TASKS, THE HOURLY RATES OF THE WORK PERFORMED, AND THE TITLE OF THE INDIVIDUAL PERFORMING THE WORK (ATTORNEY/PARALEGAL/ETC.). (LIN V JENG (2012) 203 CAL.APP.4TH 1008, 1026; LUNADA BIOMEDICAL V NUNEZ (2014) 230 CAL.APP.4TH 459, 486; CITY OF COLTON V SINGLETARY (2012) 206 CAL.APP.4TH 751, 784.) THE RECORDS SHOULD BE SUFFICIENT TO PROVIDE A BASIS FOR DETERMINING HOW MUCH TIME WAS SPENT ON PARTICULAR CLAIMS. LITIGATION EXPENSES NOT AWARDED IN THE MEMORANDUM OF COSTS AND SOUGHT UNDER THE MOTION FOR FEES SHOULD ALSO BE BROKEN DOWN BY ITEM, AMOUNT, AND DATE INCURRED. VOLPE MAY REDACT ANY WORK PRODUCT OR CONFIDENTIAL INFORMATION CONTAINED IN THE TASK DESCRIPTIONS.

THIS SUPPLEMENTAL BRIEFING SHALL BE DUE BY SEPTEMBER 4, 2019.

SAUSAL SHALL FILE ITS OPPOSITION TO THE SUPPLEMENTAL PAPERS BY SEPTEMBER 18, 2019. THE OPPOSITION SHOULD DETAIL WHETHER SAUSAL WOULD HAVE BEEN ENTITLED TO ATTORNEY'S FEES (AND ON WHAT BASIS) IF IT HAD PREVAILED IN DEFENDING ITSELF AGAINST VOLPE'S COMPLAINT, AND SIMILARLY IF IT HAD PREVAILED ON ITS CROSS-COMPLAINT. SAUSAL SHOULD EXPOUND UPON WHY CIVIL CODE SECTION 1717(A) DOES NOT REQUIRE THAT THE ATTORNEY'S FEES PROVISIONS APPLY TO THE ENTIRE CONTRACT ABSENT A PROVISION THAT BOTH PARTIES WERE REPRESENTED BY COUNSEL DURING THE DRAFTING AND EXECUTION OF THE AGREEMENT. (SEE CIVIL CODE § 1717(A); CARR BUSINESS ENTERPRISES, INC. V. CITY OF CHOWCHILLA (2008) 166 CAL.APP.4TH 14, 19.)

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
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**MOTION TO TAX COSTS:**

DEFENDANT'S MOTION TO TAX COSTS IS GRANTED IN THE AMOUNT OF \$1,160. THE COURT AWARDS PLAINTIFF COSTS IN THE AMOUNT OF \$28,140.

**LEGAL STANDARD - MOTION TO TAX COSTS**

THE CODE OF CIVIL PROCEDURE SECTION 1033.5(A) SETS FORTH THE ITEMS ALLOWABLE AS COSTS WHILE SECTION 1033.5(B) DETAILS THE ITEMS THAT ARE NOT ALLOWABLE AS COSTS. IF THE ITEMS IN A COST BILL APPEAR TO BE PROPER CHARGES, THE BURDEN IS ON THE PARTY SEEKING TO TAX COSTS TO SHOW THAT THEY WERE NOT REASONABLE OR NECESSARY. (ACOSTA V. SI CORP. (2005) 129 CAL.APP.4TH 1370, 1380.) ON THE OTHER HAND, IF THE ITEMS ARE PROPERLY OBJECTED TO, THE BURDEN OF PROOF IS ON THE PARTY CLAIMING THEM AS COSTS. (ID.) WHETHER A COST ITEM WAS REASONABLY NECESSARY TO THE LITIGATION PRESENTS A QUESTION OF FACT FOR THE TRIAL COURT. (ID.) COSTS MUST BE REASONABLY NECESSARY TO THE CONDUCT OF THE LITIGATION RATHER THAN MERELY CONVENIENT OR BENEFICIAL TO ITS PREPARATION AND REASONABLE IN AMOUNT. (CODE OF CIV. PROC. §§ 1033.5(C)(1); (C)(2).)

**DISCUSSION – MOTION TO TAX COSTS**

THE NOTICE OF ENTRY OF JUDGMENT WAS FILED ON APRIL 19, 2019 AND SERVED ON THE PARTIES BY MAIL. VOLPE FILED A MEMORANDUM OF COSTS ON MAY 2, 2019. THE MEMORANDUM WAS TIMELY.

THAT MEMORANDUM SOUGHT \$29,300.00. SAUSAL FILED A TIMELY MOTION TO TAX COSTS ON MAY 15, 2019. THE MOTION TO TAX TOOK ISSUE WITH THE COSTS FOR “BLOW UPS AND TRIAL EXHIBIT BINDERS” (\$3,569), MEDIATION FEES (\$1,160), AND “FILING FEES FOR ELECTRONIC FILING OR SERVICE OF DOCUMENTS THROUGH AN ELECTRONIC FILING SERVICE PROVIDER” (\$1,437).

IN ITS OPPOSITION TO THE MOTION TO TAX, VOLPE WITHDREW ITS REQUESTS FOR MEDIATION FEES

**BLOW UPS AND TRIAL EXHIBIT BINDERS (ITEM 12)**

THE MOTION TO TAX IS DENIED AS TO ALL COSTS SOUGHT IN THIS ITEM. THE COURT FINDS THAT THE COSTS OF THE BLOW UPS SHOWN TO THE JURY IN THE AMOUNTS OF \$389.46 AND \$143.22 ARE ALLOWED SPECIFICALLY ALLOWED BY CODE OF CIV. PROC. § 1033.5(A)(13), WERE REASONABLY NECESSARY TO THE CONDUCT OF THE LITIGATION, AND ARE REASONABLE IN AMOUNT.

WITH RESPECT TO THE \$3,036.74 FOR THE FIVE EXHIBIT TRIAL BINDERS, SUCH COST IS NEITHER EXPRESSLY ALLOWED NOR DISALLOWED BY § 1033.5(A) OR (B) AND IS THEREFORE SUBJECT TO THE COURT'S DISCRETION PURSUANT TO (C). THE COURT FINDS THE SERVICE TO HAVE BEEN UNQUESTIONABLY NECESSARY FOR THIS CASE AND THAT THE EXPENSE OF \$3,036.74, AS SET FORTH IN THE QUIVIX INVOICES PROVIDED IN EXHIBIT B TO THE MCKENZIE DECLARATION TO BE REASONABLE IN AMOUNT. THIS COST MAY BE MORE APPROPRIATELY CLAIMED IN ITEM 13, FOR “OTHER” COSTS, BUT SHOULD BE ALLOWED IN THIS CASE REGARDLESS OF THE ITEM OF THE COST BILL IN WHICH IT IS CLAIMED.

THE MOTION TO TAX IS DENIED AS TO ALL COSTS SOUGHT IN THIS ITEM.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

**FILING FEES FOR ELECTRONIC FILING OR SERVICE OF DOCUMENTS (ITEM 14)**

DEFENDANT MOVES TO TAX THE COSTS CLAIMED UNDER ITEM 14 (FILING FEES FOR ELECTRONIC FILING OR SERVICE OF DOCUMENTS) BECAUSE THERE IS NO BASIS FOR THE AMOUNT AND DEFENDANT HAS NO WAY TO TEST THE LEGITIMACY OF THE COSTS.

PLAINTIFF, IN REBUTTAL, ARGUES THAT IN THIS COMPLEX CONSOLIDATED LITIGATION CASE THE PARTIES WERE REQUIRED TO USE CASEANYWHERE TO SERVE PLEADINGS AND OTHER DOCUMENTS ELECTRONICALLY ON THE PARTIES. PLAINTIFF PROVIDES A COPY OF AN INVOICE IN THE AMOUNT OF \$165.00 ATTACHED AS EXHIBIT C TO THE MCKENZIE DECLARATION. PLAINTIFF CONTENDS IT HAD TO PAY A MONTHLY FEE FOR THE SERVICE IN THE AMOUNT OF \$165 BEGINNING IN OR ABOUT NOVEMBER OF 2016.

HOWEVER, REVIEW OF THE INVOICE SHOWS THAT THERE IS A \$120.00 "SYSTEM ACCESS FEE" PER QUARTER AND A \$5 DOCUMENT SERVICE FEE, MULTIPLIED BY THE NUMBER OF DOCUMENTS SERVED (9).

IF WE EXTRAPOLATE THE SERVICE FEE OUT TWELVE QUARTERS (LAST QUARTER OF NOVEMBER 2016) THROUGH CURRENT, THAT AMOUNTS TO \$1,440 IN SYSTEM ACCESS FEES. IT DOES NOT TAKE INTO ACCOUNT THE ADDITIONAL FILING FEES FOR ELECTRONIC DOCUMENTS. NONETHELESS, PLAINTIFF IS ONLY SEEKING TO CLAIM \$1,437.40 UNDER THIS ITEM, WHICH IS JUSTIFIED BETWEEN THE QUARTERLY INVOICE STATEMENT AS WELL AS THE DECLARATION OF MCKENZIE IN SUPPORT OF PLAINTIFF'S OPPOSITION TO THE MOTION TO TAX COSTS.

THE SYSTEM ACCESS FEE FOR THE ELECTRONIC FILING WAS NECESSARILY REQUIRED BY THE CASEANYWHERE FILING REQUIREMENT, IS REASONABLE IN AMOUNT, AND SHOULD BE AWARDED TO THE PREVAILING PARTY. (CODE OF CIV. PROC. § 1033.5(A)(13); CODE OF CIV. PROC. § 1033.5(C)(4).)

THE MOTION TO TAX IS THEREFORE DENIED AS TO ALL COSTS SOUGHT IN THIS ITEM.

**MEDIATION FEES (ITEM 16)**

THE MOTION TO TAX IS GRANTED AS TO ALL COSTS SOUGHT IN THIS ITEM. THE COURT TAXES OR STRIKES THE MEDIATION FEES CLAIMED IN ITEM 16 (\$1,160) PURSUANT TO PLAINTIFF'S WITHDRAWAL OF ITS CLAIM TO THEM.

**"AMENDMENT" OF MEMORANDUM OF COSTS**

ALTHOUGH PLAINTIFF PURPORTS TO "AMEND" ITS MEMORANDUM OF COSTS IN ITS OPPOSITION AND ADD AN ADDITIONAL \$2,537.85 IN COSTS FOR TRIAL TRANSCRIPTS, THE COURT DOES NOT FIND APPROPRIATE NOTICE BEEN GIVEN FOR THE REQUESTED AMENDMENT, NOR HAS DEFENDANT BEEN GIVEN A MEANINGFUL OPPORTUNITY TO OPPOSE THOSE COSTS. THE COURT DENIES THE PURPORTED AMENDMENT.

**CONCLUSION – MOTION TO TAX COSTS**

DEFENDANT'S MOTION TO TAX COSTS IS GRANTED IN THE AMOUNT OF \$1,160. THE COURT AWARDS PLAINTIFF COSTS IN THE AMOUNT OF \$28,140.

ENTERED BY: T. JONES

- 08/28/2019 PARTIAL DISMISSAL AS TO: CRCO, CITY OF NOVATO (2)
- 08/28/2019 PARTIAL DISMISSAL AS TO: CRCO, CITY OF NOVATO (2)
- 08/28/2019 PARTIAL DISMISSAL AS TO: CRDF, LIBERTY MUTUAL INSURANCE COMPANY (2) TO CROSS-COMPLAINT OF CITY OF NOVATO
- 08/28/2019 PARTIAL DISMISSAL AS TO: CRDF, SAUSAL CORPORATION (2) TO CROSS-COMPLAINT OF CITY OF NOVATO
- 09/04/2019 IT IS ORDERED THAT ALL DOCUMENTS LODGED AND/OR FILED UNDER CASE NUMBER A158140 (NOTICE OF APPEAL FILED 8/12/19) BE STRICKEN AND REFILED UNDER CASE NUMBER A157577. ALL FURTHER PROCEEDINGS WILL BE CONDUCTED UNDER CASE NUMBER A157577.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
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09/09/2019 HEARING CONTINUED TO: 09/25/2019 AT: 01:30 PM FOR APPEARANCE TYPE: LMCV IN DEPARTMENT: D19 FROM DATE: 08/21/2019 FROM TIME: 01:30 PM FROM APPEARANCE TYPE: LMCV FROM DEPARTMENT: D19

09/09/2019 PARTIAL DISMISSAL AS TO: CRCO, SAUSAL CORPORATION (1)

09/11/2019 IT IS ORDERED: ORDER ON SAUSAL CORPORATION'S MOTION TO TAX COSTS JUDGE JAMES T. CHOU (COPIES LEFT IN WILL CALL UNDER ANDERSON PROCESS SERVICE)

09/11/2019 STIPULATION STIPULATION AND ORDER RE HEARING DATE RE VOLPE COMPANY, INC.'S MOTION FOR ATTORNEY FEES

09/12/2019 IT IS ORDERED: ORDER RE HEARING DATE RE VOLPE COMPANY, INC.'S MOTION FOR ATTORNEY FEES JUDGE JAMES T. CHOU (COPIES LEFT IN WILL CALL UNDER RESCUE DELIVERY)

09/13/2019 (COPIES OF ORDER LEFT IN WILL CALL UNDER ANDERSON PROCESS SERVICE)

09/17/2019 (COPIES OF ORDER LEFT IN WILL CALL UNDER RESCUE DELIVERY)

09/25/2019 MINUTE ORDER POSTED - Appearance: 09/25/2019 at 1:30PM for MOTION FOR ATTORNEY FEES JUDGE JAMES CHOU ,REPORTER NOT REPORTED , DEP CLK T. JONES  
NO APPEARANCE BY OR FOR THE PARTIES  
HEARING AFTER TRIAL  
THE MATTER IS NOT HEARD OR REPORTED. THE TENTATIVE RULING IS FINAL.  
RULING

VOLPE COMPANY, INC.'S ("VOLPE") MOTION FOR ATTORNEYS' FEES IS GRANTED IN THE AMOUNT OF \$459,012.14. SAUSAL CORPORATION'S ("SAUSAL") ARGUMENT THAT VOLPE IS ONLY ENTITLED TO FEES INCURRED IN CONNECTION WITH RECOVERY UNDER THE PROMPT PAYMENT STATUTE FAILS. CIVIL CODE SECTION 1717 APPLIES. THE COURT GRANTS THE MOTION FOR EXPENSES IN THE AMOUNT OF \$9,928.75.

THE MOTION FOR ATTORNEY'S FEES WAS ORIGINALLY SET ON AUGUST 21, 2019. THE COURT CONTINUED THE MOTION FOR ATTORNEY'S FEES UNTIL SEPTEMBER 25, 2019 AND REQUESTED SUPPLEMENTAL BRIEFING FROM BOTH PARTIES.

MOTION FOR ATTORNEYS' FEES - LEGAL STANDARD

IN GENERAL, A PREVAILING PARTY MAY RECOVER ATTORNEY FEES ONLY WHEN A STATUTE OR AN AGREEMENT OF THE PARTIES PROVIDES FOR FEE SHIFTING. (SANTISAS V. GOODIN (1998) 17 CAL.4TH 599, 606; SEE ALSO CODE CIV. PROC. §1033.5 (A)(10)(A) [ATTORNEY FEES ALLOWABLE AS COSTS UNDER SECTION 1032 WHEN AUTHORIZED BY CONTRACT].)

THE PARTY CLAIMING ATTORNEY'S FEES HAS THE BURDEN OF PROVING THAT THEY ARE REASONABLE. (SEE CODE OF CIV. PROC. § 1033.5(C)(5).) A REQUEST FOR FEES SHOULD BE SUPPORTED BY EVIDENCE OF THE WORK PERFORMED, THE HOURS WORKED, AND THE HOURLY RATE CHARGED. (LIN V JENG (2012) 203 CAL.APP.4TH 1008, 1026.) THE PARTY SEEKING AN AWARD OF FEES HAS THE BURDEN OF ESTABLISHING ENTITLEMENT TO AN AWARD AND OF DOCUMENTING THE APPROPRIATE HOURS SPENT AND THE HOURLY RATES. (LUNADA BIOMEDICAL V. NUNEZ (2014) 230 CAL.APP.4TH 459, 486.) THE OPPOSING PARTY HAS THE BURDEN OF IDENTIFYING THE CHALLENGED ENTRIES WITH SUFFICIENT ARGUMENT AND CITATIONS TO THE EVIDENCE, GENERAL ARGUMENTS THAT THE FEES CLAIMED ARE DUPLICATIVE OR UNRELATED ARE INSUFFICIENT. (LUNADA BIOMEDICAL, SUPRA, 230 CAL.APP.4TH 459, 488.)

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC.	DATE FILED:	6/30/2014
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IN AWARDING FEES, A JUDGE IS NOT CONSTRAINED BY THE AMOUNT SOUGHT BY THE SUCCESSFUL PARTY, BUT MUST AWARD A "REASONABLE" AMOUNT. (JACKSON V YARBRAY (2009) 179 CAL.APP.4TH 75, 92.) A JUDGE MUST ASSESS EACH FEE APPLICATION ON ITS OWN MERITS, TAKING INTO ACCOUNT WHAT IS REASONABLE UNDER THE CIRCUMSTANCES. (LUNADA BIOMEDICAL V NUNEZ, SUPRA, 230 CAL.APP.4TH AT 488.)

HERE, VOLPE SEEKS FEES UNDER CIVIL CODE SECTION 1717, PUBLIC CONTRACT CODE SECTION 10262.5, AND BUSINESS AND PROFESSIONS CODE SECTION 7108.5.

CIVIL CODE § 1717

CIVIL CODE SECTION 1717 (A) PROVIDES, IN PART, THAT:

IN ANY ACTION ON A CONTRACT, WHERE THE CONTRACT SPECIFICALLY PROVIDES THAT ATTORNEY'S FEES AND COSTS, WHICH ARE INCURRED TO ENFORCE THAT CONTRACT, SHALL BE AWARDED EITHER TO ONE OF THE PARTIES OR TO THE PREVAILING PARTY, THEN THE PARTY WHO IS DETERMINED TO BE THE PARTY PREVAILING ON THE CONTRACT, WHETHER HE OR SHE IS THE PARTY SPECIFIED IN THE CONTRACT OR NOT, SHALL BE ENTITLED TO REASONABLE ATTORNEY'S FEES IN ADDITION TO OTHER COSTS. [¶] WHERE A CONTRACT PROVIDES FOR ATTORNEY'S FEES, AS SET FORTH ABOVE, THAT PROVISION SHALL BE CONSTRUED AS APPLYING TO THE ENTIRE CONTRACT... (CIVIL CODE § 1717.)

ATTORNEY FEES ARE AVAILABLE UNDER CIVIL CODE SECTION 1717 ONLY IF THE PARTY PREVAILS IN AN ACTION "ON A CONTRACT." (HYDUKE'S VALLEY MOTORS V. LOBEL FIN. CORP. (2010) 189 CAL.APP.4TH 430, 435.)

"IF A CAUSE OF ACTION IS 'ON A CONTRACT,' AND THE CONTRACT PROVIDES THAT THE PREVAILING PARTY SHALL RECOVER ATTORNEY FEES INCURRED TO ENFORCE THE CONTRACT, THEN ATTORNEY FEES MUST BE AWARDED ON THE CONTRACT CLAIM IN ACCORDANCE WITH CIVIL CODE SECTION 1717. [CITATION.]" (GIL V. MANSANO (2004) 121 CAL.APP.4TH 739, 742.)

CIVIL CODE SECTION 1717(A) IS A MUTUALITY OF REMEDY PROVISION, AND ITS PURPOSE IS TO ENSURE THAT THE PREVAILING PARTY RECOVERS ATTORNEYS' FEES WHEREVER A CONTRACT PROVIDES THAT ONE PARTY WOULD BE ENTITLED TO THEM. (SANTISAS V. GOODIN (1998) 17 CAL.4TH 599, 611.)

"WHERE A CONTRACT PROVIDES FOR ATTORNEY FEES IN AN ACTION TO ENFORCE THE CONTRACT, THE ATTORNEY FEES PROVISION IS MADE APPLICABLE TO THE ENTIRE CONTRACT BY OPERATION OF THE SECTION OF THE CIVIL CODE GOVERNING AWARDS OF ATTORNEY FEES IN CONTRACT ACTIONS." (CARR BUSINESS ENTERPRISES, INC. V. CITY OF CHOWCHILLA (2008) 166 CAL.APP.4TH 14, 19.) IN ITS SUPPLEMENTAL PAPERS SAUSAL ARGUES THAT CARR IS AN EXAMPLE OF WHY FEES SHOULD NOT BE AWARDED UNDER SECTION 1717. THE CARR RESULT IS DISTINGUISHABLE AS IT INVOLVED AN INDEMNITY PROVISION CONTAINING AN ATTORNEY'S FEES CLAUSE. UNDER WELL SETTLED LAW, INDEMNITY PROVISIONS, EVEN INCLUDING ATTORNEY'S FEES, DO NOT GENERATE SECTION 1717 RECIPROCAL FEE RIGHTS. ALTHOUGH THE CONTRACT AT HAND DOES HAVE AN INDEMNITY PROVISION WITH A ONE WAY FEE CLAUSE, MOVING PARTY RELIES ON OTHER FEE PROVISIONS IN THE CONTRACT AS A BASIS FOR THIS MOTION.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
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IN BOYD V. OSCAR FISHER CO. (1989) 210 CAL.APP.3D 368, 378–80, AN ATTORNEY’S FEES CLAUSE WAS CONTAINED IN INVOICES SENT BY A MANUFACTURER TO A DEALER BUT NOT IN THE DISTRIBUTORSHIP OR FRANCHISE AGREEMENT BETWEEN THE PARTIES. IN A SUIT BY DEALER FOR UNJUSTIFIABLE TERMINATION OF DEALERSHIP AGREEMENT WHICH INCLUDED A CROSS-CLAIM BY THE MANUFACTURER FOR UNPAID INVOICES, COURT AWARDED THE MANUFACTURER ATTORNEY’S FEES. RESPONDING TO DEALER’S ARGUMENT THAT ATTORNEY’S FEES SHOULD BE LIMITED TO ATTORNEY’S COLLECTION FEE EFFORTS ON THE INVOICES, THE COURT STATED THAT CIVIL CODE SECTION 1717 SHOULD NOT BE READ SO RESTRICTIVELY, AS ATTORNEY’S FEES PROVISION SHOULD APPLY TO THE ENTIRE CONTRACTUAL RELATIONSHIP.

“AN ACTION (OR CAUSE OF ACTION) IS “ON A CONTRACT” FOR PURPOSES OF SECTION 1717 IF (1) THE ACTION (OR CAUSE OF ACTION) “INVOLVES” AN AGREEMENT, IN THE SENSE THAT THE ACTION (OR CAUSE OF ACTION) ARISES OUT OF, IS BASED UPON, OR RELATES TO AN AGREEMENT BY SEEKING TO DEFINE OR INTERPRET ITS TERMS OR TO DETERMINE OR ENFORCE A PARTY’S RIGHTS OR DUTIES UNDER THE AGREEMENT; AND (2) THE AGREEMENT CONTAINS AN ATTORNEY FEES CLAUSE.” (DOUGLAS E. BARNHART, INC. V. CMC FABRICATORS, INC. (2012) 211 CAL.APP.4TH 230, 242.)

**CIVIL CODE 1717 DISCUSSION**

HERE, THERE ARE SEVERAL UNILATERAL FEE PROVISIONS IN THE AGREEMENT, ALL IN FAVOR OF SAUSAL. (SEE EXHIBIT A TO VOLPE DECLARATION.) THE FEE PROVISIONS INCLUDE “SHOULD SUBCONTRACTOR FAIL TO RECTIFY ANY CONTRACTUAL DEFICIENCIES....CONTRACTOR SHALL HAVE THE RIGHT TO TAKE WHATEVER STEPS HE DEEMS NECESSARY TO CORRECT SAID DEFICIENCIES AND CHARGE THE COST TO SUBCONTRACTOR, WHO SHALL BE LIABLE FOR THE FULL COST OF CONTRACTOR’S CORRECTIVE ACTIONS, INCLUDING REASONABLE...ATTORNEY’S FEES.” (SEE SECTION 10 OF AGREEMENT). SECTION 15 ALSO PROVIDES THAT IF “SUBCONTRACTOR....FAILS TO PROPERLY...PROSECUTE THE WORK COVERED BY THIS AGREEMENT, OR FAILS TO MAKE PROMPT PAYMENT TO HIS WORKERS, SUBCONTRACTORS OR SUPPLIERS....OR IS OTHERWISE GUILTY OF A MATERIAL BREACH OF A PROVISION IN THIS AGREEMENT, AND FAILS WITHIN FORTY-EIGHT HOURS AFTER RECEIPT OF WRITTEN NOTICE TO COMMENCE AND CONTINUE SATISFACTORY CORRECTION OF SUCH DEFAULT....THEN CONTRACTOR...SHALL HAVE THE RIGHT TO... (A) SUPPLY ...WORKERS...MATERIALS, EQUIPMENT, AND OTHER FACILITIES AND CONTRACTOR DEEMS NECESSARY FOR THE COMPLETION OF SUBCONTRACTORS WORK....AND CHARGE THE COST THEREOF TO SUBCONTRACTOR....AND ACTUAL ATTORNEY’S FEES INCURRED AS A RESULT OF SUBCONTRACTOR’S FAILURE OF PERFORMANCE.” FINALLY, SECTION 15.2 PROVIDES UPON SUBCONTRACTOR’S DEFAULT, THE COST OF PERFORMING SUBCONTRACTORS WORK, PLUS ACTUAL ATTORNEY’S FEES, SHALL BE DEDUCTED FROM ANY MONIES DUE TO SUBCONTRACTOR AND SUBCONTRACTOR SHALL BE LIABLE FOR THE PAYMENT OF ANY SUCH EXPENSES WHICH EXCEED THE UNPAID BALANCE ON THE CONTRACT. THERE ARE SEVERAL OTHER FEE PROVISIONS IN THE CONTRACT IN FAVOR OF CONTRACTOR (INDEMNITY AND FOR PRESENTING SUBCONTRACTOR’S CLAIMS TO OWNER, ETC.)

IT APPEARS THAT CONTRACTOR HAS ATTEMPTED TO AVOID 1717 MUTUALITY BY NOT WRITING THE FEE PROVISIONS AS EXPLICITLY FOR THE “ENFORCEMENT” OF THE CONTRACT. DESPITE THE FACT THAT THE PROVISIONS DO NOT EXPRESSLY SAY THIS, IT IS CLEAR THAT CONTRACTOR HAS ATTEMPTED TO COVER ALL OF THE MOST LIKELY BREACHES BY SUBCONTRACTOR AND TO MAKE FEES AVAILABLE TO ITSELF IN THOSE CASES. PER THE LANGUAGE OF 1717(A) AND BECAUSE THE CONTRACT DOES NOT CONTAIN A PROVISION REGARDING REPRESENTATION OF COUNSEL, THE FEE CLAUSES SHOULD APPLY TO THE ENTIRE CONTRACT.

THE FEE CLAUSE IN SECTION 10 IS BROAD ENOUGH TO APPLY TO VOLPE’S SUIT. (“[S]HOULD [SAUSAL] FAIL TO RECTIFY ANY CONTRACTUAL DEFICIENCIES....[VOLPE] SHALL HAVE THE RIGHT TO TAKE WHATEVER STEPS [IT] DEEMS NECESSARY TO CORRECT SAID DEFICIENCIES AND CHARGE THE COST TO [SAUSAL], WHO SHALL BE LIABLE FOR THE FULL COST OF [VOLPE’S] CORRECTIVE ACTIONS, INCLUDING REASONABLE...ATTORNEY’S FEES.” (TO DEMONSTRATE THE RECIPROCAL PROVISION FOR THE ONE CONTAINED IN THE CONTRACT, VOLPE HAS BEEN INSERTED FOR “CONTRACTOR” AND SAUSAL FOR “SUBCONTRACTOR”). “WHATEVER STEPS NECESSARY TO CORRECT SAID DEFICIENCY” IS BROAD ENOUGH TO ENCOMPASS LITIGATION. THE TERM "RECTIFY ANY CONTRACTUAL DEFICIENCY" IS THE EQUIVALENT TO "ENFORCE THE CONTRACT."



**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
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VOLPE HAD TO RESORT TO LITIGATION TO CURE SAUSAL'S CONTRACTUAL DEFICIENCY (FAILURE TO PAY). PURSUANT TO SECTION 1717, VOLPE IS ENTITLED TO ALL OF THEIR REASONABLE FEES FOR ENFORCEMENT OF A BREACH UNDER THE AGREEMENT. AS SUCH, THE COURT FINDS THAT SECTION 1717 APPLIES, AND VOLPE IS ENTITLED TO FEES UNDER THAT SECTION.

PUBLIC CONTRACT CODE SECTION 10262.5 AND BUSINESS AND PROFESSIONS CODE SECTION 7108.5

EACH OF THESE STATUTES REQUIRES THAT PROGRESS PAYMENTS BE MADE BY PRIME CONTRACTORS TO SUBCONTRACTORS WITHIN TEN DAYS OF RECEIPT OF PROGRESS PAYMENTS BY THE OWNER TO THE PRIME CONTRACTOR. THE STATUTES PROVIDE FOR PENALTIES, INTEREST AND ATTORNEY'S FEES FOR FAILURE TO COMPLY.

THE PURPOSE OF THE VARIOUS PROMPT PAYMENT STATUTES IS TO SERVE A REMEDIAL PURPOSE: ?TO ENCOURAGE GENERAL CONTRACTORS TO PAY TIMELY THEIR SUBCONTRACTORS AND TO PROVIDE THE SUBCONTRACTOR WITH A REMEDY IN THE EVENT THAT THE CONTRACTOR VIOLATES THE STATUTE. (S&S CUMMINS CORP. V. WEST BAY BUILDERS, INC. (2008) 159 CAL.APP.4TH 765, 777, REHEARING DENIED.)

"IN ANY ACTION FOR THE COLLECTION OF FUNDS WRONGFULLY WITHHELD, THE PREVAILING PARTY SHALL BE ENTITLED TO HIS OR HER ATTORNEY'S FEES AND COSTS." (BUS. & PROF. CODE, § 7108.5.)

PUBLIC CONTRACT CODE SECTION 10262.57 IS THE COMPANION SECTION TO SECTION 7108.5 FOR CONTACTS WITHIN THE STATE CONTRACT ACT (PUB. CONTRACT CODE, § 10100 ET SEQ.). AN ATTORNEY'S FEE PROVISION IDENTICAL TO THAT CONTAINED IN SECTION 7108.5 IS INCLUDED. (MORTON ENG'G & CONST., INC. V. PATSCHECK (2001) 87 CAL.APP.4TH 712, 719-20.)

PUBLIC CONTRACT CODE SECTION 10262.5 AND BUSINESS AND PROFESSIONS CODE SECTION 7108.5  
DISCUSSION

HERE, THE JURY RETURNED WITH ITS UNANIMOUS VERDICT IN FAVOR OF VOLPE ON ITS BREACH OF CONTRACT ACTION AGAINST SAUSAL, AND AWARDED VOLPE \$380,116.30. OF THAT AMOUNT, THE JURY FOUND THAT \$263,552.50 HAD BEEN PAID TO SAUSAL BY THE CITY OF NOVATO AND THAT NO PORTION OF THIS AMOUNT HAD BEEN PROPERLY WITHHELD BASED ON A GOOD FAITH DISPUTE.

AS INDICATED ABOVE, VOLPE IS ENTITLED TO FEES FOR MORE THAN JUST THE PROMPT PAYMENT CLAIMS SO A BREAKDOWN OF THE FEES REQUIRED TO RECOVER THAT \$263,552.50 IS UNNECESSARY.

**REASONABLENESS OF FEES**

THE HOURLY RATES CONTAINED IN THE MOTION APPEAR REASONABLE AND IN LINE WITH INDUSTRY STANDARDS. SAUSAL HAS NOT CHALLENGED THE HOURLY RATE, RATHER THEY HAVE CHALLENGED VOLPE'S ABILITY TO CLAIM FEES UNDER SECTION 1717. HAVING DETERMINED THAT THE REQUESTED HOURLY RATE IS REASONABLE, THE COURT MUST CONSIDER WHETHER THE NUMBER OF HOURS PLAINTIFF'S ATTORNEYS SPENT ON LITIGATION WERE REASONABLE. (SERRANO V. PRIEST (SERRANO III) (1977) 20 CAL.3D 25, 48-49.) GENERALLY, HOURS ARE REASONABLE IF THEY WERE NECESSARY TO THE CONDUCT OF THE LITIGATION. (ROBERTSON V. FLEETWOOD TRAVEL TRAILERS OF CALIFORNIA, INC. (2006) 144 CAL.APP.4TH 785, 818.)

IF PRESENTED WITH DETAILED AND COMPREHENSIVE BILLING RECORDS, IT IS INCUMBENT ON A PARTY OPPOSING AN ATTORNEY FEE MOTION TO PROVIDE SOME EXPLANATION WHY THE EFFORTS OF COUNSEL WERE INEFFICIENT OR DUPLICATIVE. (CHRISTIAN RESEARCH INST. V ALNOR (2008) 165 CAL.APP.4TH 1315, 1321.)  
HERE, SAUSAL HAS FAILED TO POINT TO SPECIFIC ENTRIES THEY CHALLENGE OR IDENTIFY THE BILLING THAT IS "UNNECESSARY, DUPLICATIVE, OR EXCESSIVE," AND HAS THEREFORE FAILED TO MEET ITS BURDEN. DEFENDANT MERELY ASSETS THAT PLAINTIFF MAY ONLY RECOVER FOR FEES SPENT ON PROMPT PAYMENT CLAIMS (NOT SECTION 1717 BREACH OF CONTRACT CLAIMS).

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC.	DATE FILED:	6/30/2014
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NOTWITHSTANDING, "ASCERTAINING THE FEE AMOUNT IS LEFT TO THE TRIAL COURT'S SOUND DISCRETION." (CHRISTIAN RESEARCH INST., SUPRA, 165 CAL.APP.4TH 1315, 1321 CITING KETCHUM V. MOSES (2001) 24 CAL.4TH 1122, 1132.)

THEREFORE, AS TO THE REASONABLENESS OF THE ATTORNEY FEES, AND NAMELY THE REASONABLENESS OF THE NUMBER OF HOURS SOUGHT, THE COURT FINDS THAT THE TOTAL HOURS SOUGHT FOR ATTORNEYS' FEES ARE REASONABLE GIVEN THE COMPLEXITY OF THE CASE AND LENGTH OF TRIAL. HOWEVER, SEVERAL OF THE ENTRIES FOR PARALEGAL TIME APPEAR TO BE FOR ADMINISTRATIVE WORK WHICH WOULD NOT BE RECOVERABLE AS ATTORNEY'S FEES. BECAUSE THE BLOCK BILLING COMBINES THESE NON-BILLABLE ENTRIES WITH BILLABLE ENTRIES, THE COURT HAS ESTIMATED THAT A COMBINED \$3,000 IN PARALEGAL TIME WAS SPENT ON NON-RECOVERABLE ADMINISTRATIVE WORK.

THUS, THE COURT GRANTS THE MOTION FOR ATTORNEY FEES IN THE REDUCED AMOUNT OF \$459,012.14.

**LITIGATION EXPENSES**

ADDITIONALLY, PLAINTIFF SEEKS LITIGATION EXPENSES (COSTS) NOT RECOVERED BY THE MEMORANDUM OF COSTS UNDER THE PROMPT PAYMENT STATUTES AND SECTION 1717. THE COURT REQUESTED SUPPLEMENTAL BRIEFING DELINEATING THE COSTS, WHICH MOVING PARTY PROVIDED IN THE TOTAL AMOUNT OF \$12,832.59. DEFENDANT HAS NOT OPPOSED THE SPECIFIC ITEMS SOUGHT. HOWEVER, UPON REVIEW, THE COURT FINDS THAT FED EX, LEXIS NEXIS LEGAL RESEARCH, COPIES, AND PRINTING EXPENSES BEYOND THOSE ALREADY AWARDED IN THE MEMORANDUM OF COSTS, ARE MORE APPROPRIATELY CHARACTERIZED AS OVERHEAD RATHER THAN RECOVERABLE LITIGATION EXPENSES. AS SUCH, THE COURT REDUCES THE TOTAL EXPENSES SOUGHT BY \$2,903.84.

THE COURT GRANTS THE MOTION FOR EXPENSES IN THE AMOUNT OF \$9,928.75.

ENTERED BY: T. JONES

10/03/2019 PARTIAL DISMISSAL AS TO: CRDF, CITY OF NOVATO WITH PREJUDICE. EACH PARTY TO BEAR THEIR OWN FEES AND COSTS.

10/11/2019 REPORTER'S TRANSCRIPT DEPOSIT OF \$2599.00; SMITH, CURRIE & HANCOCK LLP, 2700 MARQUIS ONE TOWER, 245 PEACHTREE CTR AVE NE, ATLANTA, GA 30303-1227, 404-521-3800 OBO APPELLANT SAUSAL CORPORATION; CHECK 185683; TRUST RECEIPT 0002295

11/05/2019 MINUTE ORDER POSTED

EX PARTE MINUTE ORDER \*\*\*\*\* IN CHAMBERS MINUTE ORDER \*\*\*\*\*

JUDGE JAMES T. CHOU ,REPORTER NOT REPORTED , DEP CLK J. DALE

NO APPEARANCE BY OR FOR THE PARTIES

ON SEPTEMBER 12, 2019, THE COURT ORDERED, PURSUANT TO STIPULATION BY THE PARTIES, THAT PLAINTIFF'S MOTION FOR ATTORNEY FEES AND LITIGATION EXPENSES ("MOTION") BE CONTINUED FROM SEPTEMBER 25, 2019 TO NOVEMBER 6, 2019 AT 1:30 P.M. IN COURTROOM B. DUE TO CLERICAL ERROR THE MOTION REMAINED ON CALENDAR FOR SEPTEMBER 25, 2019 AT 1:30 P.M. IN COURTROOM B. THE COURT THEN ISSUED ITS TENTATIVE RULING FOR THE MOTION ON SEPTEMBER 24, 2019 AND THEREAFTER ADOPTED ITS RULING ON SEPTEMBER 25, 2019. NO APPEARANCES WERE MADE BY THE PARTIES.

IT IS ORDERED: THE PREVIOUSLY ADOPTED RULING OF SEPTEMBER 25, 2019 ON PLAINTIFF'S MOTION FOR ATTORNEY FEES AND LITIGATION EXPENSES IS HEREBY STRICKEN IN LIGHT OF THE CLERICAL ERROR. HEARING ON THE MOTION WILL BE ON DECEMBER 11, 2019 AT 1:30 P.M. IN COURTROOM B. CLERK TO PROVIDE NOTICE TO THE PARTIES.

ENTERED BY: J. DALE

11/05/2019 HEARING CONFIRMED FOR: 12/11/2019 AT: 01:30 PM FOR APPEARANCE TYPE: LMCV IN DEPARTMENT: D19

11/05/2019 IT IS ORDERED: IN CHAMBERS MINUTE ORDER. SIGNED BY JUDGE JAMES T. CHOU. PROOF OF SERVICE BY FIRST CLASS MAIL ATTACHED. DATE OF MAILING 11/05/2019.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

11/05/2019 NOTICE OF HEARING MAILED RE: PLAINTIFF'S MOTION FOR ATTORNEY'S FEES SET ON 12/11/2019. NOTICE MAILED TO PLAINTIFF'S COUNSEL RICHARD BOWLES AND DEFENDANT'S COUNSEL CRAIG WALLACE.

11/07/2019 APPEARANCE MOVED TO: 12/19/2019 AT: 09:30 AM FOR APPEARANCE TYPE: LMCV IN DEPARTMENT: D19 MOVE REASON: BY AGREEMENT OF PARTIES WITH PERMISSION OF COURT FROM DATE: 12/11/2019 FROM TIME: 01:30 PM FROM APPEARANCE TYPE: LMCV FROM DEPARTMENT: D19

12/19/2019 MINUTE ORDER POSTED - Appearance: 12/19/2019 at 9:30AM for MOTION FOR ATTORNEY FEES  
JUDGE JAMES T. CHOU ,REPORTER DIANE FREEMAN (CSR# 5884, PRIVATELY RETAINED) , DEP CLK J. DALE  
ATTORNEY RICHARD T. BOWLES APPEARED FOR THE PLAINTIFF VOLPE COMPANY, INC.  
ATTORNEY CRAIG WALLACE APPEARED FOR THE DEFENDANT SAUSAL CORPORATION  
HEARING AFTER TRIAL  
MOTION(S) HEARD AND ARGUED.  
IT IS ORDERED:  
CASE UNDER SUBMISSION  
THE COURT WILL ISSUE THE ORDER  
ENTERED BY: J. DALE

12/20/2019 MINUTE ORDER POSTED  
EX PARTE MINUTE ORDER ON SUBMITTED MATTER  
JUDGE JAMES T. CHOU ,REPORTER NOT REPORTED , DEP CLK J. DALE  
NO APPEARANCE BY OR FOR THE PARTIES  
CASE NO LONGER UNDER SUBMISSION  
ORDER AFTER HEARING RE: ATTORNEYS' FEES  
ON DECEMBER 19, 2019, THIS MATTER CAME ON FOR HEARING ON PLAINTIFF VOLPE COMPANY, INC'S. ("VOLPE") MOTION FOR ATTORNEYS' FEES. RICHARD BOWLES APPEARED ON BEHALF OF PLAINTIFF. CRAIG WALLACE APPEARED ON BEHALF OF DEFENDANTS SAUSAL CORPORATION.  
PLAINTIFF'S MOTION FOR ATTORNEYS' FEES IS GRANTED IN THE AMOUNT OF \$459,012.14. SAUSAL CORPORATION'S ("SAUSAL") ARGUMENT THAT VOLPE IS ONLY ENTITLED TO FEES INCURRED IN CONNECTION WITH RECOVERY UNDER THE PROMPT PAYMENT STATUTE FAILS. CIVIL CODE SECTION 1717 APPLIES. THE COURT GRANTS THE MOTION FOR EXPENSES IN THE AMOUNT OF \$9,928.75.  
THE MOTION FOR ATTORNEYS' FEES WAS ORIGINALLY SET ON AUGUST 21, 2019. THE COURT CONTINUED THE MOTION FOR ATTORNEYS' FEES UNTIL SEPTEMBER 25, 2019 AND REQUESTED SUPPLEMENTAL BRIEFING FROM BOTH PARTIES.  
[SEE CASE FILE FOR COMPLETE TEXT OF ORDER]  
IT IS SO ORDERED.  
DATED: DECEMBER 20, 2019  
///// JAMES T. CHOU, JUDGE OF THE SUPERIOR COURT /////  
ORDER AFTER HEARING RE: ATTORNEYS' FEES SERVED BY FIRST CLASS MAIL ON 12/20/2019 BY JUDICIAL SECRETARY  
ENTERED BY: J. DALE

12/20/2019 IT IS ORDERED: ORDER AFTER HEARING RE ATTORNEYS' FEES. SIGNED BY JUDGE JAMES T. CHOU. PROOF OF SERVICE BY FIRST CLASS MAIL ATTACHED. DATE OF MAILING 12/20/2019.

01/14/2020 NOTICE OF APPEAL BY SAUSAL CORPORATION FROM ORDER AFTER HEARING FILED 12/20/19; NO FEES TAKEN

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF MARIN**

VOLPE COMPANY, INC. PLAINTIFF(s)	DATE FILED:	6/30/2014
VS.	CASE TYPE:	COMPLAINT
SAUSAL CORPORATION ( COMPLEX ) DEFENDANT(s)	CASE SUBTYPE:	BREACH OF CONTRACT
	DATE OF LAST ACTIVITY:	2/13/2020
	DATE/TIME RUN:	04/07/2020 12:37 PM
REGISTER OF ACTIONS	CASE NUMBER:	CIV 1402511

- 01/23/2020 JUDGMENT FOR SECOND AMENDED JUDGMENT: SECOND AMENDED JUDGMENT IS HEREBY ENTERED IN FAVOR OF VOLPE AND AGAINST SAUSAL IN THE TOTAL AMOUNT OF \$1,385,580.23. OF THIS AMOUNT \$888,499.34 PLUS STATUTORY COSTS AWARDED OF \$28,140.00 WILL INCUR SIMPLE INTEREST AT THE RATE OF AGAINST 10% FROM AND AFTER 4/19/19 UNTIL PAID. THE AMOUNT OF ATTORNEYS' FEES AND COSTS AWARDED OF \$468,940.89 WILL INCUR SIMPLE INTEREST AT THE RATE OF 10% FROM AND AFTER 12/20/19. JUDGE JAMES T. CHOU
- 01/24/2020 CORRECTION OF COUNSEL'S ADDRESS IN COURT'S RECORDS BY ATTORNEY CRAIG WALLACE ON BEHALF DEFENDANT SAUSAL CORPORATION
- 02/13/2020 NOTICE OF ENTRY OF JUDGMENT MAILED TO ALL PARTIES; COPY FILED W/POS BY MAIL. BY ATTORNEY KENNETH MCKENZIE ON BEHALF OF PLAINTIFF AND CROSS-DEFENDANT VOLPE CORPORATION,, MAILED ON 2/10/20