

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
HALL OF JUSTICE
TENTATIVE RULINGS - March 26, 2010**

EVENT DATE: 04/09/2010 EVENT TIME: 02:00:00 PM DEPT.: C-62

JUDICIAL OFFICER: Ronald L. Styn

CASE NO.: 37-2008-00090684-CU-BT-CTL

CASE TITLE: SAN DIEGO COUNTY SCHOOLS FRINGE BENEFITS CONSORTIUM VS. ALLRED

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Business Tort

EVENT TYPE: Summary Judgment / Summary Adjudication (Civil)

CAUSAL DOCUMENT/DATE FILED: Motion for Summary Judgment and/or Adjudication, 12/07/2009

Cross-Complainant Daniel Puplava's motion for summary adjudication is denied. Pursuant to his original notice of motion and his amended notice of motion Puplava seeks summary adjudication of each of the causes of action pled in his cross-complaint: Violation of Right to Privacy – Intrusion into Private Financial Affairs, Violation of Constitutional Right to Privacy, Breach of Fiduciary duty and Breach of Contract on the basis that "there are no triable issues of material fact" as to each of these causes of action. Pursuant to CCP §437c(f)(1) "[a] motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." To the extent Puplava continues to seek summary adjudication of each of these causes of action, because each of these causes of action requires proof of damages, and because Puplava fails to submit evidence as to the amount of damages, there is no basis to summarily adjudicate these causes of action. See, *Pajaro Valley Water Management Agency v. McGrath* (2005) 128 Cal.App.4th 1093, 1106; CCP §437c(f)(1). The court is not persuaded by Puplava's attempts to distinguish *Pajaro Valley*.

In his amended notice of motion, Puplava also seeks, in the alternative, summary adjudication: 1. There are no triable issues as to any material fact as to cross-complainant Puplava's claim for breach of duty against cross-defendants for violation of right to privacy – intrusion into financial affairs; 2. There are no triable issues as to any material fact as to cross-complainant Puplava's claim for breach of duty by cross-defendants for violation of constitutional right to privacy; 3. There are no triable issues as to any material fact as to cross-complainant Puplava's claim for breach of fiduciary duty; and 4. There are no triable issues as to any material fact as to cross-complainant Puplava's claim for breach of contractual duty. However, the authority upon which Puplava relies, *Linden Partners v. Wilshire Linden Associates* (1998) 62 Cal.App.4th 508 is distinguishable. In *Linden* the moving party specifically sought summary adjudication that ". . . defendants had a duty to deliver to plaintiffs an "estoppel certificate" that correctly stated the current monthly rent" *Linden*, 62 Cal.App.4th at 515. The analysis and conclusion in *Linden* is specific to the ability of the court to summarily adjudicate "an issue of duty" (as specifically referenced in CCP §437c(f)(1)). "We hold that on a motion for summary adjudication, the court may rule whether a defendant owes or does not owe a duty to plaintiff without regard for the dispositive effect of such ruling on other issues in the litigation, except that the ruling must completely dispose of the issue of duty." *Linden*, 62 Cal.App.4th at 522. In this case, Puplava seeks summary adjudication, not of an issue of duty, but instead whether Cross-Defendants Barry Allred, Christopher Dougherty and B&C

Investments, Inc. breached a duty. While there is ample authority allowing summary adjudication of an issue of duty, Puplava fails to cite authority providing for summary adjudication of whether a duty was breached. Absent such authority, there is no basis to summarily adjudicate the claims for breach of duty as requested by Puplava. Even if there was such authority, Puplava's separate statement fails to identify the specific breach of duty and the undisputed facts as to each breach of duty for which summary adjudication is sought.