

Tulare County Superior Court
Visalia Division
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FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION

NOV 12 2021

STEPHANIE CAMERON, CLERK
BY: 

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF TULARE, VISALIA DIVISION

SOMA ENVIRONMENTAL
ENGINEERING, INC.

Plaintiff

Vs.

CHOICE DRILLING, INC., AMERICAN
CONTRACTORS' INDEMNITY COMPANY,
SEAN PICHINSON AND DOES 2-15

Defendants.

Case No. VCU280753

DECISION AFTER
TRIAL

The above-entitled matter came on for Court Trial on July 19, 2021 through July 29, 2021 in Department #1 of the Tulare County Superior Court, with the Honorable David C. Mathias, presiding. The Court accepted the presentation of evidence and heard the arguments of Plaintiff Soma Environmental Engineering, Inc. (hereinafter "Plaintiff" or "SOMA"), Defendant Choice Drilling, Inc. ("Choice"), Defendant Sean Pichinson ("Pichinson") and American Contractors' Indemnity Company ("American"). Plaintiff was represented by H. Ty Kharazi of Yarra Law Group and Defendants were represented by Rudy Perrino of Kutak Rock LLP. The Court has reviewed and considered Plaintiff's Post Trial Brief and Post Trial Reply Brief filed August 9, 2021 and August 26, 2021, respectively, and Defendant's Post Trial Brief filed August 17, 2021. Closing arguments were held on September 1, 2021 and the matter was taken under submission on that date. The entire trial, including witness testimony and closing arguments, was conducted by Zoom. The Court's Tentative Decision After Trial was issued on October 26, 2021. No Statement of Decision has been requested.

PLEADINGS

Plaintiff filed its Second Amended Complaint on August 4, 2020 seeking unspecified damages against Choice and Pichinson based on causes of action for (1) Breach of Contract, (2) Negligence, (3) Negligent Misrepresentation and (5) Fraud and Deceit. Plaintiff's fourth (4) cause of action for Demand on Contractors Bond is against American only.

FIRST CAUSE OF ACTION – BREACH OF CONTRACT

A. Factual Background

The historical facts of this case are generally undisputed. In or about 2014 SOMA was hired by the Dinuba Unified School District to evaluate and remediate as necessary soil and groundwater beneath a parcel of the district's property. The subject property was previously utilized as a gas station. The property required remediation prior to being converted to the District's intended use as high school tennis courts. The remediation project was funded by the State Water Resource Control Board's (hereinafter "SWRCB") Underground Storage Tank Clean-up Fund. SOMA's initial responsibility was to create and implement a cleanup plan for the property and install 27 groundwater monitoring and remediation wells. The oversight regulatory agency was initially Tulare County Environmental Health and subsequently the City of Dinuba.

The cleanup and remediation portion of the project was completed in 2016 and the scope of the project was redirected to convert the property to its intended use for the high school. The decommissioning and abandonment of the 27 groundwater monitoring wells was a necessary step in returning the land to a usable condition. SOMA, as the environmental consultant, retained Choice, a licensed C-57 contractor, to decommission the subject wells. SOMA and Choice had a limited prior business relationship before working together on the Dinuba High School project.

It is generally undisputed that the parties entered a contract wherein SOMA would compensate Choice to decommission 27 wells for the Dinuba High School project. The formation of the agreement was somewhat casual. Plaintiff's employee, Ruchi Mathur, sent a series of e-mails around February 8, 2017 to Choice to inquiry if Choice was interested in the decommissioning project. The e-mails provided general information about the project, to include a reference to pressure grouting the subject wells and specifications related to slurry strength for the well abandonment. Choice expressed their interest through Debbie Critser in the project by providing a bid estimate to SOMA on February 21, 2017. The estimate was for \$34,068.00 and included a provision to "destroy wells by pressure grouting." No formal contract was executed between the parties and no RFP, or similar document outlining the specifications for the project, was introduced that indicated any decommissioning requirements or specifications established by the regulatory agency. The anticipated work required a C-57 contractor's license, which was held by defendant Pichinson. The second series of e-mails by and between Ms. Mathur and Ms. Critser occurred in September 2017, which resulted with the parties agreeing on a commencement date for the project of November 9, 2017.

The work anticipated under the subject estimates was completed on November 9, 10, 13 and 14, 2017. Choice delivered service tickets for each day identifying the work completed. The service

ticket for November 9, 2017 indicates that nine wells were completed by pressure grouting. The service ticket for November 10, 2017 indicates that five wells were decommissioned by pressure grouting. The service tickets for November 13 and 14, 2017 seem to indicate work completed on the remaining wells, but are silent as to the issue of pressure grouting. In or about January 2018, SOMA prepared a Well Completion Report for each of the 27 wells decommissioned by Choice. The Well Completion Reports were submitted by SOMA to Choice for signature and contained a description of the work completed for each well as "pressure grout well, removed well box, finish to match existing grade." The Well Completion Reports were signed by Debbie Critser in the name of Sean Pichinson on January 15, 2018 and returned to SOMA. SOMA received its full payment for the project from the SWRCB – Underground Storage Tank Cleanup Fund upon the SWRCB's receipt of all required documentation, including the referenced Well Completion Reports. SOMA's payment equaled 110% of Choice's invoice. (It is believed SOMA was actually paid by the School District, who received the funding for the project from the SWRCB) Choice was likewise subsequently paid in full for its invoice by SOMA.

The evidence presented indicates that SOMA received 10% of the project costs for its management and supervision of the project. The well decommissioning work completed by Choice was accepted by the City of Dinuba and the SWRCB and no remedial work was ever requested or performed by Choice related to well decommissioning or pressure grouting. Likewise, neither the City of Dinuba nor the SWRCB has ever sought compensatory damages from either Choice or SOMA for work completed at the Dinuba project. The site currently fulfills its intended use as tennis courts for Dinuba High School.

Approximately three months later, on or about May 3, 2018, SOMA received a letter from the SWRCB delineating deficiencies in SOMA's work on various State projects. The letter generally described each deficiency and set forth the SWRCB's intent to pursue upwards of \$18,500,000 in penalties for at least 37 misrepresentations (\$500,000 for each misrepresentation) from SOMA. The letter further indicated the subject penalties were a result of SOMA's alleged negligent and fraudulent activities documented by the Fraud Prevention Unit from 2007 through 2018.

On June 19, 2018, SOMA's principal, Mansour Sepehr, his daughter (who is an attorney) and attorney Charles Pomeroy attended a meeting in Sacramento with the SWRCB to address the deficiencies set forth in the May 3, 2018 letter. The SWRCB presented the factual basis for eight separately delineated claims against SOMA during the meeting. The eight claims presented were as follows: 1) Misrepresenting Well Decommissioning; 2) Marking Up Affiliated Company, Golden Gate Remediation Technology; 3) Double Billing Labor; 4) Unnecessary Remediation; 5) Unnecessary Field Work; 6) Unnecessary Report; 7) Padded Invoices; and 8) Misrepresenting Data. These claims are more specifically discussed below. The SWRCB offered evidence in support of each claim and the basis for the above referenced penalties and compensatory damages (\$425,886). There were no compensatory damages alleged by the SWRCB that involved Choice or the Dinuba project. In support of its claim against SOMA relating to the Dinuba site, the SWRCB presented a video of the work completed at the project site by Choice. The SWRCB alleged that the video showed that the wells decommissioned by Choice were not, in fact, pressure grouted as indicated in the Well Completion Reports. The SWRCB claimed that the false or inaccurate Well Completion Reports subjected SOMA to a penalty under its claim.

The June 19, 2018 meeting evolved into comprehensive settlement negotiations that ultimately resulted in a settlement. The settlement was reduced to a formal settlement agreement wherein SOMA agreed to pay \$200,000 in penalties, forego \$67,780 in remaining billed service, cease work on all existing jobs and forego future work directly or indirectly with the SWRCB.

SOMA's prayer for relief in this matter is \$1,326,810, plus attorney fees and punitive damages. The damages sought include the civil penalties paid (\$200,000), denied receivables (\$67,786), lost profits (\$84,024), attorney fees paid to a prior attorney (\$65,000) and future economic damages (\$910,000). All damages sought by SOMA in this matter result from its settlement with the SWRCB. SOMA does not seek any damages from Choice that would be a direct result of its contract with Choice.

B. Analysis

To recover damages for breach of contract SOMA must prove all of the following: 1) that the parties entered into a contract; 2) that SOMA did all, or substantially all, of the significant things that the contract required it to do or that it was excused from doing those things; 3) that all conditions required by the contract for Choice's performance had occurred or were excused; 4) that Choice failed to do something that the contract required it to do or that Choice did something that the contract prohibited it from doing; 5) that SOMA was harmed by that failure and 6) that Choice's breach of contract was a substantial factor in causing SOMA's harm. (CACI 303) As a general rule, no person can recover a greater amount in damages for the breach of an obligation, than he could have gained by the full performance thereof on both sides. CC 3358.

SOMA contends that Choice is responsible for all consequential damages suffered by SOMA as a result of its settlement with the SWRCB. SOMA's claim for damages is based on its contention that Choice failed to pressure grout all 27 wells as agreed, Choice provided false Well Completion Reports to SOMA that were in turn submitted to the SWRCB and that the deficiencies of the work completed by Choice at the Dinuba project was the sole basis for SOMA's settlement with the SWRCB. Choice generally denies all allegation set forth by SOMA and, more specifically, alleges that the subject wells were decommissioned in compliance with the agreement, that SOMA supervised the project and approved any work changes, and that SOMA's settlement with the SWRCB was unrelated to or insignificantly based on work completed by Choice.

SOMA's ability to recover its alleged derivative, or consequential, damages from Choice is the primary issue in this case. Consequential damages are those losses that do not arise directly and inevitably from any similar breach of any similar agreement. Instead, they are secondary or derivative losses arising from circumstances that are particular to the contract or to the parties. Consequential damages are recoverable if the special or particular circumstances from which they arise were actually communicated to or known by the breaching party (a subjective test) or were matters of which the breaching party should have been aware at the time of contracting (an objective test). Consequential damages are among the losses that are foreseeable and proximately caused by the breach of a contract. *Lewis Jorge Construction Management, Inc. v. Pomona Unified School Dist.* 34 Cal.4th 960, 968. Further, a party assumes the risk of consequential damages for unusual losses arising from special circumstances only if it was advised of the facts

concerning special harm which might result from breach – it is not deemed to have assumed such additional risk, however, simply by entering into the contract. *Lewis Jorge*, supra pg. 969 See also *Schellinger Brothers v. Cotter* 2 Cal.App.5th 984; *Glob. Hawk Ins. Co v. Wesco Ins Co* 424 F. Supp. 3d 848 and *Ash v. North American Title Co.* 223 Cal.App. 4th 1258 as recited in defendant’s closing brief.

In support of SOMA’s claim that Choice is responsible for its consequential damages, SOMA offered the testimony of Mansour Sepehr. Dr. Sepehr is the President and principal hydrogeologist of SOMA. He holds a PhD in hydrology and water resources engineering. Dr. Sepehr testified on direct that he entered the agreement with the SWRCB to cut losses, eliminate risk and conclude the litigation with the State. He was firm in his testimony that he believed the only claim by the SWRCB against SOMA that could be substantiated was the one relating to the work completed by Choice and that the other seven claims were defensible. Dr. Sepehr contends that SOMA’s alleged losses are the direct result of Choice’s failure to properly pressure grout the subject wells and that Choice prepared and submitted false Well Completion Reports. Dr. Sepehr did not notify Choice of its meeting with the State nor did he attempt to contact Choice during the settlement negotiations. During cross, Dr. Sepehr acknowledged that he settled with the SWRCB because it was “less expensive to sue Choice than to litigate with the State”, that he was forced to settle to eliminate the risk of higher penalties and that the settlement was a package deal, in essence “all or nothing.”

David Charter testified as a retained expert for SOMA on the issue of damages, pressure grouting and project supervision. Mr. Charter was a qualified expert based on his training and experience as a geologist and his knowledge of well drilling and well abandonment. He is retired from the SWRCB. Mr. Charter opined that 1) he did not believe the wells decommissioned by Choice were properly pressure grouted, 2) that Choice was ultimately responsible for work being completed correctly and 3) that Choice was responsible for proper reporting to the regulatory agency. Mr. Charter reviewed all complaints by the SWRCB against SOMA and opined that items 2-8 (all claims not involving Choice) were either mitigated or defensible. On cross-examination, Mr. Charter acknowledged that he had a limited pre-existing social relationship with Dr. Sepehr (indicating some bias), had very limited actual knowledge of the SWRCB investigation of SOMA (he was not part of the investigative unit for the SWRCB) and that SOMA did have a responsibility to have a knowledgeable supervisor in the field. Mr. Charter’s testimony was credible, but not overly persuasive for the purpose intended.

Jacques Lord testified at the request of the defense on the issue of damages and the terms of settlement. Mr. Lord is employed by the SWRCB in its enforcement division and testified as to his investigation of SOMA. Mr. Lord testified that the SWRCB had been investigating SOMA for approximately 10 years relating to a variety of acts of misconduct.

Mr. Lord was the subject of fairly intense examination regarding the settlement negotiations between the SWRCB and SOMA that resulted in the settlement that is the subject of this litigation. His testimony was riddled with EC 1154 objections as the parties attempted to infiltrate the settlement negotiations between the SWRCB and SOMA and exploit the basis for the settlement between the parties. The evidence presented, including the testimony of Mr. Lord, indicates that the Fraud Investigation Unit of the SWRCB presented eight claims against SOMA

at their meeting on June 19, 2018. As presented above, the claims against SOMA were as follows: 1) Misrepresenting Well Decommissioning; 2) Marking Up Affiliated Company, Golden Gate Remediation Technology; 3) Double Billing Labor; 4) Unnecessary Remediation; 5) Unnecessary Field Work; 6) Unnecessary Report; 7) Padded Invoices; and 8) Misrepresenting Data. Items 4 and 8 were dismissed by the SWRCB during the negotiation process. Mr. Lord testified that all claims carried equal weight against SOMA and that the SWRCB would have pursued its claims against SOMA even in the absence of the claim related to Choice and the Dinuba project. Mr. Lord testified that the SWRCB's claims against SOMA dated back to 2007, well before the involvement of Choice at the Dinuba Site, and that SOMA was being investigated for items 2-8 prior to 2017 (the date Choice accepted the Dinuba job).

Mr. Lord testified that none of the \$425,886 in compensatory damages sought by the SWRCB in its claim against SOMA related to the work completed by Choice. All such damages were related to claims 2-8 and were directed solely at SOMA. Similarly, of the \$18,500,000 in civil penalties sought by the State, only \$500,000 was a potential claim related to item 1 and Choice. Mr. Lord appeared as a credible unbiased witness who recounted the facts of his investigation. His testimony was fully supported by the Settlement Agreement between the parties, which indicated that the agreed upon settlement was to resolve all claims by the SWRCB against SOMA and not just the claims related to the Dinuba project and Choice. Mr. Lord's testimony defeated the claims by Mr. Sepehr and SOMA that the settlement with the State was to solely and exclusively resolve claims related to the Dinuba job and the work completed by Choice (Item 1).

Finally, Mr. Lord testified as to his specific investigation of the Dinuba project and his opinion as to whether or not the subject wells were pressure grouted. His investigation included the installation of a surveillance camera at the Dinuba job that captured some of the work completed at the site. Mr. Lord testified that though review of the surveillance video he believed the wells abandoned by Choice were not pressure grouted as represented in the Well Completion Reports submitted by SOMA.

Nickolaus Knight is an attorney for the SWRCB's Office of Enforcement and testified at the request of the defense. He testified as to the settlement agreement by and between the SWRCB and SOMA. The enforcement objectives and purpose of the settlement with SOMA was to recover damages for prior projects, impose penalties that serve as a deterrent for future violations and remove business entities from the contractor list to prevent future harm. The settlement with SOMA was to satisfy these objectives and to resolve all past claims by the SWRCB against SOMA. Mr. Knight indicated that the settlement between SOMA and the SWRCB was as to all claims and was in no way exclusive to the Dinuba project or the work completed by Choice.

Sean Pichinson is the principal of Choice. Mr. Pichinson testified he was never advised or put on notice that SOMA could be fined or banned if wells were not pressure grouted, nor was he advised that the Well Completion Reports could create liability for SOMA if they were submitted to the SWRCB. Mr. Pichinson testified that Ms. Critser signed off on the Well Completion Reports. The reports were signed by Ms. Critser without his permission, but he believed the reports were prepared by SOMA and were materially correct and that Ms. Critser signed them at Ms. Mathur's request.

The final Settlement Agreement was signed between the SWRCB and SOMA on November 13, 2018. The Settlement Agreement memorialized the terms of the settlement that were agreed to at the June 19, 2018 meeting between the parties. The Recitals set forth in the Settlement Agreement clearly reflect that the SWRCB's Office of Enforcement's Fraud, Waste, and Abuse Prevention Unit was actively investigating SOMA as early as 2014. This was well before Choice completed its work at the Dinuba site. The claims settled by and between the SWRCB and SOMA are clearly reflected in paragraph 3 of the Settlement Agreement. This section reads as follows: "The audit focused on alleged misrepresentations SOMA made to the Cleanup Fund, including invoicing the Cleanup Fund for markup on an affiliated company, double billing the Cleanup Fund for labor paid to Golden Gate Remediation Technologies, Ind., Invoicing the Cleanup Fund for unnecessary site visits, remedial activities and an unnecessary report, overbilling for senior review labor hours, and misrepresentations in a well decommissioning report for a well decommissioning performed by a subcontractor." It is clear from the Settlement Agreement that the claims settled include all claims against SOMA and not just those claims that may involve Choice.

Based on the facts and evidence presented in this matter, SOMA has failed to meet its burden that the work completed by Choice at the Dinuba site or the submission of the Well Completion Reports either harmed SOMA or was a substantial factor in causing SOMA's harm. The weight of the evidence presented was clear that SOMA had been under investigation by the SWRCB for many years and that SOMA was subject to disciplinary action by the SWRCB notwithstanding the work completed by Choice. The *Lewis Jorge* matter is on point both factually and legally with this present matter before the court. SOMA's penalties, denied receivables, present lost profits, attorney fees related to the SWRCB settlement and future economic damages are not recoverable as derivative or consequential damages by SOMA in this action. The agreement reached between SOMA and Choice for well decommissioning at the Dinuba site in no way contemplated an action by the SWRCB against SOMA. Furthermore, the SWRCB penalties, SOMA's lost present and future profits and attorney fees were not, and could not have been, actually foreseen or foreseeable as reasonably probable to result from the alleged breach by Choice.

PRESSURE GROUTING and SUPERVISION:

Although the court's decision as to the recoverability of damages by SOMA in this matter is dispositive, the Court makes the following findings as to pressure grouting and supervision at the Dinuba site. Soma contends that Choice failed to pressure grout all 27 wells as represented in the Well Completion Reports. SOMA further contends that SOMA had no supervisory role at the project and that Choice was exclusively responsible for its work, changes and reporting.

In addition to the testimony and evidence referenced above, the parties presented the following witnesses:

Travis Barrow was called as a witness by SOMA. He is a previous employee of Choice. Mr. Barrow stated it has "been a long time" since he was on this project and could not remember

exact specifics of the job. He was experienced at decommissioning wells and has performed well abandonment by pressure grouting approximately 250 times. His testimony included the following statements: 1) the service tickets would be accurate (indicating wells that were or were not pressure grouted); 2) he recalled pressure grouting approximately 14 wells at the project, possibly a couple could not be pressure grouted due to location and 3) SOMA's employee Davoud Bazrpash was the supervisor on the job and approved any changes to the expected work, including decisions regarding the referenced wells that could not be pressure grouted.

Javier Zerapio testified as a witness for SOMA. He was an employee of Choice. Mr. Zerapio had limited experience with pressure grouting. He testified that a tremie pipe (a pipe that may be used in the process of pressure grouting) was not used on the project, however believed all but two wells were pressure grouted when decommissioned.

Sean Pichinson is the principal for Choice and testified on behalf of the defense. His company has abandoned over 1000 wells, approximately one half by pressure grouting. He was confident that his employees on the job, Travis and Javier, were experienced with pressure grouting wells. Mr. Pichinson testified that Davoud Bazrpash was SOMA's foreman for the job and it was his responsibility to ensure the job was done correctly. Mr. Pichinson further testified that if there were any issues with the way the wells were abandoned that either Mr. Bazrpash or some other representative from SOMA would have brought it to his attention. He was not advised at any time, or from any source, that there was an issue with the wells or with the SWRCB until the within lawsuit was filed and served. He had no personal information as to how the wells were abandoned, but believed they were abandoned correctly. He has not received a request by any entity, whether it be the SWRCB or the City of Dinuba, to complete any remedial work.

Sam Williams testified as a retained expert witness for the defense. Mr. Williams was educated in the field of geophysics, was a certified hydrologist and has been employed as an environmental manager. He testified in the area of project supervision and reporting. Mr. Williams testified that SOMA had the ultimate supervisory responsibility in the field. As such, SOMA had the duty to rectify field work deficiencies, approve necessary work scope changes, approve invoices and ensure reports to regulatory agencies are correct. A project manager should never leave the field work unsupervised. Mr. Williams provided the following opinions: 1) SOMA knew or should have known which wells were pressure grouted and which ones were not; 2) SOMA should have accurately reported the work completed in the field to the appropriated regulatory agency; and 3) the corrective acts taken and penalties imposed by the SWRCB were a result of the deficiencies of SOMA and not Choice. Mr. Williams opined that SOMA failed to properly supervise the project by maintaining a field representative at the project, Davoud Bazrpash, who had little or no experience with well abandonment or pressure grouting. Mr. William's testimony and opinions were supported by the evidence presented by the parties in this action.

Davoud Bazrpash was a prior employee of SOMA and was called as a witness in this case by Choice. Mr. Bazrpash testified that while on the job in Dinuba he reported to Dr. Sepehr, performed duties as assigned by Ms. Mathur and Dr. Sepehr, assisted with equipment mobilization, and assisted with keeping the site clean. Mr. Bazrpash further testified he had no supervisory duties at the job site, had no experience with pressure grouting, did not oversee well

decommissioning and had limited communication with the employees of Choice. He stated he had limited knowledge of well abandonment and no recollection of whether or not the subject wells were pressure grouted. Mr. Bazrpash testified that he almost exclusively communicated with Dr. Sepehr due to his language limitations (he testified during trial with the assistance of a Farsi interpreter). Mr. Bazrpash appeared evasive in his testimony and was subject to issues related to credibility. Regarding Mr. Bazrpash's testimony, the weight of the evidence supports that he was the intended onsite supervisor for SOMA, signed the service tickets that indicated work completed and had a sufficient command of the English language to communicate with the Choice subcontractors.

Regarding the issues of pressure grouting and supervision, the weight of the evidence presented supports Choice's position that it completed all its obligations required under the agreement with SOMA. In addition to the testimony summarized above, it is noted that Choice was never subject to performing remedial work on the project, the job was accepted as performed by the City of Dinuba and that the SWRCB sought no direct damages relating to the work performed by Choice. The evidence presented is inconclusive as to exactly how many wells were abandoned by pressure grouting or if the wells were decommissioned by some other method. It is clear, however, that the wells were decommissioned in a manner that was acceptable to the relevant regulatory agency. The property is now being used for its intended purpose as high school tennis courts. Similarly, the weight of the evidence supports Choice's position that SOMA served as the onsite supervisor of the project. SOMA was paid for its retention and apparent supervision of the project (10% of Choice's invoice); acted as the project manager and was aware at all times of its obligation to properly report to the SWRCB. In addition, the Well Completion Reports were prepared by SOMA and it must be assumed that they would have the appropriate information to prepare them correctly. Finally, the Well Decommissioning Report prepared and filed by SOMA on January 5, 2018 clearly indicates in Section 2.2 that SOMA "oversaw decommissioning of twenty-seven groundwater monitoring wells." In sum, SOMA failed to meet its burden that Choice breached its contract with SOMA on either of the grounds of pressure grouting or supervision.

*PLAINTIFF'S REMAINING CAUSES OF ACTION AGAINST CHOICE and PICHINSON:
NEGLIGENCE; NEGLIGENT MISREPRESENTATION and FRAUD*

Plaintiff's second cause of action is for Negligence. In order to successfully plead and prove a cause of action for negligence SOMA must satisfy the following elements: 1) that Choice was negligent; 2) that SOMA was harmed and 3) that Choice's negligence was a substantial factor in causing SOMA's harm. (CACI 400)

Plaintiff's third cause of action is for negligent misrepresentation. The required elements of a claim for negligent misrepresentation are: 1) that Choice represented to SOMA that a fact was true; 2) that Choice's representation was not true; 3) that although Choice may have honestly believed that the representation was true, Choice had no reasonable grounds for believing the representation was true when Choice made it; 4) that Choice intended that SOMA rely on this representation; 5) that SOMA reasonably relied on Choice's representation; 6) that SOMA was

harm and 7) that SOMA's reliance on Choice's representation was a substantial factor in causing SOMA's harm. (CACI 1903)

Plaintiff's fifth cause of action is for Fraud. The required elements of a fraud claim are: 1) a knowingly false representation by Choice; 2) an intent to deceive or induce reliance; 3) justifiable reliance by SOMA; and 4) resulting damages. (CACI 1900)

SOMA's claims in this matter for each of the stated causes of action are primarily based on the same acts as alleged in the Plaintiff's first cause of action for breach of contract. As discussed above, the court finds that SOMA is not entitled to recover its alleged derivative or consequential damages from Choice. In addition, Choice materially performed its obligation under its agreement with SOMA and any variations or modifications to its work at the Dinuba site were subject to the supervision of SOMA. All Well Completion Reports that allegedly contain the false or misleading information were prepared by SOMA and the work completed by Choice was approved by the SOMA project supervisor and the relevant regulatory agency. Because of these specific findings of the court, SOMA is unable to meet its burden of proof that it has been damaged by Choice or that a false representation has been made regarding the work completed at the project site. As such, all causes of action fail.

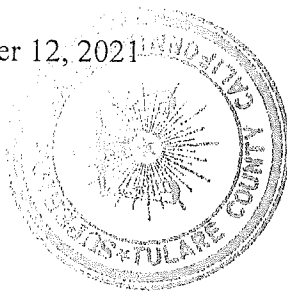
DEMAND ON CONTRACTORS BOND

Plaintiff's fourth cause of action is for Demand on Contractors Bond against American. SOMA's claim against American is derivative to its claims against Choice and Pichinson. As such, no monetary claim survives by Plaintiff against this Defendant.

DECISION

Judgment shall be entered in favor of Defendants Choice Drilling, Inc., Sean Pichinson and American Contractors' Indemnity Company.

Date: November 12, 2021



Honorable David C. Mathias
Tulare County Superior Court
Visalia Division