02-02-24
Dept. 9
Tentative Rulings

1. 22CV0660 CALIFORNIA JOINT & SPINE LLC v. VIRTUAL RAIN, INC.

Motion to Approve Good Faith Settlement

According to the April 1, 2022, Complaint for negligence, strict product liability and breach of express warranty, Plaintiffs California Joint & Spine, United Surgical Partners International, Inc. and their subrogated insurer XL Insurance America (collectively "Plaintiffs") experienced a water intrusion event at professional offices that caused damage to the premises. Defendant Virtual Rain ("VR") is the supplier of the water filter that is alleged to have failed, which resulted in the discharge. The event occurred on June 8, 2019, after the installed water filter had been in use for only a few hours. Complaint, ¶8. The Complaint alleges that the Plaintiffs engaged a consultant to test the filter and determined that the particular filter in use on the premises was defective. Complaint, ¶¶12-23. Excessive water pressure above the filter's design standards may have also been a contributing factor. Complaint, ¶10. Plaintiffs allege that they suffered damages in the amount of $556,867. Complaint, ¶¶24-25.

The Complaint references a pre-litigation settlement with other parties not named in the Complaint. Complaint, ¶27. Defendant VR argues that as a result of this pre-litigation settlement, the Complaint focuses solely on the VR water filter, and does not allege any malfeasance by the designer or installer of the plumbing system in which the filter was operating. VR learned through discovery that two contractors were involved in the design and installation of the plumbing system, and as a result VR filed a Cross-Complaint against Cross-Defendants RCP Construction ("RCP") and Baskerville Parsons Contractors ("BP") for indemnification, apportionment of fault and declaratory relief.

RCP was a general contractor and BP was a subcontractor who contracted to install a plumbing system rated at 100 psi at Plaintiffs' premises on January 17, 2018. Declaration of Timothy Baskerville, dated November 6, 2023 ("Baskerville Declaration") at ¶3. When Plaintiffs experienced rust particulates in the water they contacted RCP/BP; BP flushed the system but the problem persisted. Baskerville Declaration, ¶4. In June, 2019, BP installed water filters on the hot water heater and a reverse osmosis system on a time and materials basis, declining to sign the change order for the water heater that included the failed filter. Id. at ¶5. After the June 2019 water intrusion event that is the basis for this lawsuit, BP inspected the failed filter and determined that it was designed to be installed in a system that delivered 100 psi or less. Id. at ¶6. The water delivered to the premises by the El Dorado Hills Water District was at 125 psi, a fact of which BP was unaware, because the plans for the premises indicated a water pressure of 65 psi. Id. at ¶¶7-8[1]. BP asserts that the responsibility for the water pressure lies with the site development contractor who connects the main water line from the public water system to the

[1] The Baskerville Declaration references an Exhibit A, consisting of the site plans for the premises but no exhibit is attached to the Declaration on file with the court.

premises without installing a water pressure reduction device as required by plumbing code regulations for water pressure in excess of 80 psi, and the El Dorado Hills Water District, which delivered water at pressure at 125 psi. Id. at ¶¶9-10.

Cross-Defendants RCP and BP and reached a proposed settlement with Plaintiff before the litigation was filed. Appendix of Exhibits in Support of Opposition of Defendant Virtual Rain ("VR Exhibits"), Exhibit 6, pursuant to which each of them paid $75,000. BP requests approval of that settlement by the court pursuant to Code of Civil Procedure § 877.6, the pertinent provisions of which are reproduced below:

> (a)(1) Any party to an action in which it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, ...
>
> * * *
>
> (b) The issue of the good faith of a settlement may be determined by the court on the basis of affidavits served with the notice of hearing, and any counteraffidavits filed in response, or the court may, in its discretion, receive other evidence at the hearing.
>
> (c) A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault.
>
> (d) The party asserting the lack of good faith shall have the burden of proof on that issue.

Standard of Review

The California Supreme Court defined the analysis required in applying Code of Civil Procedure § 877.6 in the case of Tech-Bilt, Inc. v. Woodward-Clyde & Assocs., 38 Cal. 3d 488 (1985). The Court established the following factors to be considered by a trial court in determining whether to approve a proposed settlement meets the "good faith" standard, which is to be made on the basis of information available at the time of settlement:

(1) The amount paid in settlement;
(2) The allocation of settlement proceeds among plaintiffs;
(3) Whether the amount of the settlement is within the reasonable range of the settling tortfeasor's proportional share of comparative liability for the plaintiff's injuries, which requires "a rough approximation of plaintiffs' total recovery and the settlor's proportionate liability"; this settlement amount must not be "grossly disproportionate to

what a reasonable person, at the time of settlement, would estimate the defendant's liability to be." [1] Tech-Bilt at 499.

(4) A recognition that a settlor should pay less in settlement than he would if he were found liable after a trial.
(5) The financial conditions and insurance policy limits of settling defendants,
(6) The existence of collusion, fraud, or tortious conduct aimed to injure the interests of nonsettling defendants.

The determination as to whether a settlement is in good faith is a matter left to the discretion of the trial court. Tech-Bilt*, at* 502. This evaluation requires a sufficient evidentiary basis, through affidavits, declarations and other evidence to allow the court to make findings to support the exercise of its discretion in approving or disapproving the proposed settlement. These findings must be supported by substantial evidence. Toyota Motor Sales U.S.A., Inc. v. Superior Ct., 220 Cal. App. 3d 864, 871 (1990). It is an abuse of discretion for the trial court to find a good faith settlement where there is insufficient evidence presented on the issues to be considered, and a continuance may be required for the purpose of gathering further evidence if there is not sufficient information already in the record before the court. City of Grand Terrace v. Superior Ct., 192 Cal. App. 3d 1251, 1264-1265 (1987).

In determining "a rough approximation" of the total amount of Plaintiff's damages, it is not sufficient to reply on the amount stated in the Complaint. West v. Superior Ct., 27 Cal. App. 4th 1625, 1636 (1994), citing Horton v. Superior Ct., 194 Cal. App. 3d 727, 735, (1987).

Defendant VR opposes the settlement. It argues that without the presence of Cross-Defendants BP and RCP in the litigation, it will not be able to conduct discovery to defend against Plaintiffs' negligence and product liability claims. Declaration of Anna J. Niemann, dated January 22, 2024 ("Niemann Declaration").

Of the Tech-Bilt factors, VR argues that BP has not established 1) a rough approximation of the Plaintiff's total recovery, 2) BP's proportional liability, 3) the financial condition or insurance policy limits of BP, or 4) the absence of collusion, fraud, or tortious conduct in reaching the settlement.

Request for Judicial Notice

[1] "The party asserting the lack of good faith, who has the burden of proof on that issue . . . , should be permitted to demonstrate, if he can, that the settlement is so far "out of the ballpark" in relation to these factors as to be inconsistent with the equitable objectives of the statute. Such a demonstration would establish that the proposed settlement was not a "settlement made in good faith" within the terms of section 877.6." Tech-Bilt at 499-500.

Defendant/Cross-Complainant Virtual Rain requests judicial notice of various pleadings in this action.

Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. Evidence Code Section 452 lists matters of which the court may take judicial notice, including "records of (1) any court in this state or (2) any court of record of the United States." Evidence Code § 452(d). A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453. Accordingly, Defendant's request for judicial notice is granted.

Amount of Plaintiffs' Damages/Recovery

As to an approximation of the total damages, VR notes that there is no evidentiary support for the amount of damages in the record apart from the amount stated in the unverified Complaint.

BP's Proportional Liability

As to proportional liability of the settling party, BP asserts that it has no liability for the damages caused by the water pressure in excess of VR's filter capacity that was much higher than the stated pressure on the site plans BP relied upon in installing the system. However, BP argues that the fact that the Plaintiffs have agreed to settle with BP for $75,000 is indicative of the Plaintiffs' assessment of BP's share of liability.

The court notes that only one of the three causes of action is for negligence and is directed at all Defendants. The Complaint does not attempt to hold BP responsible for strict product liability or breach of warranty associated with defects in the filter.

However, the other potential contributing factor identified in the Complaint is the water pressure, and BP's supporting declaration states that the site plan on which it relied indicated a water pressure of 65 psi. The Exhibit cited in that Declaration which would establish that fact is not attached to the Declaration on file with the court.

Fraud or Collusion

BP's pleadings state that there was no fraud or collusion in reaching the settlement. This issue is not expressly addressed in its supporting declarations, although there is a statement that the settlement was reached in good faith in the Settlement Agreement, paragraph 3(d).

The court finds that there is insufficient evidence in the record on the issue of the amount of damages, which in turn deprives the court of any basis for determining that the proposed settlement amount represents a reasonable relationship to the settling party's proportional liability. The primary rationale for exculpating BP from liability, the water pressure indicated on the site plans, is missing from the declaration in which it is referenced. The moving party may decide to renew this motion after additional discovery creates an adequate factual record to support a determination.

TENTATIVE RULING #1:

(1) DEFENDANT'S REQUEST FOR JUDICIAL NOTICE IS GRANTED.

(2) CROSS-DEFENDANT'S MOTION TO APPROVE GOOD FAITH SETTLEMENT IS DENIED.

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

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

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2. 23CV1482 HADLOCK v. MILLER

Motion to Quash

This lawsuit was filed on August 30, 2023. A default judgment was entered on October 25, 2023, and a Writ of Execution was issued on December 13, 2023.

On December 27, 2023, Defendant filed a motion to quash service of the Summons and Complaint. The proof of service states that substituted service "on behalf of an entity or an authorized agent" was made by delivering the documents to a receptionist at 5170 Golden Foothilll Parkway, El Dorado Hills and then subsequently mailed to the same address. The proof of service was accompanied by a Declaration of Due Diligence, stating that on two occasions, once on August 31, 2023 in the afternoon, and once on September 1, 2023, in the morning, the process server requested to see Defendant at the business address and was informed that he was not present. On September 7, 2023, the process server left the documents with the receptionist.

Defendant states that he has not maintained an office at the location where the documents were served since February, 2023, although he still receives mail at that location. Defendant states that he did not receive the Summons and Complaint until September 17, 2023, and that because he never received the proof of service or accompanying declaration of due diligence, he was not aware that any service of process had been attempted until he received the Plaintiff's Request for Entry of Default. Defendant notes that there was no attempt to serve him at his home address.

Defendant states that upon discovering the status of the lawsuit he retained counsel and brought this motion to quash service of process.

Plaintiff filed an objection to the motion ("Plaintiff's Objection"), including various attachments.

Defendant's assertions that he is not sufficiently associated with the business address to justify substituted service at that location is not convincing. It is the local address listed on his website, Plaintiff's Objection, Attachment A, and the address of record for the State Bar Association. Plaintiff's Objection, Attachment B. It is the address listed on the Secretary of State's website for his LLC. Declaration of Alexander Promm, dated January 26, 2024, Exhibit A.

Defendant argues that he was named as an individual in the lawsuit but served as if he were a business. However, the Complaint alleges that Defendant the individual "is a business entity of unknown type doing business in El Dorado County . . ." and that the named individual "owned and controlled the business through which the incidences which form the basis of this matter occurred." Complaint, ¶2. Further, the Complaint states that the named individual "was

an agent, employee, and/or owner of the Miller Injury Attorneys, . . ." Complaint, ¶3 and lists his professional license in Complaint, ¶ 4.

Defendant objects that he never received a proof of service from the Plaintiff, but was forced to obtain a copy of that document from the files of the court. Code of Civil Procedure § 417.30 requires a proof of service to be filed with a court; it does not require mailing to the person or entity who was served. Code of Civil Procedure § 415.20(b) requires mailing of the Summons and Complaint as part of substituted service, but it does not require a proof of service to be included in that mailing.

Defendant argues that substituted service, even if authorized, was not made on an individual who could receive service, but that the documents were served on a receptionist who was not "in charge" of place of business. Defendant represents that the business location where the Summons and Complaint were served is a "co-working, rentable, business workspace." Defendant's Memorandum of Points and Authorities, page 2. However, there is case law establishing that a receptionist in a common reception area shared by multiple businesses might be found by a court to be a person who was apparently in charge of the business location. Ludka v. Memory Magnetics Int'l, 25 Cal. App. 3d 316, 321 (1972).

Defendant argues that the process server did not allege adequate due diligence in its Declaration, but as Defendant notes, that location "has not been used for his business" and "is simply a location at which Mr. Miller receives his mail." Defendant's Memorandum of Points and Authorities, page 2. According to Defendant's own representations, additional efforts to find Defendant personally present at that location would not have been fruitful. Plaintiff's process server has filed a Declaration alleging compliance with due diligence requirements, including multiple failed attempts to locate him at his business address.

TENTATIVE RULING #2: DEFENDANT'S MOTION TO QUASH SERVICE OF THE SUMMONS AND COMPLAINT IS DENIED.

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

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COUNTY LOCAL RULE 8.05.07. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

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3. 22CV1415 CAMPO v. HOLT OF CALIFORNIA

Motion to Approve PAGA Settlement

This motion is for approval of the settlement.

This is an unopposed motion for an Order to approve settlement of this Private Attorneys General Act ("PAGA") class action lawsuit representing similarly situated employees of Defendant Holt of California, for the amount of $490,000.00 in exchange of release of claims and dismissal of the action consistent with the terms of the settlement, and to make other orders required to facilitate such settlement. The underlying action involves claims against Defendant for violation of California Labor Code §§ 201-203, 226, 226.7, 510, 1174, 1194, 1194.2, 2802, Business and Professions Code § 17200 *et. seq.,* and applicable IWC Wage Orders, and liability for PAGA civil penalties. Defendant denies the allegations and any liability or wrongdoing.

Specifically, the parties request the court to issue an Order as follows:

1. Finding that the Plaintiff has exhausted all administrative remedies required to bring PAGA claims and is authorized to act a private attorney general to pursue the claims being released under the proposed Joint Stipulation of PAGA Settlement and Release ("Settlement").

2. Approving the PAGA penalty allocations in the Settlement, with 75 percent of such allocations to be paid to the Labor and Workforce Development Agency (LWDA"), and 25 percent to be paid to the PAGA Group, as set forth in Labor Code § 2699(i).

3. Finding that the Settlement between the parties as described in the Joint Stipulation of PAGA Settlement and Release ("Settlement") to have been agreed upon only after significant investigation and arms-length negotiation and grant approval of the Settlement, including the releases as to Defendant under the Settlement

4. Find that the Common Fund Doctrine is applicable to this case because there is a sufficiently identifiable class of beneficiaries (Settlement Group Members and the Labor and Workforce Development Agency), the benefits can be accurately traced as set forth in the Settlement, Plaintiff and Plaintiff's counsel were able to negotiate on behalf of the beneficiaries, and the fee can be shifted with exactitude to those benefitting as the fee request is a specific, lump sum percentage of the common fund.

5. Find that the attorney's fees requests of one-third of the common fund ($163,317) to be appropriate compensation for Plaintiff's counsel, and order the costs of approximately $11,373.67 be reimbursed to class counsel for reasonable costs incurred in the case;

6. Approve ILYM Group as the Claims Administrator to perform administration of the Settlement, whose costs shall be approximately $6,150 as provided in the Settlement,

and any balance after actual costs be included within the Net Settlement Amount for distribution to the Settlement Group Members and the LWDA in accordance with the Settlement.

7. Approve the Notice of Settlement as to form and content and the proposed distribution in accordance with the terms of the proposed Settlement.

Court approval of a class action settlement is governed by California Rules of Court, Rule 3.3769, as follows:

(a) Court approval after hearing
A settlement or compromise of an entire class action, or of a cause of action in a class action, or as to a party, requires the approval of the court after hearing.

(b) Attorney's fees
Any agreement, express or implied, that has been entered into with respect to the payment of attorney's fees or the submission of an application for the approval of attorney's fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action.

(c) Preliminary approval of settlement
Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion.

(d) Order certifying provisional settlement class
The court may make an order approving or denying certification of a provisional settlement class after the preliminary settlement hearing.

(e) Order for final approval hearing
If the court grants preliminary approval, its order must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement hearing.

(f) Notice to class of final approval hearing
If the court has certified the action as a class action, notice of the final approval hearing must be given to the class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.

(g) Conduct of final approval hearing
Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.

(h) Judgment
If the court approves the settlement agreement after the final approval hearing, the court must make and enter judgment. The judgment must include a provision for the retention of the court's jurisdiction over the parties to enforce the terms of the judgment. The court may not enter an order dismissing the action at the same time as, or after, entry of judgment.

In this case, the proposed Order appears to request a final approval, whereas the California Rules of Court, Rule 3.3769(c) requires preliminary approval at a preliminary settlement hearing. At the preliminary hearing, a date for a final approval hearing is scheduled, and notice of that hearing date is to be included in the Notice of Settlement. California Rules of Court, Rule 3.3769(e)-(f). The proposed Notice of Settlement will have to be amended to provide for a final approval hearing, with notice an and opportunity for class members to appear and/or object to the proposed Settlement.

A review of the court's file did not reveal any agreement that has been entered into with respect to the payment of attorney's fees, as required by California Rules of Court, Rule 3.3769(b).

TENTATIVE RULING #3: THE MATTER IS CONTINUED TO FRIDAY, MARCH 22, 2024, TO ALLOW THE PARTIES AN OPPORTUNITY TO FILE AN AMENDED NOTICE OF SETTLEMENT AND PROPOSED ORDER IN COMPLIANCE WITH CALIFORNIA RULES OF COURT, RULE 3.3769.

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

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4. PC20200069 BURNLEY v. ERB

Motion to Deconsolidate Cases for Discovery Purposes

In 2017, Gold Country Homeowners' Association ("HOA") filed a Complaint against the Bowmans, who owned property within the development.[1] In 2020, a group of homeowners within the HOA filed a Complaint against the HOA (Burnley, et al v. Erb, et al [PC20200069]) ("the Burnley action"[2]), claiming that the HOA's litigation against the Bowmans was a breach of the HOA's fiduciary duty and beyond the scope of the HOA's authority. The Bowmans were initially part of that homeowner's lawsuit against the HOA, but they subsequently withdrew and filed a separate action against the HOA for malicious prosecution and civil conspiracy (Bowman et al v. Gold Country Homeowners' Association, et al [PC20200539]) ("the Bowman action"[3])

In September, 2021, the parties to the Burnley action and the Bowman action entered into a Stipulation and Order to consolidate the two actions for discovery purposes only, because both lawsuits related to the same underlying events, in particular to the 2017 litigation initiated by the HOA. The parties agreed that many of the issues of fact were common to both actions and that discovery would involve inquiry into the same information, documents, and deposition testimony. It was anticipated that consolidating the actions for the sole purpose of discovery would expedite the discovery process and eliminate duplication.

Now Plaintiffs in the Burnley action move to deconsolidate the discovery in the two cases. Plaintiffs' counsel has filed a Declaration detailing some of the issues raised by Plaintiffs. Declaration of Michael Thomas, ("Thomas Declaration"), dated December 1, 2023.

Plaintiffs assert that after the Bowman action Defendants raised an "advice of counsel" defense, the Bowman action's discovery became subject to a prolonged dispute that over access to attorney-client material that was unrelated to the Burnley action. Thomas Declaration, ¶4. Plaintiffs argue that there is a risk that the Burnley Plaintiffs will be affected by the Bowman discovery issues, such as when the Bowman parties are reluctant to produce documents in the Burnley matter that might come within the attorney-client privilege in the Bowman matter.

Plaintiffs Jeff and Carrie Bowman have filed a Notice of Non-Opposition and Joinder. One logistical issue raised by the Bowmans' Non-opposition is that the Stipulation allows deposition questions regarding attorney-client communications, which would then be marked "confidential," but counsel in the Burnley matter is not entitled to be present during those confidential exchanges. The Bowmans argue that proposal to split depositions into confidential and non-confidential portions is an undue burden on Plaintiff's counsel and would begin to run

[1] Gold County Homeowner's Association v. Bowman (PC20170366).
[2] See Request for Judicial Notice, Exhibit 1.
[3] See Request for Judicial Notice, Exhibit 2.

up against the seven-hour limitation on depositions. A recent court ruling in the Bowman action provided that the waiver of the attorney-client privilege extends through the time of judgment in the prior action, which in turn extends the temporal period regarding which discovery is complicated by the consolidation.

Defendants oppose the deconsolidation because the common factual basis for the multiple actions that motivated the Stipulation and Order to Consolidate has not changed and Defendants argue that it still serves to avoid duplication and create efficiencies in the discovery process. Defendants argue that it would be burdensome for deposed parties to sit for multiple depositions on the same issues.

Request for Judicial Notice

Plaintiffs request judicial notice of various pleadings in this action. Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. Evidence Code Section 452 lists matters of which the court may take judicial notice, including "records of (1) any court in this state or (2) any court of record of the United States." Evidence Code § 452(d). A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453. Accordingly, Defendant's request for judicial notice is granted.

Standard of Review

Trial courts have discretion to consolidate actions involving common questions of law or fact and are pending in the same court:

> When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

Code of Civil Procedure § 1048(a).

The trial court's decision will not be disturbed on appeal absent a clear showing of abuse of discretion. Todd-Stenberg v. Dalkon Shield Claimants Tr., 48 Cal. App. 4th 976, 978–79 (1996).

From the written submissions it appears that some logistical difficulty has presented itself in sorting through discovery on these two related cases. However, they remain fundamentally based on the same set of facts and involve the same parties. Absent a clearer showing of logistical difficulties created by consolidation that are more unwieldy than having multiple depositions of the same parties on the same issues, or a showing that there is a

substantive effect on the capacity of the parties to elicit relevant information through discovery if the cases remain consolidated, it appears to the court that allowing these two cases to remain consolidated for discovery purposes is more efficient, convenient and productive than deconsolidating them.

TENTATIVE RULING #4:

(1) PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE IS GRANTED.
(2) PLAINTIFFS' REQUEST TO DECONSOLIDATE CASES FOR DISCOVERY PURPOSES IS DENIED.

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5. 23CV1018 WILMINGTON SAVINGS FUND SOCIETY v. UNKNOWN HEIRS, ASSIGNS AND DEVISEES OF JACK F. STORM

Motion to Substitute Party Plaintiff

This is an unopposed motion to substitute the entity to whom the beneficial interest in the Deed of Trust for the subject property was assigned on December 13, 2023.

The moving party cites California Code of Civil Procedure, Section 368.5:

> An action or proceeding does not abate by the transfer of an interest in the action or proceeding or by any other transfer of an interest. The action or proceeding may be continued in the name of the original party, or the court may allow the person to whom the transfer is made to be substituted in the action or proceeding.

TENTATIVE RULING #5: ABSENT OBJECTION, THE MOTION IS GRANTED AS REQUESTED.

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

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6. 23CV1183 SAMBOY v. HALL'S WINDOW CENTER, INC.

(1) Motion to Strike
(2) Demurrer

TENTATIVE RULING #6: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, MARCH 8, 2024, IN DEPARTMENT NINE.

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

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7. 22CV1011 SHINGLE SPRINGS BAND OF MIWOK INDIANS v. FLINTCO PACIFIC, INC.

Demurrer to Second Amended Cross-Complaint

At issue is Cross-Defendant Urata & Sons Cement Co. ("Urata") demurrer to the Second Amended Cross-Complaint ("SACC") filed by Cross-Complainant Flintco Pacific, Inc. ("Flintco Pacific").[1] The underlying action was filed by the Shingle Spring Band of Miwok Indians ("Miwok Tribe") alleging design and construction deficiencies in concrete slabs installed at the Shingle Springs Ambulatory Clinic project ("Project"). SACC ¶5

The SACC lists 21 causes of action alleging comparative fault, negligence, equitable, express and implied indemnity, breach of express and implied warranties, breach of contract, strict products liability, and declaratory relief.

The SACC alleges that Urata and the other Cross-Defendants agreed in their contracts to defend, indemnify and hold Flintco, and by extension, Flintco Pacific, harmless for claims and losses arising from the construction agreements related to the Project. SACC ¶23.

Request for Judicial Notice

Urata has filed a Request for the court to take judicial notice of various pleadings filed in this action, and the notice of completion for Plaintiff's construction project recorded with the County Recorder's Office of El Dorado County. Judicial notice is a mechanism which allows the court to take into consideration matters which are presumed to be indisputably true. California Evidence Code Sections 451, 452, and 453 collectively govern the circumstances in which judicial notice of a matter may be taken. Evidence Code Section 452 lists matters of which the court may take judicial notice, including "records of (1) any court in this state or (2) any court of record of the United States," and "official acts of the legislative, executive and judicial departments of the United States and of any state of the United States." Evidence Code §§ 452(c) and (d). A trial court is required to take judicial notice of any matter listed in section 452 if a party requests it

[1] According to the SACC, in 2008 Flintco Pacific's predecessor in interest, Flintco, Inc., entered into a design build contract with the Miwok Tribe, and Flintco, Inc. subsequently entered into various subcontracts for the design and construction of Plaintiff's project. This included a subcontract with Cross-Defendant Urata. SACC ¶4.

Flintco, Inc. was restructured and in 2011, and, according to the SACC, "all interests in its construction contracts in the State of California were assigned to Cross-Complainant," Flintco Pacific. SACC ¶5. Based on that assignment, according to the ACC, Flintco Pacific assumed all of the benefits and obligations of the contracts entered into for the construction of Plaintiff's project, including the right to enforce their terms and conditions and all legal and equitable rights previously held by Flintco, Inc. SACC ¶6.

and gives the other party sufficient notice to prepare to meet the request. Evidence Code § 453. Accordingly, Cross-Defendant's request for judicial notice is granted.

Chronology

- The Notice of Completion of the Project was dated September 2, 2011, and was recorded on October 7, 2011.
- On December 17, 2021, the Miwok Tribe and Flintco Pacific entered into a tolling agreement to extend the statute of limitations under May 19, 2022.
- On May 19, 2022 The Miwok Tribe and Flintco Pacific amended the tolling agreement to extend the limitations period to July 29, 2022.
- The Miwok Tribe filed its initial Complaint in this matter on July 22, 2022.
- Flintco Pacific filed its Cross-Claim against Urata on November 14, 2022, and then filed and Amended Cross Complaint ("ACC") on December 8, 2022.
- Following the court's sustaining of Urata's demurrer on September 1, 2023, Flintco Pacific filed the SACC on September 11, 2023.
- The Miwok Tribe filed a First Amended Complaint ("FAC") on October 27, 2023.

Demurrer to the Prior Version of the Cross-Complaint

Urata demurred to 14 of the 21 causes of action contained the prior version of Flintco Pacific's Cross-Complaint (the ACC) on the same grounds that are asserted in the current demurrer to the SACC: 1) that Flintco Pacific's cause of action is time-barred under the ten-year statute of limitations contained in California Code of Civil Procedure § 337.15, and 2) the cause of action is against public policy because Flintco Pacific's liability arises from its own concealment. Following hearing on September 1, 2023, the court sustained the demurrer, finding the causes of action to be time barred as a matter of law.

Demurrer to the Second Amended Cross-Complaint

Flintco Pacific filed the SACC following the demurrer on the ACC. The substantive allegations that are newly included in the SACC and relevant to the pending demurrer are:

1) allegations regarding a tolling agreement (SACC ¶2).
2) more specific allegations about the alleged indemnity agreement (SACC ¶23), and
3) an allegation that all Cross-Defendants expressly agreed in their subcontracts to extend the time period during which they would remain liable concurrently with Flintco (SACC ¶28).

Since the hearing and decision on Urata's prior demurrer the Miwok Tribe filed a First Amended Cross-Complaint ("FAC"), in which it listed new allegations that relate to the new

allegations in the SACC. With respect to the alleged tolling agreement, the FAC filed by the Miwok Tribe alleges that on December 17, 2021, the Miwok Tribe and Flintco Pacific entered into a tolling agreement that extended the statute of limitations until May 19, 2022. FAC ¶14. On May 19, 2022, the Miwok Tribe and Flintco Pacific extended the tolling agreement to July 29, 2022. FAC ¶15.The FAC alleges that Buehler Engineering, Inc. was a party to that tolling agreement, but does not allege that Urata was a party to the tolling agreement. FAC ¶12.

On the statute of limitations issue, Urata cites Code of Civil procedure § 337.15(a)(1), which states:

> (a) No action may be brought to recover damages from any person, or the surety of a person, who develops real property or performs or furnishes the design, specifications, surveying, planning, supervision, testing, or observation of construction or construction of an improvement to real property more than 10 years after the substantial completion of the development or improvement for any of the following:
>
> (1) Any latent deficiency in the design, specification, surveying, planning, supervision, or observation of construction or construction of an improvement to, or survey of, real property.

Both parties cite to the case of FNB Mortg. Corp. v. Pac. Gen. Grp., 76 Cal. App. 4th 1116 (1999), which involved a similar issue of whether a cross-complaint for indemnity survives the expiration of the 10-year statute of limitations under Code of Civil Procedure § 337.15 for latent design or construction defects because of a tolling agreement. The trial court applied the statute of limitations and barred the action on a summary judgment motion. The Court of Appeals upheld the trial court's determination, holding that the tolling agreement extending time for filing the complaint did not extend the time to file the cross-complaint, and that the limitations period in Code of Civil Procedure § 337.15 is not subject to equitable tolling.

Urata argues that Flintco Pacific's SACC is time-barred pursuant to the holding in the FNB Mortgage case. Urata further points out that any alleged tolling agreements were entered into in December, 2021, subsequent to the expiration of the ten-year statute of limitations following the Project's completion on September 2, 2011. Further, Urata argues that if there was a tolling agreement, Urata was not a party to it.

Flintco Pacific urges the court to "take a closer look" at the holding in FNB Mortgage , and "decline to follow the flawed reasoning" of the case to overrule Urata's demurrer because the court in that case overlooked important public policy considerations of promoting equitable apportionment among cross-defendants. The court is not inclined to disregard applicable precedent in order to restore claims that are barred by applicable statutory limitations on the time for filing claims.

Accordingly, the court finds that Code of Civil Procedure § 337.15(a)(1) bars the challenged causes of action in the Second Amend Cross-Complaint as a matter of law.

TENTATIVE RULING #7:

(1) CROSS-DEFENDANT'S REQUEST FOR JUDICIAL NOTICE IS GRANTED.

(2) CROSS-DEFENDANT'S DEMURRER IS SUSTAINED WITHOUT LEAVE TO AMEND.

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

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8. 22CV1621 ALES v. JAGUAR LAND ROVER NORTH AMERICA, LLC.

Motion to Compel

This motion was filed on September 14, 2023. On January 19, 2024, the parties filed a Joint Status Report re: Plaintiff's Motion to Compel Deposition Attendance and Production of Documents that states that the scope of matters for examination and requested document production has been agreed upon.

The parties have been unable to agree on a date for the scheduled deposition. Defendant has offered June 27, 2024, and also requests that the deposition be scheduled after the hearing on its motion for summary judgment, which is currently scheduled to be heard on June 7, 2024.

Plaintiffs have filed a motion to amend the Complaint to add two new causes of action under the Magnuson-Moss Act and the California Commercial Code, based on the same set of operative facts. The hearing on that motion is scheduled for February 16, 2024.

TENTATIVE RULING #8: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 2, 2024, IN DEPARTMENT NINE.

PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

9. PC20190143 DEWATER v. HOSOPO, CORP.

Review Hearing

TENTATIVE RULING #9: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, FEBRUARY 2, 2024, IN DEPARTMENT NINE.

PARTIES MAY PERSONALLY APPEAR AT THE HEARING. IF A PARTY OR PARTIES WISH TO APPEAR BY ZOOM PLEASE CONTACT THE COURT AT (530) 621-5867 AND MEETING INFORMATION WILL BE PROVIDED.

10. 23CV2145 NAME CHANGE OF BOARTFIELD

Petition for Name Change

Petitioner filed a Petition for Change of Name on December 8, 2024.

Proof of publication was filed on January 11, 2024**,** as required by Code of Civil Procedure § 1277(a).

A background check has been filed with the court as required by Code of Civil Procedure § 1279.5(f).

TENTATIVE RULING #10: ABSENT OBJECTION, THE PETITION IS GRANTED AS REQUESTED.

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

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11. 23CV2147 NAME CHANGE OF KENDRICK

Petition for Name Change

Petitioner filed a Petition for Change of Name on December 8, 2023.

Proof of publication was filed on January 29, 2024**,** as required by Code of Civil Procedure § 1277(a).

Upon review of the file, the court has yet to receive the background check for petitioner, which is required under the law. Code of Civil Procedure §1279.5(f).

TENTATIVE RULING #11: THE HEARING ON THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, FEBRUARY 23, 2024, TO ALLOW PETITIONER TIME TO FILE A BACKGROUND CHECK WITH THE COURT.

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

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