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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SWINGLESS GOLF CLUB CORPORATION,  
a Wyoming corporation,

No. C 08-05574 WHA

Plaintiff,

v.

**ORDER GRANTING  
SUMMARY JUDGMENT  
ON COUNTERCLAIMS**

ROY H. TAYLOR, individually and d/b/a  
CENTERFIRE GOLF COMPANY, and  
JAMES S. STOWELL, an individual, JACK  
GALANTI, an individual, MIKE STRINGER,  
an individual, CENTERFIRE GOLF  
COMPANY, a California corporation, NEW  
RIVER INDUSTRIES CORP., EZEE GOLF  
LLC, a Delaware limited liability company,  
and STEVE FLUKE, an individual,

Defendants.

\_\_\_\_\_  
ROY H. TAYLOR, JAMES S. STOWELL, an  
individual, JACK GALANTI, an individual,  
MIKE STRINGER, an individual, STEVE  
FLUKE, an Individual,

Counterclaimants,

v.

SWINGLESS GOLF CORPORATION, A  
Wyoming Corporation, JAMES DEPORCHE,  
an individual, and JOYCE TAYLOR, an  
individual, and DOES 1–25,

Counterdefendants.

1 **INTRODUCTION**

2 The Court once again turns its attention to the “swingless” golf club: a pyrotechnic device  
3 that uses explosive charges, a wedge-shaped piston, and a trigger to blast golf balls hundreds of  
4 yards down a fairway. Designed for golfers who cannot (or would rather not) swing, this  
5 intriguing invention — which looks like a traditional golf club except that it is loaded with  
6 gunpowder — stands at the heart of this dispute.

7 The instant motion targets the four remaining counterclaims in this action. In short,  
8 counterdefendants Swingless Golf Corporation (“SGC”), James DePorche, and Joyce Taylor  
9 move for summary judgment on counterclaims of fraud, conversion, corporate waste, and breach  
10 of fiduciary duty asserted by counterclaimants Roy Taylor, James Stowell, Jack Galanti, Mike  
11 Stringer, and Steve Fluke. For the reasons set forth below, the motion is **GRANTED**.

12 **STATEMENT**

13 **1. THE INVENTION**

14 In 1992, defendant and counterclaimant Roy Taylor created several inventions relating to  
15 the “ballistic impeller club.” The ballistic impeller club was designed for people who wanted to  
16 participate in the game of golf but lacked the requisite strength, skill, or desire to actually swing a  
17 club (R. Taylor Decl. ¶ 2). Four patents were issued to Mr. Taylor covering various components  
18 of this invention, including U.S. Patent No. 5,924,932, No. 5,816,927, No. 5,522,594, and No.  
19 6,139,440 (*id.* at ¶ 3). Perhaps recognizing that “ballistic impeller” lacked a marketable ring, the  
20 product soon became known as the swingless golf club.

21 **2. SWINGLESS GOLF CORPORATION**

22 Mr. Taylor incorporated SGC in California in April 1999 (*id.* at ¶ 4; J. Taylor Decl. Exh.  
23 A; Arthur Decl. ¶ 3). Among the three directors present at the first board of directors meeting  
24 held in Fremont on May 12, 1999, were Roy Taylor and his then-wife Joyce Taylor.<sup>1</sup> At the  
25 meeting, Roy Taylor was selected as chairman of the board and Joyce Taylor served as secretary.  
26 Shortly thereafter, Roy Taylor hired Robert Arthur as corporate counsel for SGC (*id.* at ¶ 5;

27 \_\_\_\_\_  
28 <sup>1</sup> Roy and Joyce Taylor were married to each other twice. The first marriage began in 1973 and lasted for two years. They married again in 1977 or 1978, and divorced in 2002 (J. Taylor Decl. ¶ 2). They are now on opposite ends of this lawsuit.

1 Arthur Decl. ¶ 2). The board meeting minutes, which were signed by both Roy and Joyce Taylor,  
2 set forth the following relevant information (J. Taylor Decl. Exh. A):

3 Name	4 Number of Shares	5 Consideration and (if other than cash) Fair Value
6 Roy H. Taylor and Joyce Taylor, as community property	7 150,000	8 Expense Reimbursement
9 Roy H. Taylor and Joyce Taylor, as community property	10 5,100,000	11 Patent Rights Assignment

12 As shown, Roy and Joyce Taylor received — as community property — 5,100,000 shares  
13 of SGC stock as consideration for the assignment of their patent rights to the new corporate  
14 entity. They also received 150,000 shares of SGC stock as reimbursement for expenses (*id.* at ¶  
15 5). An additional 5,250,000 shares in SGC were issued to Roy and Joyce Taylor — again as  
16 community property — two years later in May 2001 (*ibid.*; Arthur Decl. ¶ 4, Exh. E). In total,  
17 Roy and Joyce Taylor received 10,500,000 shares of SGC stock prior to their divorce in 2002.  
18 This amounted to a 60% ownership stake in the company (Arthur Decl. Exh. E).

19 **3. INVESTOR JAMES DEPORCHE**

20 With the swingless golf club supposedly nearing “production-ready” status, Roy Taylor  
21 approached a former co-worker, James DePorche, to invest in SGC in mid-June 2001. Mr.  
22 DePorche, who is a counterdefendant in this action (along with Joyce Taylor), agreed to invest  
23 capital in SGC. He received — with the assent of Roy Taylor and the board of directors —  
24 4,900,000 shares as consideration for his investment (*id.* at ¶5; DePorche Decl. ¶ 3). This  
25 amounted to a 28% ownership stake in SGC.

26 **4. JACK GALANTI, STEVE FLUKE, AND MIKE STRINGER**

27 Starting around 2001, Jack Galanti and Steve Fluke — who, like Roy Taylor, are both  
28 defendants and counterclaimants in this action — began helping with the development of the  
swingless golf club (J. Taylor Decl. ¶ 6). In addition to his commitment of time and efforts, Mr.  
Fluke claims to have invested \$7,500 in SGC (Fluke Decl. ¶ 4). A stock dispute, however, arose  
between Roy Taylor and these two contributors in late 2001 (Arthur Decl. ¶¶ 6–8; DePorche

1 Decl. ¶ 4). According to Mr. Galanti and Mr. Fluke, Roy Taylor orally promised to issue ten  
2 percent of SGC’s stock to Mr. Galanti in exchange for his work in moving the swingless golf club  
3 to production (Fluke Dep. 32; Arthur Decl. ¶ 6). Mr. Fluke similarly alleged that eight or ten  
4 percent of SGC’s stock was promised to him for his efforts (Fluke Decl. ¶ 5). Roy Taylor denied  
5 ever making such promises when this dispute was brought to the attention of SGC corporate  
6 counsel (Arthur Decl. ¶ 8).

7 With the assistance of Robert Arthur, SGC’s corporate counsel, Roy Taylor prepared  
8 written counter-offers to the demands of Mr. Galanti and Mr. Fluke (Arthur Decl. Exhs. A and B).  
9 Mr. Fluke eventually accepted an SGC counter-offer and received shares in SGC for his work on  
10 the swingless golf club (*id.* at ¶ 8; DePorche Decl. ¶ 4, Exh. A). Mr. Galanti, however, refused to  
11 accept anything less than a ten percent stake in the company. Due to this impasse, SGC released  
12 Mr. Galanti from his services in January 2002 (DePorche Decl. ¶ 4; Arthur Decl. ¶ 8).

13 In August of 2003, a similar dispute arose with another contributor to SGC, Mike Stringer.  
14 Like Roy Taylor, Mr. Stringer is also a defendant and counterclaimant in this action (DePorche  
15 Decl. ¶ 10). A stock and compensation agreement was reached between SGC and Mr. Stringer  
16 shortly thereafter (*id.* at Exh. E).

17 **5. JOYCE TAYLOR’S ROLE IN SGC**

18 Roy and Joyce Taylor were still married to each other until 2002. While they were  
19 married, there were occasional SGC meetings held at their home (J. Taylor Decl. ¶ 7). Joyce  
20 Taylor, who is a counterdefendant, held the position of corporate secretary (R. Taylor Decl. ¶ 7).  
21 As corporate secretary, Joyce Taylor initially tried to attend SGC business meetings and take  
22 notes. Roy Taylor, however, quickly began telling his then-wife to “go upstairs unless food and  
23 snacks were needed,” making it clear that he did not want her involved in the business (J. Taylor  
24 Decl. ¶ 7). Thereafter, Joyce Taylor ceased trying to be at the table when SGC meetings were  
25 held. She served — in her words — as merely a “waitress” (*ibid.*). Mr. Stringer corroborated this  
26 characterization, stating that “Joyce Taylor . . . never used to attend meetings, so to speak, but she  
27 would be there providing food” (Stringer Dep. 14).  
28

1           **6. THE DIVORCE AND TRANSFER OF INTELLECTUAL PROPERTY TO SGC**

2           In 2002, Joyce Taylor discovered that her then-husband, Roy Taylor, had been “fooling  
3 around” with her son’s wife (J. Taylor Decl. ¶ 9). Divorce proceedings ensued in May 2002, with  
4 Roy Taylor announcing that he would be marrying his daughter-in-law and moving to Mississippi  
5 to be near his ailing mother (DePorche Decl. ¶ 5; Arthur Decl. ¶ 9; R. Taylor Decl ¶ 14).

6           Upon learning about the impending divorce proceedings between the majority  
7 shareholders, Attorney Arthur discussed with Mr. DePorche the due diligence that needed to be  
8 conducted to ensure that SGC’s affairs remained in order (DePorche Decl. ¶ 6; Arthur Decl. ¶ 9).  
9 In carrying out this due diligence, Attorney Arthur learned that Roy Taylor had never assigned his  
10 swingless golf club patents to SGC. An assignment agreement was thereafter prepared by  
11 Attorney Arthur to ensure that the patents rights were assigned to the company. The agreement  
12 was signed by Roy Taylor on June 8, 2002 (Arthur Decl. ¶ 10, Exh. C).

13           A separate set of agreements were also prepared by Attorney Arthur entitled “Confidential  
14 Information and Invention Assignment Agreement.” These agreements — which will simply be  
15 called “IP agreements” herein — were created by Attorney Arthur to protect SGC’s intellectual  
16 property, including its trademarks and trade secrets. Roy Taylor signed an IP agreement on  
17 November 15, 2002 (DePorche Decl. ¶ 7, Exh. B; Arthur Decl. ¶ 9). Other SGC principals,  
18 including Mr. DePorche, Joyce Taylor, Mr. Fluke, and Mr. Stringer, also signed IP agreements  
19 (DePorche Decl. ¶ 7, Exhs. C and D). Principals were not allowed to remain with the company if  
20 they refused to sign the IP agreement (Fluke Decl. ¶ 7).

21           According to Roy Taylor, however, when he signed both the patent assignment agreement  
22 and the IP agreement, he believed — as he had since he created the company in 1999 — that he  
23 and SGC “were the same” and therefore it “did not matter whether the patents were in [his] name  
24 or under” the company’s name (R. Taylor Decl. ¶ 12). In his own words, he transferred his patent  
25 rights to SGC to “bring a feeling of trust among the other members of SG[C]” (*id.* at ¶ 13).

26           Late in the fall of 2002, the divorce between Roy and Joyce Taylor was finalized. The  
27 10,500,000 shares of SGC stock the couple had previously held as community property were split  
28 evenly between them (J. Taylor Decl. ¶ 9; DePorche Decl. ¶ 8; Arthur Decl. ¶ 12). As a result of

1 this split, Roy and Joyce Taylor each owned approximately 30% of SGC. Shortly thereafter,  
2 sometime between November 2002 and early 2003, Roy Taylor moved with his daughter-in-law  
3 (who had also gotten a divorce) to Byhalia, Mississippi.

4 **7. ROY TAYLOR’S REMOVAL FROM THE SGC BOARD AND MANAGEMENT**

5 Following Roy Taylor’s relocation to Byhalia, SGC employees — including Mr. Fluke  
6 and Mr. Stringer — continued to use the home of Joyce Taylor to work on the swingless golf club  
7 (J. Taylor Decl. ¶ 11). Mr. DePorche would also occasionally use Joyce Taylor’s home to  
8 conduct SGC-related conference calls with Roy Taylor (*ibid.*).

9 In August 2003, as the swingless golf club reached production-ready status, Mr. Fluke  
10 brought in a new monetary investor for SGC, Donn Mulder (Fluke Decl. ¶ 4). Mr. Mulder  
11 invested \$14,000 in capital to fund production of the product (J. Taylor Decl. ¶ 12; DePorche  
12 Decl. ¶ 13). On behalf of SGC, both Mr. Fluke and Mr. DePorche promised Mr. Mulder that the  
13 swingless golf club would be made and manufactured in the Bay Area of Northern California  
14 (DePorche Decl. ¶ 13).<sup>2</sup>

15 That same month, however, Roy Taylor began seeking to manufacture parts for the  
16 swingless golf club in Mississippi and Tennessee. By August 2003, he had already assembled  
17 one hundred golf club handles (R. Taylor Decl. ¶ 136). A conference call was arranged and held  
18 between Roy Taylor in Mississippi and Mr. DePorche, Joyce Taylor, Mr. Stringer, Mr. Fluke, and  
19 Cameron Lozada (who was another shareholder and director of SGC) in California to discuss  
20 where the product would be manufactured (*id.* at ¶ 15). During the call, Roy Taylor announced  
21 that he had begun and intended to continue manufacturing parts for the swingless golf club with  
22 his daughter and son-in-law — defendant and counterclaimant James Stowell — “back east.”<sup>3</sup>  
23 When Roy Taylor was informed that this was expressly contrary to investor expectations, he told  
24 the other participants in the conference call “F\*ck the investor(s), we’ll do whatever we want”  
25 and “that’s the way its going to be, it’s not open for discussion” (*ibid.*; J. Taylor Decl. ¶ 13).

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26  
27 <sup>2</sup> The record is unclear as to whether this was an oral or written promise.

28 <sup>3</sup> Mr. Stowell was not an SGC shareholder — a point that is relevant to the instant motion (Arthur Decl. Exh. E; R. Taylor Dep. 28).

1 Counterclaimants' recollection of this conference call varies slightly. According to Mr.  
2 Taylor and Mr. Fluke, "[t]he majority of the phone call was spent abusing, harassing and  
3 inflaming [Roy Taylor] for the lack of progress on the search for an 'investor'" (R. Taylor Decl. ¶  
4 17; Fluke Decl. ¶ 8). Both, however, concede that during the conference call, Roy Taylor  
5 heatedly exclaimed "'F\*\*\* investors' we have to get this done" (R. Taylor Decl. ¶ 18; Fluke  
6 Decl. ¶ 9). Roy Taylor claims that he was never given an opportunity to apologize or to make  
7 clear that his comment was not directed to any specific investors (R. Taylor Decl. ¶ 19).

8 In any event, following this conference call, Mr. DePorche grew concerned about  
9 financial obligations that Roy Taylor would impose on SGC by entering into contracts with  
10 machine shops in Mississippi and Tennessee (DePorche Decl. ¶ 15). On September 1, 2003, a  
11 majority of SGC shareholders voted to remove Roy Taylor as a director of SGC (J. Taylor Decl. ¶  
12 14). Signatories to the "Written Consent of Shareholders" included Mr. Lozada, Mr. Fluke, Joyce  
13 Taylor, Mr. DePorche, and Mr. Stringer (DePorche Decl. at Exh. G).<sup>4</sup> That same day, Joyce  
14 Taylor, Mr. DePorche, and Mr. Lozada held a board of directors meeting and voted to remove  
15 Roy Taylor as Chief Executive Officer of SGC, appointing him instead as "Technical Advisor"  
16 (*id.* at Exh. H). The meeting minutes justified this move as follows (*ibid.*):

17 The specific comment, "F\_\_\_ the Investor[,]" . . . led to a concern  
18 that new investor(s) funds needed to be protected from mis-use  
19 which could lead to litigation against the company. Roy Taylor's  
20 added statements about moving the company's operations to  
21 Mississippi and heavily involving his son-in-law in day-to-day  
operations were contrary to all prior expectations of the existing  
shareholders and investors. Finally, his statements about working  
with machine shops in Mississippi and nearby states[] led to  
concerns of unwanted financial obligations.

22 The board also voted to open a new corporate bank account for "deposit and safekeeping of new  
23 investor(s) funds" (*ibid.*).

24 Sometime thereafter, Mr. Fluke and Mr. Stringer switched their alliances. They left (or  
25 were removed from) SGC, and joined Roy Taylor in a separate venture (J. Taylor Decl. ¶¶ 15–16;

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26  
27 <sup>4</sup> Note well that many counterclaimants in the instant action were signatories to Roy  
28 Taylor's removal from SGC's board. Mr. Fluke, however, claimed that he was "pressured"  
by Mr. DePorche and Joyce Taylor to remove Roy Taylor as a director, although no details  
as to how he was pressured were provided (Fluke Decl. ¶ 11).

1 DePorche Decl. Exh. K). According to Mr. Fluke, he was “removed” from SGC in a “fraudulent  
2 fashion” due to “misrepresentations” by counterdefendants including (Fluke Decl. ¶ 14):

3 SG[C] would operate more efficiently without [his] presence,  
4 although [he] was donating [his] time without pay[,] the monies  
5 would be used in a manner that was controlled and efficient[,]  
6 marketing and sales of the golf club would be accomplished better  
7 with less people managing the customers[,] costs for the company  
8 would be controlled with less personnel participating[,] success of  
9 patents and the company would be faster in development[,] and  
10 patents would be protected because Jim DePorche and Joyce  
11 Taylor were the only controllers.

12 Mr. Fluke never explains, however, how it was possible that he “relied” upon these alleged  
13 “misrepresentations” when he was removed, or how these alleged “misrepresentations” were  
14 false. He also never explains when or where these alleged “misrepresentations” were made.

15 **8. THE FIRST SWINGLESS GOLF CLUBS ARE SOLD**

16 Despite these various distractions involving Roy Taylor and other counterclaimants, SGC  
17 launched a website, created promotional photos and videos of the product, and began selling the  
18 product online (De Porche Decl. ¶ 17). Of the 25 clubs that the company could assemble using  
19 available funds, all but a few (reserved for demonstrative purposes) were sold.

20 **9. SGC SUES ROY TAYLOR IN STATE COURT**

21 Following his removal as a director and CEO of SGC, Roy Taylor unilaterally “assigned”  
22 the ’932 and ’594 patents back to himself and then to New River Industries, a Mississippi  
23 corporation that he founded and controlled (DePorche Decl. ¶ 18; R. Taylor Decl. ¶ 30). Roy  
24 Taylor also “assigned” the registered trademark “Swingless” to himself as well (R. Taylor Decl. ¶  
25 30). Thereafter, SGC filed a lawsuit against Roy Taylor in California Superior Court to reverse  
26 these transfers (*id.* at ¶ 19). Following a slew of failed settlement efforts, SGC obtained a  
27 judgment in its favor in August 2005 (*id.* at ¶ 20, Exh. J). It took, however, until May 2006 for  
28 the USPTO to restore ownership of the patents and other intellectual property rights to SGC.

Roy Taylor’s version of these events differs slightly. Although he fully admits to  
executing these purported transfers, he claims that both sides actually reached a settlement in the  
state court action in March 2005. According to Roy Taylor, in exchange for returning the ’932  
and ’594 patents to SGC, the settlement agreement provided that he would be “reintegrated in



1 SG[C] at the Board level and [he would] be paid royalt[ies]” (R. Taylor Decl. ¶¶ 30–32).<sup>5</sup>  
2 Despite this claim, Roy Taylor acknowledges that it was “the Court [that] ordered the transfer” of  
3 the aforementioned patents and intellectual property back to SGC (*id.* at ¶ 31).

4 **10. REINCORPORATION OF SGC IN WYOMING**

5 In 2006, Mr. DePorche and the SGC board grew concerned that the annual California  
6 franchise fees of \$800 and other requirements for corporations domiciled in California were too  
7 costly for the corporation (*id.* at ¶ 22). As such, the board decided to domicile the corporation in  
8 Wyoming, where franchise fees were only \$50 per year (*ibid.*). SGC’s corporate counsel Robert  
9 Arthur assisted SGC in performing a “standard re-incorporation” in Wyoming, and advised the  
10 company on how to provide notice of the re-incorporation to existing SGC shareholders (Arthur  
11 Decl. ¶ 19; Exh. D; DePorche Decl. ¶ 23). Attorney Arthur explained to the board that each  
12 shareholder in SGC would have the same number of shares and ownership stake in the new entity.  
13 The reincorporation proceeded on the supposed authority of both Joyce Taylor and Mr. DePorche,  
14 who collectively held a majority of shares in SGC. Both voted to reincorporate the business in  
15 Wyoming (Arthur Decl. ¶ 19; DePorche Decl. ¶ 23). The company did not consult Roy Taylor or  
16 Mr. Fluke on the reincorporation, and did not provide them with a chance to oppose it (R. Taylor  
17 Decl. ¶¶ 35, 37).

18 The new Wyoming entity was called Swingless Golf Club Corporation (“SGCC”).  
19 Notices of the reincorporation were mailed to all former SGC shareholders by Joyce Taylor on  
20 August 31, 2006 (J. Taylor Decl. ¶ 18). The notices informed these shareholders that they “will  
21 have the same quantity of shares in [SGCC]” as they did in SGC (*id.* at Exh. C). According to  
22 Attorney Arthur, all former shareholders of SGC were *in fact* issued the same quantity of shares  
23 (and retained the same percentage ownership) in SGCC as they had held in SGC prior to its  
24 dissolution (Arthur Decl. ¶ 21, Exh. E).

25 Despite this assertion by Attorney Arthur (who was inexplicably never deposed by  
26 counterclaimants), both Mr. Taylor and Mr. Fluke state in their declarations that they were *not*

27 \_\_\_\_\_  
28 <sup>5</sup> This purported settlement agreement was not provided by counterclaimants as an  
exhibit to any of their declarations.

1 issued any shares in SGCC (R. Taylor Decl. ¶¶ 36, 38; Fluke Decl. ¶ 27). Mr. Fluke explained  
2 this belief during his deposition (Fluke Dep. 61–62):

3 Q: Is it your contention that you own no shares in Swingless-  
4 Wyoming?

5 A: Yes.

6 Q: What led you to that conclusion?

7 A: I don't believe I have been given anything, and with  
8 regards to Swingless Golf-Wyoming, once the old  
9 Swingless Golf Corporation was closed down illegally,  
10 anything from that point on I never treated seriously, to be  
11 perfectly frank.

12 Mr. Fluke further explained that he didn't "even recognize [SGCC] as a real company[.]" calling  
13 it a "kangaroo company" (*id.* at 70). In other words, Mr. Fluke's belief that he was not issued  
14 shares in SGCC stems from his belief that SGCC was never a real company to begin with.

15 As for Roy Taylor's statement that he was not issued shares in SGCC, it is contradicted by  
16 a letter he wrote in December 2006 to Mr. DePorche in which he expressly acknowledged receipt  
17 of the August 31 reincorporation notice regarding "a stock exchange" (Jacobson Reply Decl. Exh.  
18 A). In any event, neither Roy Taylor nor Mr. Fluke have personal knowledge as to whether they  
19 were actually issued shares in SGCC, since they have never been involved in its affairs.<sup>6</sup>

## 20 11. FURTHER "REASSIGNMENTS" OF THE SWINGLESS GOLF PATENTS

21 Roy Taylor's unilateral assignment of SGC intellectual property in September 2003 was  
22 followed by another "assignment" of SGCC patents in 2007 (DePorche Decl. ¶ 25). The USPTO  
23 transferred them back to SGCC in June 2009. In September 2009, Roy Taylor again attempted —  
24 for the third time — to "assign" SGCC patents to himself (*ibid.*). It is unclear whether this  
25 assignment has yet been reversed.

26 \* \* \*

27 SGCC initiated this lawsuit on December 15, 2008, against Roy Taylor, Steven Fluke,  
28 Mike Stringer, Jack Galanti, James Stowell, and a number of corporate defendants including EZee  
Golf LLC, which supposedly makes its own competing version of the swingless golf club (Dkt.

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<sup>6</sup> For these reasons, counterdefendants' evidentiary objections targeting these statements are **GRANTED** (Dkt. No. 105)

1 No. 1). Defendants fired back with eight counterclaims, which were cut in half by a motion to  
2 dismiss filed in November 2009 (Dkt. No. 85).<sup>7</sup> The four surviving counterclaims — covering  
3 fraud, conversion, corporate waste, and breach of fiduciary duties — are the subject of the instant  
4 motion.

### 5 ANALYSIS

6 Summary judgment is proper when the “pleadings, depositions, answers to interrogatories,  
7 and admissions on file, together with the affidavits, show that there is no genuine issue as to any  
8 material fact and that the moving party is entitled to judgment as a matter of law.” FRCP 56(c).  
9 An issue is “genuine” only if there is sufficient evidence for a reasonable fact-finder to find for  
10 the non-moving party, and “material” only if the fact may affect the outcome of the case.  
11 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–49 (1986).

12 In resolving a summary judgment motion, all reasonable inferences must be drawn in the  
13 light most favorable to the non-moving party. *Olsen v. Idaho State Bd. of Med.*, 363 F.3d 916,  
14 922 (9th Cir. 2004). However, unsupported conjecture or conclusory statements are insufficient  
15 to defeat summary judgment. *Surrell v. Cal. Water Serv. Co.*, 518 F.3d 1097, 1103 (9th Cir.  
16 2008); *see also Nilsson v. City of Mesa*, 503 F.3d 947, 952 n. 2 (9th Cir. 2007) (explaining that a  
17 “conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is  
18 insufficient to create a genuine issue of material fact”).

19 As explained below, counterclaimants have failed to meet their burden of showing a  
20 genuine issue for trial on any of their remaining counterclaims.

#### 21 1. FRAUDULENT INDUCEMENT

22 Counterclaimants’ fraudulent inducement counterclaim requires proof of the following  
23 five elements: (1) misrepresentation, (2) knowledge of the falsity of the representation, (3) intent  
24 to induce reliance, (4) justifiable reliance, and (5) resulting damages. *Stewart v. Ragland*, 934  
25 F.2d 1033, 1043 (9th Cir. 1991).

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<sup>7</sup> While counterclaimants were invited to seek leave to amend the dismissed counterclaims, they chose not to do so.

1 Counterclaimants alleged that Mr. DePorche and Joyce Taylor fraudulently induced them  
2 to transfer their intellectual property rights to SGC (via the patent assignment agreement and IP  
3 agreements) by convincing them that the transfer would be in the best interests of the company  
4 (Ans. ¶¶ 28, 29, 63–67). According to counterclaimants, this was false because Mr. DePorche  
5 and Joyce Taylor intended all along to “take control of the company and dissolve it and establish  
6 a new company where they would be the sole [shareholders] and would control the patents and all  
7 subsequent designs arising from [Roy] Taylor’s own designs” (*id.* at ¶ 32). As part of this alleged  
8 fraud, Mr. DePorche and Joyce Taylor then “systematically removed all defendants from  
9 employment with [SGC] . . . in August 2003, which fraudulently precluded defendants from using  
10 the intellectual property that they personally developed” (*id.* at ¶¶ 31, 67).

11 Bare allegations, however, cannot defeat a motion for summary judgment. While this  
12 normally goes without saying, it is emphasized here because the opposition brief inexplicably  
13 recites the legal standard for a *motion to dismiss* and argues that “the Court must assume that the  
14 [counterclaimants’] allegations are true” (Opp. 15). We are, however, well beyond the motion to  
15 dismiss stage. We are on summary judgment. At this stage, a summary judgment motion *must be*  
16 opposed with admissible evidence. Mere allegations are *not* admissible.

17 In their motion, counterdefendants have easily met their initial burden of showing that the  
18 above allegations lack factual support. As set forth in numerous supporting declarations and  
19 exhibits, counterclaimants have shown that Roy Taylor — a the very first SGC board meeting —  
20 promised to assign his patents to SGC as consideration for the shares he was issued. The  
21 assignment agreement he later executed was a belated fulfillment of that earlier promise. The  
22 same evidence also shows that the execution of the IP agreements and removal of Roy Taylor  
23 from the board of directors and management was done to protect the interests of the corporation  
24 and its investors. Finally, counterclaimants have produced evidence showing that all former  
25 shareholders of SGC received an equal number of shares in SGCC — thus negating the allegation  
26 that Mr. DePorche and Joyce Taylor schemed to be the “sole shareholders” of SGCC.

27 In response, counterclaimants have produced no admissible evidence showing a genuine  
28 issue of material fact for trial. *See Nissan Fire & Marine Ins. Co.*, 210 F.3d 1099, 1102 (9th Cir.

1 2000). *First*, with respect to Mr. Stowell, Mr. Stringer, and Mr. Galanti, no declarations  
2 whatsoever were provided from these counterclaimants.<sup>8</sup> As such, there is no admissible  
3 evidence showing that any of these three counterclaimants relied upon any alleged  
4 “misrepresentations” or even suffered any harm. Such reliance cannot be “vouched for” by Roy  
5 Taylor or Mr. Fluke, as they do not have firsthand knowledge to make such statements.

6 *Second*, counterclaimants have produced no admissible evidence showing that Mr. Stowell  
7 or Mr. Galanti even signed an IP agreement or owned any shares in SGC. Indeed, there is no  
8 evidence that Mr. Stowell was even present for these events.

9 *Third*, with respect to the two counterclaimants who *have* submitted sworn declarations —  
10 Roy Taylor and Steven Fluke — their declarations contained only bare and conclusory statements  
11 that they were defrauded. For example, Roy Taylor’s declaration states that “DePorche induced  
12 me to transfer the patent rights to SG[C] under conditions that turned out to be false pretenses”  
13 and “under the same conditions, [he] induced me to transfer other non-patent intellectual property  
14 rights including trade secrets to SG[C]” (R. Taylor Decl. ¶¶ 10–11). That’s it. No details are  
15 provided in his declaration as to what “misrepresentations” were actually made by Mr. DePorche  
16 to “induce” Roy Taylor to sign these documents, or how such “misrepresentations” were false.  
17 All Roy Taylor provides in his declaration are legal conclusions couched as factual statements.<sup>9</sup>

18 *Fourth*, Roy Taylor’s own declaration affirmatively concedes that he did not rely on any  
19 “inducements” by Mr. DePorche when he signed the patent assignment agreement. In his sworn  
20 declaration, Roy Taylor states (R. Taylor Decl. ¶¶ 12–13):

21 Since the beginning of SG[C] in 1999 to 2003, I believed SG[C]  
22 and I were the same . . . therefore [it] did not matter whether the  
23 patents were in my name or under SG[C]. . . . I transferred the  
24 patents to SG[C] to bring a feeling of trust among other members  
25 of SG[C].

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26 <sup>8</sup> While a four-page excerpt from Mr. Galanti’s deposition was attached to the  
27 opposition brief, the testimony therein was irrelevant to any of the counterclaims addressed  
28 by this motion.

<sup>9</sup> For these reasons, counterdefendants’ evidentiary objections targeting these  
statements are **GRANTED** (Dkt. No. 105).

1 In other words, Mr. Taylor didn't sign the patent assignment agreement because of any supposed  
2 "misrepresentations." He signed the agreement because he believed it "did not matter" whether  
3 the intellectual property was in his name or the company's name. Moreover, he wanted to "bring a  
4 feeling of trust" among SGC members. In sum, no admissible evidence supports Roy Taylor's  
5 counterclaim that he was fraudulently induced by Mr. DePorche to sign the patent assignment  
6 agreement or the IP agreement.

7 *Fifth*, Mr. Fluke's fraud counterclaim similarly fails. In his declaration, Mr. Fluke states  
8 was that he "was removed from SG[C] through conspiracy [sic] and fraudulent fashion [sic]  
9 through a variety of misrepresentations including but not limited to" (Fluke Decl. ¶ 14):

10 SG[C] would operate more efficiently without [his] presence,  
11 although [he] was donating [his] time without pay[,] the monies  
12 would be used in a manner that was controlled and efficient[,]  
13 marketing and sales of the golf club would be accomplished better  
14 with less people managing the customers[,] costs for the company  
would be controlled with less personnel participating[,] success of  
patents and the company would be faster in development[,] and  
patents would be protected because Jim DePorche and Joyce  
Taylor were the only controllers.

15 Nowhere in his declaration does Mr. Fluke reveal, however, *who* made these supposed  
16 "misrepresentations," when they were made, or where they were made. Mr. Fluke's declaration  
17 also fails to explain why these alleged "misrepresentations" were *false* or how he relied upon  
18 them when being "removed from SG[C]." Again, simply calling a statement "fraudulent" does  
19 not make it so.<sup>10</sup>

20 *Sixth*, turning to the IP agreement he signed, Mr. Fluke's statement that he was "coerced"  
21 into signing the agreement is similarly devoid of any factual details surrounding the alleged  
22 coercion. He does not explain how he was "coerced," what representations were made, and how  
23 those representations were false. Again, this is insufficient to survive summary judgment.

24 In sum, counterclaimants have each failed to meet their burden of producing admissible  
25 evidence establishing a genuine issue of material fact on their fraud counterclaim. The anemic  
26 argument put forth in the opposition brief that "[t]here are enough facts alleged" to survive

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27  
28 <sup>10</sup> Due to its conclusory nature, counterdefendants' evidentiary objection targeting  
the statement "[f]inally, I was removed from SG through conspiracy and fraudulent fashion  
through a variety of misrepresentations" is **GRANTED** (Dkt. No. 105).

1 summary judgment is based upon an incorrect legal standard (Opp. 10). Summary judgment on  
2 this counterclaim is therefore **GRANTED**.

3 Given this ruling, it is not necessary to decide whether this counterclaim is barred under  
4 the applicable three-year statute of limitations or whether the parole evidence rule bars extrinsic  
5 evidence relating to the IP agreements.

6 **2. CONVERSION**

7 To prove conversion, a plaintiff must establish: (1) his ownership of or right to possess the  
8 property in question at the time of the conversion, (2) that the defendant disposed of the plaintiff's  
9 property rights or converted the property by a wrongful act, and (3) damages. *Oakdale Village*  
10 *Group v. Fong*, 43 Cal. App. 4th 539, 544 (1996). A plaintiff must also prove that he or she did  
11 not consent to the defendant's exercise of dominion over the property in question. *Band of New*  
12 *York v. Fremont General Corp.*, 523 F.3d 902, 914 (9th Cir. 2008).

13 Counterclaimants alleged that they each held shares in SGC, and that — without notice or  
14 an opportunity to vote on the issue — SGC was dissolved and reincorporated in Wyoming as  
15 SGCC (Ans. ¶¶ 69–71). According to counterclaimants, they were harmed because they received  
16 no value for their SGC shares and no shares in the new entity. Rather, according to  
17 counterclaimants, the only shareholders of SGCC were Mr. DePorche and Joyce Taylor (*id.* at ¶¶  
18 72–74).

19 As before, counterdefendants have met their burden of negating these allegations with  
20 admissible evidence. *First*, through sworn declarations and exhibits, counterdefendants have  
21 shown that all former shareholders of SGC received an identical number of shares in SGCC that  
22 they previously held in SGC.<sup>11</sup> *Second*, counterdefendants have shown that notice of the  
23 dissolution, reincorporation, and exchange of shares *was* provided to shareholders. *See* Cal.  
24 Corp. Code § 1903(c) (“The board shall cause written notice of the commencement of the  
25 proceeding for voluntary winding up to be given by mail to all shareholders.”). Indeed, Roy

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26  
27 <sup>11</sup> While counterdefendants acknowledge that new stock certificates were not printed  
28 and sent to shareholders after reincorporation, this was entirely lawful under Wyoming law.  
Wyoming law clearly states that “[s]hares may *but need not be* represented by certificates”  
for Wyoming corporations. *See* W.S.1977 § 17-16-625 (emphasis added).

1 Taylor’s own letter to Mr. DePorche in December 2006 directly referenced this notice, indicating  
2 that he had received it and understood that shares were being “exchanged.” *Third*,  
3 counterdefendants have established that the dissolution of SGC was approved by both the board  
4 of directors and the majority of shareholders. *See* Cal. Corp. Code § 1900(a) (“Any corporation  
5 may elect voluntarily to wind up and dissolve by the vote of shareholders holding shares  
6 representing 50 percent or more of the voting power.”). In sum, counterdefendants have met their  
7 burden of gutting the core allegations underlying the conversion counterclaim.

8 In response, the opposition brief *again* improperly relies upon allegations in the pleadings  
9 as “proof” that counterdefendants “did in fact dissolve the original corporation SG[C] without  
10 notice to [counterclaimants]” and “in fact failed to issue shares of stock” to counterclaimants  
11 (Opp. 11). As stated, allegations are insufficient to create a genuine issue of material fact for  
12 trial. Even assuming that counterclaimants — as shareholders — were entitled to the formality  
13 of a full shareholder vote on the reincorporation of SGC, there is no admissible evidence that  
14 counterclaimants were *damaged* as a result of the reincorporation. Rather, their sole argument for  
15 damages is that they were never issued any shares in SGCC — an assertion that is unsupported by  
16 any admissible evidence. Additionally, counterclaimants have provided no evidence that either  
17 Mr. Stowell or Mr. Galanti even held shares in SGC. Rather, the evidence provided by  
18 counterdefendants proves the contrary. As such, these particular counterclaimants lack standing  
19 to bring a conversion counterclaim based upon the reincorporation of SGC.

20 For these reasons, counterclaimants have again failed to show that a genuine issue of  
21 material fact exists for trial. Summary judgment on this counterclaim is therefore **GRANTED**.

22 As an aside, this order will *not* allow counterclaimants to repackage their unjust  
23 enrichment counterclaim — which was dismissed over half a year ago — as an additional theory  
24 of conversion. Counterclaimants were expressly invited to seek leave to amend their dismissed  
25 counterclaims, but chose not to do so. Therefore, this order need not address the merits of  
26 counterclaimants’ conversion arguments regarding the Roy Taylor’s supposed “loan” to SGC and  
27 the closure of SGC’s corporate bank account following his removal from the board (Opp. 11–12).  
28



1           **3. CORPORATE WASTE**

2           Counterclaimants’ corporate waste theory is premised on the alleged misuse by Mr.  
3 DePorche and Joyce Taylor of approximately \$315,000 in funds invested in SGC by  
4 counterclaimants (Ans. ¶ 99). According to counterclaimants, both SGC and SGCC failed to  
5 develop the swingless golf club “for many years” and made no attempt to sell the product, thereby  
6 “guaranteeing” that investors would not be repaid (*id.* at ¶ 100).

7           Under California law, liability of directors for failing to perform their duties is limited by  
8 “the familiar concept that . . . a director should not be liable for an honest mistake of business  
9 judgment.” *See* Legislative Comments to Cal. Corp. Code § 309. Thus, for claims like corporate  
10 waste, a director can avoid liability altogether by acting “in good faith, in a manner such director  
11 believes to be in the best interests of the corporation and its shareholders and with such care,  
12 including reasonable inquiry, as an ordinarily prudent person in a like position would use under  
13 similar circumstances.” Cal. Corp. Code § 309(a). Wyoming law contains an analogous statutory  
14 provision for Wyoming corporations. *See* W.S.1977 § 17-16-830.

15           In support of the instant motion, counterdefendants have produced ample admissible  
16 evidence demonstrating that the counterclaimants’ allegations of corporate waste lack factual  
17 support. Specifically, counterdefendants have shown that soon after the swingless golf club  
18 became “production-ready” in 2003, SGC attempted to market and sell the product. The  
19 company developed a website, created promotional materials, and manufactured 25 clubs. These  
20 efforts proved successful, albeit on a small scale commensurate with the funds on hand. Shortly  
21 thereafter, however, SGC was forced to divert corporate resources towards protracted litigation  
22 with counterclaimant Roy Taylor following his removal from SGC. It took until 2006 — after  
23 SGC had fought for and received a state court judgment in its favor — for the patents and related  
24 intellectual property to be returned to the company. According to counterdefendants, this stymied  
25 any efforts to raise additional investor capital (DePorche Decl. ¶ 21). Soon thereafter, SGC was  
26 reincorporated in Wyoming *to save costs*. All of this evidence directly negates counterclaimants’  
27 allegations of corporate waste and supports the applicability of the business judgment rule.  
28

1 In response, the opposition brief *again* points to counterclaimants’ allegations set forth in  
2 the pleadings (Opp. 12–14). Amazingly, the opposition brief also contains paragraphs copied  
3 wholesale from counterclaimants’ opposition to the November 2009 motion to dismiss (*compare*  
4 Dkt. No. 72 at 7 *with* Opp. 13).<sup>12</sup> No admissible evidence was proffered in the declarations of  
5 Roy Taylor or Steven Fluke to support their allegations of corporate waste. Moreover, given that  
6 Mr. Stowell and Mr. Galanti held no shares in SGC and own no shares in SGCC, they lack  
7 standing to even bring allegations of corporate waste against the company.

8 For these reasons, summary judgment on this counterclaim is **GRANTED**. Given this  
9 ruling, this order does not need to address the question of whether an unclean hands defense —  
10 based upon Roy Taylor’s repeated attempts to “assign” the company’s intellectual property to  
11 himself — bars the “corporate waste” counterclaim.

#### 12 **4. BREACH OF FIDUCIARY DUTIES**

13 While the prior counterclaims addressed herein targeted both Mr. DePorche and Joyce  
14 Taylor, the breach of fiduciary duties counterclaim targeted only Mr. DePorche. In their answer,  
15 counterclaimants alleged that Mr. DePorche breached his duty to shareholders through a slew of  
16 failures, including failing to “ensure that the corporation is operated in a legal manner to ensure a  
17 continual business and decisions that are appropriate[,]” “refusing to provide any material data as  
18 to the operation of [SGC] to [counterclaimant Roy] Taylor a 30% shareholder[,]” “fail[ing] to  
19 provide any accounting or assessment as to the operational condition related to the product line,  
20 marketing maintenance of the patents, potential sales, and on going operation of the  
21 corporation[,]” and “fail[ing] to hold noticed share holder meetings, issue shares as required,  
22 produce any accounting of the business operation, or produce quarterly, or annual reports of the  
23 business operations” (Ans. ¶ 60).

24 Under California law, a claim for breach of fiduciary duties requires proof that: (1) Mr.  
25 DePorche owed a fiduciary duty to the party in question, (2) the duty was breached, and (3) the  
26 breach caused the harm suffered. *First Interstate Bank of Arizona, N.A., v. Murphy, Weird and*  
27 *Butler*, 210 F.3d 983, 986 (9th Cir. 2000). As a controlling shareholder and director of SGC and

28 \_\_\_\_\_  
<sup>12</sup> This perhaps explains why the opposition brief cites an inapplicable legal standard.

1 SGCC, there is no question that Mr. DePorche owed fiduciary duties to shareholders, including  
2 the duty to protect the interests of minority shareholders. *Jones v. H. F. Ahmanson & Co.*, 1  
3 Cal.3d 93, 110 (1969).

4 As stated, counterdefendants have put forth substantial evidence showing that they  
5 operated SGC and SGCC in a lawful manner — indeed, they relied upon the advice of the very  
6 same corporate counsel hired by Roy Taylor himself. Additionally, counterdefendants have  
7 produced evidence showing that they properly noticed the reincorporation of SGC, properly  
8 issued SGCC shares to former shareholders of SGC, and otherwise made business decisions for  
9 both SGC and SGCC in good faith. The same evidence also shows that neither Mr. Stowell nor  
10 Mr. Galanti owned shares of SGC or SGCC. Thus, no fiduciary duties were ever owed to them.

11 In response, the declarations of both Mr. Taylor and Mr. Fluke state that “[Mr.] DePorche  
12 . . . dissolved SG[C] without informing or consulting any of the shareholders” of the company (R.  
13 Taylor Decl. ¶ 35; Fluke Decl. ¶ 24). Additionally, both declarations state that Mr. Taylor and  
14 Mr. Fluke “were not given any opportunity to oppose the dissolution of SG[C]” and received “no  
15 annual reports, no notice of shareholders meetings, and no dividends from those shares” (R.  
16 Taylor Decl. ¶¶ 37–38; Fluke Decl. ¶ 26–27). Finally, both assert — in statements that have  
17 already been deemed inadmissible due to lack of firsthand knowledge — that “SGCC did not  
18 issue any shares” to them (R. Taylor Decl. ¶ 36; Fluke Decl. ¶ 27).

19 Even crediting these statements, there is insufficient evidence for a reasonable jury to find  
20 that Mr. DePorche breached any fiduciary duties to counterclaimants. The fiduciary duty of a  
21 controlling shareholder to a minority shareholder is based on “powers in trust” and is subject to  
22 the equitable limitation that it may not be exercised for the aggrandizement, preference, or  
23 advantage of the fiduciary. *Interactive Multimedia Artists, Inc. v. Superior Court (Allstate Ins.*  
24 *Co.)*, 62 Cal. App. 4th 1546, 1555 (2d Dist. 1998). In other words, majority shareholders may not  
25 use their power to control corporate activities to benefit themselves alone or in a manner  
26 detrimental to the minority. Directors are bound to similar duties.

27 Notably absent from counterclaimants’ declarations are any facts showing how these  
28 actions (or inactions) by Mr. DePorche were done with the intent to benefit majority shareholders

1 to the detriment of minority shareholders. Moreover, neither Roy Taylor nor Mr. Fluke state how  
2 they have been *harmed* as a result of these supposed breaches of fiduciary duties, given the  
3 undisputed evidence showing that they were issued shares in SGCC.

4 Finally, this order again notes that the opposition brief includes paragraphs cribbed  
5 directly from counterclaimants' opposition to the November 2009 motion to dismiss (*compare*  
6 *Opp. 14 with Dkt. No. 72 at 9*). Given that the legal standards differ substantially between a  
7 summary judgment motion and a motion to dismiss, this sloppy copying is a substantial reason  
8 why counterclaimants' arguments are unavailing.

9 For these reasons, summary judgment on this counterclaim is **GRANTED**

10 **5. COUNTERCLAIMANTS' RULE 56(f) MOTION**

11 Despite the fact that the parties were ordered to complete all depositions in January 2010  
12 and fact discovery in this action closed three months ago (Dkt. Nos. 78, 84), the opposition brief  
13 nevertheless argues that a number of depositions are still incomplete and that (Opp. 8) (all errors  
14 in original):

15 The depositions are anticipated to present additional extensive  
16 evidence that support Counter claimants claims and shows that  
17 there would be triable issue of material fact, which include but not  
18 limited to 1) when and how the Counter Claimants were put on  
19 notice of Counter Defendants fraud, under what circumstance  
20 Counter Claimants signed the IP agreement 2) how the actions of  
Counter Defendants led to conversion of property rights of Counter  
Claimants 3) how the actions of Counter Defendants led to their  
fiduciary duty 4) what actions led to misuse of investors funds 5)  
how the actions of Counter Defendants were not rational which led  
to misuse of Counter Claimants/investors funds.

21 FRCP 56(f) states that “[i]f a party opposing [a summary judgment] motion shows by  
22 affidavit that, for specified reasons, it cannot present facts essential to justify its opposition, the  
23 court may: (1) deny the motion; (2) order a continuance to enable affidavits to be obtained,  
24 depositions to be taken, or other discovery to be undertaken; or (3) issue any other just order.”

25 This burden has clearly not been met. *First*, the arguments presented in the opposition  
26 brief have not been set forth in affidavit form, as required under FRCP 56(f). *Second*,  
27 counterclaimants have provided no “specific facts” that they hope to elicit from further discovery.  
28 *Third*, no reasonable explanation has been provided as to why these depositions were delayed and

1 not taken during the lengthy discovery period, which ended three months ago. The arguments  
2 presented above only show that counsel seek further delays to continue a fishing expedition for  
3 any evidence that *might* support the counterclaims alleged.

4 The Rule 56(f) motion is **DENIED**.

5 **CONCLUSION**

6 For the reasons set forth above, counterdefendants' motion for summary judgment on all  
7 remaining counterclaims is **GRANTED**. Counterclaimants' Rule 56(f) motion to postpone  
8 adjudication of the instant motion pending additional discovery is **DENIED**.

9 \* \* \*

10 With no counterclaims remaining for trial, all that is left are SGCC's claims for patent  
11 infringement, misappropriation of trade secrets, unfair competition under Section 17200 of the  
12 California Business and Professions Code, violation of the Lanham Act, 15 U.S.C. 1125(a), and  
13 breach of contract (Dkt. No. 59). With respect to the patent infringement claim, the parties are  
14 reminded that they opted one year ago to forego claim construction and that the jury will be  
15 instructed that the terms of the asserted patent claims have their ordinary and customary meaning  
16 (Dkt. No. 51). Since the last date to file dispositive motions — June 7 — has long since passed,  
17 all that is left is the final pretrial conference on **SEPTEMBER 6** and a jury trial on **SEPTEMBER 20**.

18 The Court expects all counsel of record to be prepared to try this case on schedule and to  
19 know and follow the applicable rules and standards for trial. No mulligans on summary judgment  
20 or discovery will be permitted. Both sides must be ready to come out swinging.

21 **IT IS SO ORDERED.**

22  
23 Dated: August 5, 2010.



24 **WILLIAM ALSUP**  
25 **UNITED STATES DISTRICT JUDGE**