04-12-24
Dept. 9
Tentative Rulings

1. PC20210112 12FIVE CAPITAL v. GRANITE SPRINGS WINERY

Motion to Consolidate

Related Cases: PC20210117
PC20210125
PC20210136
PC20210138
PC20210141
PC20210147

A stay of this action for a period of 18 months was entered on October 7, 2022, pursuant to a Stipulation for Stay of Proceedings and Order ("Stay Order"), in order to allow the parties to implement a settlement agreement pursuant to which several business entities named as Defendants in these related cases agreed to make payments in satisfaction of Plaintiff's claim. Following material default of the settlement agreement and a hearing on January 19, 2024, the stay was lifted on Plaintiff's motion. Trial is scheduled for October 29, 2024.

Plaintiff now moves to consolidate these related actions. According to the Declaration of John Samberg, dated February 21, 2024, counsel for the Plaintiff, the matter was initially filed as separate cases against each Defendant in order to avoid the potential of staying the action against all parties in the event of bankruptcy of any party, but there are common issues of law and fact and overlap of witnesses and documentary evidence such that judicial economy would best be served by consolidating these related cases into a single action.

The motion is unopposed.

Proof of service of notice of the hearing on the motion was filed on February 28, 2024.

Request for Judicial Notice

Defendant has filed a Request for the court to take judicial notice of the Complaint filed 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.

Consolidation

Code of Civil Procedure § 1048(a) provides: "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."

California Rules of Court, Rule 3.350 (Consolidation of Cases) further provides:

(a) Requirements of motion

(1) A notice of motion to consolidate must:

(A) List all named parties in each case, the names of those who have appeared, and the names of their respective attorneys of record;

(B) Contain the captions of all the cases sought to be consolidated, with the lowest numbered case shown first; and

(C) Be filed in each case sought to be consolidated.

(2) The motion to consolidate:

(A) Is deemed a single motion for the purpose of determining the appropriate filing fee, but memorandums, declarations, and other supporting papers must be filed only in the lowest numbered case;

(B) Must be served on all attorneys of record and all nonrepresented parties in all of the cases sought to be consolidated; and

(C) Must have a proof of service filed as part of the motion.

(b) Lead case

Unless otherwise provided in the order granting the motion to consolidate, the lowest numbered case in the consolidated case is the lead case.

(c) Order

An order granting or denying all or part of a motion to consolidate must be filed in each case sought to be consolidated. If the motion is granted for all purposes including trial, any subsequent document must be filed only in the lead case.

(d) Caption and case number

All documents filed in the consolidated case must include the caption and case number of the lead case, followed by the case numbers of all of the other consolidated cases.

The court notes that the motion does not technically comply with the requirements of the California Rules of Court, Rule 350(a)(1).

TENTATIVE RULING #1: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, APRIL 12, 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.

2. SC20160174 COOK v. COOK

Approve Referee's Final Report and Accounting

This is an action for partition of real and personal property owned by the parties as tenants in common. On May 18, 2022, the court entered an Order appointing a referee pursuant to Code of Civil Procedure § 873.010. The referee was appointed for the purpose of selling two pieces of art and accounting for the net proceeds from the sales (Exhibits A and B to the Referee's Final Report). Exhibit C to the Referee's Final Report ("Report") documents the referee's fees for professional services and costs. Exhibit D to the Report is the Final Accounting spreadsheet showing a proposed distribution to each of the two parties in the amount of $26,850.27.

The referee recommends that the parties bear their own expenses incurred prior to the appointment of the referee. Report, ¶16. Plaintiff filed an objection to this recommendation, but later withdrew her objections in a filing dated April 5, 2024.

TENTATIVE RULING #2: THE COURT APPROVES THE REFEREE'S REPORT.

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.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. 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.

3. 22CV0636 LUCIA V. SUMMITVIEW CHILD & FAMILY SERVICES, INC.

Motion for Preliminary Approval of Class Action Settlement

See Related Case No. PC20210500 (Tyson v. Summitview Child and Family Services, Inc.), Item 4 below.

This is an unopposed motion for an Order for preliminary approval of a class action settlement and to make other orders required to facilitate such settlement. The underlying action involves claims against Defendant for unpaid wages in violation of various California Labor Code provisions as well as claims for civil penalties under the Private Attorney General Act ("PAGA").

Following mediation, the parties reached a Settlement Agreement. See Exhibit A to Declaration of Mehrdad Bokhour, dated January 31, 2024.

The proposed terms of the Settlement Agreement include:

Gross Settlement Amount	$300,000
Attorney's Fees not to exceed one third of Gross Settlement Amount	$100,000
Litigation Costs (not to exceed)	$20,000
Administrator Costs (not to exceed)	$10,000
PAGA Payment to Labor Workforce Development Agency	$7,500
Plaintiff's Service Award (two named Plaintiffs)	$20,000
Net Settlement Amount:	$142,500

Individual Settlement Payments would be paid on a pro-rata basis based on the number of Compensable Workweeks during the Class Period. The average payment is estimated to be $250, with the highest payment estimated to be approximately $1,000. Class Members would not be required to submit claim forms, but each Class member would be mailed the Notice Packets containing information about his or share, the opportunity to dispute the number of Compensable Workweeks and the opportunity to opt out. All Class Members who do not opt out would receive a settlement check upon the court's final approval. Defendant will pay the employer's share of payroll taxes on the portion of the Individual Settlement Amounts that are allocated as wages.

The Settlement Administrator will be responsible for mailing out notices to Class Members, making reasonable efforts to locate Class Members if the mailed notices are returned, managing the opt out process, calculating the payment amounts among participating Class Members, managing payments and issuing appropriate IRS forms. Class Members will execute releases of liability of Defendant as described in the Settlement Agreement.

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

1) For settlement purposes only, conditionally certifying the following Settlement Class: all current and former individuals who are or previously were employed by Defendant in California who were classified as non-exempt employees under California law during the Class Period (i.e., September 14, 2017, until August 31, 2023).

2) Preliminarily appointing the named Plaintiff Jessica Raye Lucia as the Class Representative and Mehrdad Bokhour of Bokhour Law Group, P.C. and Joshua Falakassa of Falakassa Law, P.C., and Zack Domb of Domb Rauchwerger LLP as Class Counsel.

3) Preliminary approval of the proposed Settlement upon the terms and conditions set forth in the Settlement Agreement, with a finding on a preliminary basis that:

   a) The Settlement appears to be within the range of reasonableness of a settlement that could ultimately be given final approval by the Court;
   b) That the Maximum Settlement Amount is fair, adequate, and reasonable as to all potential Class Members, when balanced against the probable outcome of further litigation relating to liability and damages issues;
   c) That extensive and costly investigation and research has been conducted such that counsel for the parties at this time are reasonably able to evaluate their respective positions;
   d) That the Settlement at this time will avoid substantial additional costs by all parties, as well as the delay and risks that would be presented by the further prosecution of the Action;
   e) That the Settlement has been reached as the result of intensive, non-collusive, arms-length negotiations utilizing an experienced mediator.

4) Approval, as to form and content, the proposed Notice Packet attached as Exhibit “A” to the Settlement Agreement.

5) Directing the mailing of the Notice Packet by first-class mail to the Class Members pursuant to the terms of the Settlement Agreement, and finding that the dissemination of the Notice Packet set forth in the Settlement Agreement complies with the requirements of due process of law and appears to be the best notice practicable under the circumstances.

6) Preliminary approval of the definition and disposition of the not-to-exceed Gross Settlement Amount of $300,000, which is inclusive of the payment of attorneys’ fees not to exceed $100,000, costs not to exceed $20,000, a Service Award not to exceed $10,000 to each named Plaintiff, a PAGA Payment of $10,000 (of which 75% or $7,500 will be paid to the California Labor and Workforce Development Agency (“LWDA”) and 25% or $2,500 will be paid to Settlement Class Members); Settlement Administration Costs not to exceed $10,000, and payment by Defendant of its share of payroll taxes on the portion of the Individual Settlement Amounts to Participating Class Members that are allocated as wages subject to withholding.

7) Confirmation of the ILYM Group, Inc. as the Settlement Administrator, approval of the payment of Settlement Administration Costs, not to exceed $10,000, out of the Settlement Amount for services to be rendered by on behalf of the Class Members, and instruction to the Settlement Administrator to prepare and submit to Class Counsel and Defendant's Counsel a declaration attesting to the completion of the notice process as set forth in the Settlement Agreement, including an explanation of efforts to resend any Notice Packet returned as undeliverable and the total number of opt-outs and objections received before and after the deadline.

8) Instructing the Defendant to work diligently and in good faith to compile from its records and provide the Settlement Administrator with the "Class Data" – as defined in paragraph 6 of the Settlement Agreement – for Settlement Class Members, in a format to be provided by the Settlement Administrator, which will consist of the following information: (1) the Class Members' full names; (2) last known addresses; (3) Social Security Numbers; (4) telephone numbers; and (5) dates of employment and/or number of Workweeks Worked as non-exempt employees of Defendant in California during the Class Period and the PAGA Period for each Settlement Class Member, and ordering the Defendant to provide the "Class Data" as referenced herein to the Settlement Administrator within thirty (30) days after entry of the Preliminary Approval Order.

9) Instructing the Settlement Administrator to use the National Change of Address database (U.S. Postal Service) to check for updated addresses for Class Members and then to mail, via first class U.S. mail, the Notice Packet to Settlement Class Members.

10) Establishing the deadline by which Class Members may dispute the number of Workweeks Worked, opt-out or object to be forty-five (45) calendar days from the date of mailing of the Notice Packet; and directing that:

    a) Any Class Member who desires to be excluded from the Settlement must timely mail or fax his or her written Request for Exclusion in accordance with the Notice Packet;
    b) Requests for Exclusion must include the full name, address, telephone number, last four digits of the social security number or date of birth, and signature of the Settlement Class Member requesting exclusion.
    c) The Request for Exclusion should state: "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE SUMMITVIEW CLASS ACTION LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS IN THIS LAWSUIT."
    d) All such persons who properly and timely exclude themselves from the Settlement shall not be Settlement Class Members and shall have no rights with respect to the Settlement, no interest in the Settlement proceeds, and no standing to object to the proposed Settlement.

11) Establishing the deadline for filing objections to any of the terms of the Settlement as forty-five (45) calendar days from the date of mailing of the Notice Packet, and providing that:

a) Any Class Member who wishes to object to the Settlement must serve a timely written objection on the Settlement Administrator, who will email a copy of the objection to Class Counsel and counsel for Defendant.
b) Class Counsel will submit a copy of the objection to the Court.
c) Any such objection shall include the full name, address, telephone number, last four digits of the social security number or date of birth, signature of the Objecting Settlement Class Member, and the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof, and, if the Objecting Settlement Class Member is represented by counsel, the name and address of his or her counsel.
d) Any Class Member who fails to make his or her objection in the manner provided for in this Order shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to or appeal of the fairness, reasonableness or adequacy of the Settlement as incorporated in the Settlement Agreement, or to the award of Attorneys' Fees and Costs, or Service Award to the Class Representative.

12) Providing that

a) Any Settlement Class Member who does not submit a timely and valid Request for Exclusion will be deemed a Participating Class Member and will be entitled to receive an Individual Settlement Amount based upon the allocation formula described in the Settlement Agreement;
b) Settlement Class Members may not object to or opt-out of the Settlement with respect to the Release of the PAGA Claims.
c) Settlement Class Members who opt out of the Release of Class Claims will still be paid their allocation of the PAGA Payment and will be bound by the Release of PAGA Claims regardless of whether they submit a timely and valid Request for exclusion from the Release of Class Claims.

13) Approving the handling of unclaimed funds set forth in the Settlement Agreement, specifically that any unclaimed funds in the Settlement Administrator's account as a result of a Participating Class Member's failure to timely cash a settlement check shall be handled by the Settlement Administrator and be issued to the State of California Unclaimed Property Fund, as set forth in the Settlement Agreement.

14) Setting a final approval hearing to determine (1) whether the proposed settlement is fair, reasonable, and adequate and should be finally approved by the Court; (2) the amount of attorneys' fees and costs to award to Class Counsel; and (3) the amount of service award to the Class Representative.

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.

TENTATIVE RULING #3: THE MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT IS GRANTED. APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, APRIL 12, 2024, TO SET THE DATE OF THE FINAL APPROVAL HEARING.

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.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. 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.

4. PC20210500 TYSON V. SUMMITVIEW CHILD & FAMILY SERVICES, INC.

Motion for Preliminary Approval of Class Action Settlement

See Related Case No. 22CV0636 (Lucia v. Summitview Child and Family Services, Inc.), Item 3 above.

This is an unopposed motion for an Order for preliminary approval of a class action settlement and to make other orders required to facilitate such settlement. The underlying action involves claims against Defendant for unpaid wages in violation of various California Labor Code provisions as well as claims for civil penalties under the Private Attorney General Act ("PAGA").

Following mediation, the parties reached a Settlement Agreement. See Exhibit A to Declaration of Mehrdad Bokhour, dated January 31, 2024.

The proposed terms of the Settlement Agreement include:

Gross Settlement Amount	$300,000
Attorney's Fees not to exceed one third of Gross Settlement Amount	$100,000
Litigation Costs (not to exceed)	$20,000
Administrator Costs (not to exceed)	$10,000
PAGA Payment to Labor Workforce Development Agency	$7,500
Plaintiff's Service Award (two named Plaintiffs)	$20,000
Net Settlement Amount:	$142,500

Individual Settlement Payments would be paid on a pro-rata basis based on the number of Compensable Workweeks during the Class Period. The average payment is estimated to be $250, with the highest payment estimated to be approximately $1,000. Class Members would not be required to submit claim forms, but each Class member would be mailed the Notice Packets containing information about his or share, the opportunity to dispute the number of Compensable Workweeks and the opportunity to opt out. All Class Members who do not opt out would receive a settlement check upon the court's final approval. Defendant will pay the employer's share of payroll taxes on the portion of the Individual Settlement Amounts that are allocated as wages.

The Settlement Administrator will be responsible for mailing out notices to Class Members, making reasonable efforts to locate Class Members if the mailed notices are returned, managing the opt out process, calculating the payment amounts among participating Class Members, managing payments and issuing appropriate IRS forms. Class Members will execute releases of liability of Defendant as described in the Settlement Agreement.

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

1) For settlement purposes only, conditionally certifying the following Settlement Class: all current and former individuals who are or previously were employed by Defendant in California who were classified as non-exempt employees under California law during the Class Period (i.e., September 14, 2017, until August 31, 2023).

2) Preliminarily appointing the named Plaintiff, Karla Tyson as the Class Representative and Mehrdad Bokhour of Bokhour Law Group, P.C. and Joshua Falakassa of Falakassa Law, P.C., and Zack Domb of Domb Rauchwerger LLP as Class Counsel.

3) Preliminary approval of the proposed Settlement upon the terms and conditions set forth in the Settlement Agreement, with a finding on a preliminary basis that:

    a) The Settlement appears to be within the range of reasonableness of a settlement that could ultimately be given final approval by the Court;
    b) That the Maximum Settlement Amount is fair, adequate, and reasonable as to all potential Class Members, when balanced against the probable outcome of further litigation relating to liability and damages issues;
    c) That extensive and costly investigation and research has been conducted such that counsel for the parties at this time are reasonably able to evaluate their respective positions;
    d) That the Settlement at this time will avoid substantial additional costs by all parties, as well as the delay and risks that would be presented by the further prosecution of the Action;
    e) That the Settlement has been reached as the result of intensive, non-collusive, arms-length negotiations utilizing an experienced mediator.

4) Approval, as to form and content, the proposed Notice Packet attached as Exhibit “A” to the Settlement Agreement.

5) Directing the mailing of the Notice Packet by first-class mail to the Class Members pursuant to the terms of the Settlement Agreement, and finding that the dissemination of the Notice Packet set forth in the Settlement Agreement complies with the requirements of due process of law and appears to be the best notice practicable under the circumstances.

6) Preliminary approval of the definition and disposition of the not-to-exceed Gross Settlement Amount of $300,000, which is inclusive of the payment of attorneys’ fees not to exceed $100,000, costs not to exceed $20,000, a Service Award not to exceed $10,000 to each named Plaintiff, a PAGA Payment of $10,000 (of which 75% or $7,500 will be paid to the California Labor and Workforce Development Agency (“LWDA”) and 25% or $2,500 will be paid to Settlement Class Members); Settlement Administration Costs not to exceed $10,000, and payment by Defendant of its share of payroll taxes on the portion of the Individual Settlement Amounts to Participating Class Members that are allocated as wages subject to withholding.

7) Confirmation of the ILYM Group, Inc. as the Settlement Administrator, approval of the payment of Settlement Administration Costs, not to exceed $10,000, out of the Settlement Amount for services to be rendered by on behalf of the Class Members, and instruction to the Settlement Administrator to prepare and submit to Class Counsel and Defendant's Counsel a declaration attesting to the completion of the notice process as set forth in the Settlement Agreement, including an explanation of efforts to resend any Notice Packet returned as undeliverable and the total number of opt-outs and objections received before and after the deadline.

8) Instructing the Defendant to work diligently and in good faith to compile from its records and provide the Settlement Administrator with the "Class Data" – as defined in paragraph 6 of the Settlement Agreement – for Settlement Class Members, in a format to be provided by the Settlement Administrator, which will consist of the following information: (1) the Class Members' full names; (2) last known addresses; (3) Social Security Numbers; (4) telephone numbers; and (5) dates of employment and/or number of Workweeks Worked as non-exempt employees of Defendant in California during the Class Period and the PAGA Period for each Settlement Class Member, and ordering the Defendant to provide the "Class Data" as referenced herein to the Settlement Administrator within thirty (30) days after entry of the Preliminary Approval Order.

9) Instructing the Settlement Administrator to use the National Change of Address database (U.S. Postal Service) to check for updated addresses for Class Members and then to mail, via first class U.S. mail, the Notice Packet to Settlement Class Members.

10) Establishing the deadline by which Class Members may dispute the number of Workweeks Worked, opt-out or object to be forty-five (45) calendar days from the date of mailing of the Notice Packet; and directing that:

    a) Any Class Member who desires to be excluded from the Settlement must timely mail or fax his or her written Request for Exclusion in accordance with the Notice Packet;
    b) Requests for Exclusion must include the full name, address, telephone number, last four digits of the social security number or date of birth, and signature of the Settlement Class Member requesting exclusion.
    c) The Request for Exclusion should state: "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE SUMMITVIEW CLASS ACTION LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THE CLASS CLAIMS IN THIS LAWSUIT."
    d) All such persons who properly and timely exclude themselves from the Settlement shall not be Settlement Class Members and shall have no rights with respect to the Settlement, no interest in the Settlement proceeds, and no standing to object to the proposed Settlement.

11) Establishing the deadline for filing objections to any of the terms of the Settlement as forty five (45) calendar days from the date of mailing of the Notice Packet, and providing that:

a) Any Class Member who wishes to object to the Settlement must serve a timely written objection on the Settlement Administrator, who will email a copy of the objection to Class Counsel and counsel for Defendant.
b) Class Counsel will submit a copy of the objection to the Court.
c) Any such objection shall include the full name, address, telephone number, last four digits of the social security number or date of birth, signature of the Objecting Settlement Class Member, and the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof, and, if the Objecting Settlement Class Member is represented by counsel, the name and address of his or her counsel.
d) Any Class Member who fails to make his or her objection in the manner provided for in this Order shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to or appeal of the fairness, reasonableness or adequacy of the Settlement as incorporated in the Settlement Agreement, or to the award of Attorneys' Fees and Costs, or Service Award to the Class Representative.

12) Providing that

a) Any Settlement Class Member who does not submit a timely and valid Request for Exclusion will be deemed a Participating Class Member and will be entitled to receive an Individual Settlement Amount based upon the allocation formula described in the Settlement Agreement;
b) Settlement Class Members may not object to or opt-out of the Settlement with respect to the Release of the PAGA Claims.
c) Settlement Class Members who opt out of the Release of Class Claims will still be paid their allocation of the PAGA Payment and will be bound by the Release of PAGA Claims regardless of whether they submit a timely and valid Request for exclusion from the Release of Class Claims.

13) Approving the handling of unclaimed funds set forth in the Settlement Agreement, specifically that any unclaimed funds in the Settlement Administrator's account as a result of a Participating Class Member's failure to timely cash a settlement check shall be handled by the Settlement Administrator and be issued to the State of California Unclaimed Property Fund, as set forth in the Settlement Agreement.

14) Setting a final approval hearing to determine (1) whether the proposed settlement is fair, reasonable, and adequate and should be finally approved by the Court; (2) the amount of attorneys' fees and costs to award to Class Counsel; and (3) the amount of service award to the Class Representative.

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

(i) 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.

(j) 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.

(k) 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.

(l) 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.

(m) 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.

(n) 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.

(o) Conduct of final approval hearing

Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.

(p) 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.

TENTATIVE RULING #4: THE MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT IS GRANTED. APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, APRIL 12, 2024, TO SET THE DATE OF THE FINAL APPROVAL HEARING.

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.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. 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.

5. 23CV0065 KENT v. KANNAN

Attorney's Fees

Petitioner filed a Request for Civil Harassment Restraining Order, which was denied on the court's finding that there was insufficient evidence to justify the issuance of a restraining order after a hearing held over the course of three days that included documentary evidence and the testimony of witnesses. Respondent seeks attorney's fees as prevailing party.

Code of Civil Procedure § 527.6(s) provides that "[t]he prevailing party in [a civil harassment] action brought pursuant to this section may be awarded court costs and attorney's fees, if any."

Respondent's counsel filed a Declaration, dated May 1, 2023, indicating that 26.5 hours were spent on both this case (23CV0065) as well as the related case against Respondent's spouse (23CV0064), which included client communications, reviewing the Petition, site investigation, drafting a response to the Petition, issuing a third party subpoena of records, and four court hearing dates on February 10, 2023 and March 17, 24 and 30, 2023. Respondent's counsel's hourly rate is $400 per hour.

With respect to the October 27, 2023 hearing, the court noted that Petitioner had not filed any opposition to the fees motion; however, the court identified an issue related to proof service of the motion for attorney's fees.

On December 15, 2023, the court issued a Ruling on Submitted Matter ordering Petitioner to pay Respondent $3,200 for attorney's fees related to her denied restraining order request under Code of Civil Procedure (CCP) § 527.6(s). On January 29, 2024, Petitioner filed a motion to set aside the ruling, arguing that, notwithstanding the proof of service filed by Respondent on October 27, 2023, she was never served with the motion for attorney's fees and therefore did not have an opportunity to respond.

The court, mindful of the strong public policy in favor of resolving cases on their merits, set aside the December 15, 2023, order. The court continued the matter to April 12, 2024, to resolve the attorney's fees motion, stating that if neither party filed any new pleadings, the court would rely on the pleadings already filed on this issue.

On April 2, 2024, Petitioner filed a supplemental Declaration of Lucinda Kent, dated April 2, 2024. That Declaration documents a new series of alleged events of harassment between January 29 and March 21, 2024, and requests the court to order Respondents to pay Petitioners costs in the amount of $931.08 for temporary fencing and court costs.

As to the request for costs by Petitioner, the court finds that such a request is beyond the jurisdiction of the court in this case, particularly since the underlying restraining order request

was denied. As to the concerns raised by Petitioner since the restraining order, the court finds that it must focus on the events leading up to and through the denial of the restraining order in determining what fees, if any, are appropriate to order.

Upon review of Petitioner's declaration, the court finds that its initial analysis remains largely unchanged. As a result of Petitioner's filing of her restraining order request, Respondent incurred substantial attorney's fees that should be borne by Petitioner. The court adopts the reasoning in its prior December 15, 2023 ruling with a modification to the number of hours the court deems to be reasonable. In re-reviewing the billing statement attached to Respondent's motion and based on this court's own experience and the level of complexity of this case, the court finds that its initial assessment slightly overstated the reasonable number of hours expended by Respondent's counsel in this matter. Rather than 8 hours for preparation, the court finds that 6 hours (for both cases) is the more reasonable amount. Finding the billing rate of $400 to be reasonable, the court finds that the reasonable total fees for both cases is $5,600, amounting to $2,800 per case. Therefore, for this case the court orders Petitioner to pay Respondent $2,800 in attorney's fees, payable to Respondent by May 10, 2024 or as otherwise agreed upon by the parties.

TENTATIVE RULING #5: PETITIONER IS ORDERED TO PAY $2,800 IN ATTORNEY'S FEES TO RESPONDENT.

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. 23CV0064 KENT v. KANNAN

Attorney's Fees

Petitioner filed a Request for Civil Harassment Restraining Order, which was denied on the court's finding that there was insufficient evidence to justify the issuance of a restraining order after a hearing held over the course of three days that included documentary evidence and the testimony of witnesses. Respondent seeks attorney's fees as prevailing party.

Code of Civil Procedure § 527.6(s) provides that "[t]he prevailing party in [a civil harassment] action brought pursuant to this section may be awarded court costs and attorney's fees, if any."

Respondent's counsel filed a Declaration, dated May 1, 2023, indicating that 26.5 hours were spent on both this case (23CV0064) as well as the related case against Respondent's spouse (23CV0065), which included client communications, reviewing the Petition, site investigation, drafting a response to the Petition, issuing a third party subpoena of records, and four court hearing dates on February 10, 2023 and March 17, 24 and 30, 2023. Respondent's counsel's hourly rate is $400 per hour.

With respect to the October 27, 2023 hearing, the court noted that Petitioner had not filed any opposition to the fees motion; however, the court identified an issue related to proof service of the motion for attorney's fees.

On December 15, 2023, the court issued a Ruling on Submitted Matter ordering Petitioner to pay Respondent $3,200 for attorney's fees related to her denied restraining order request under Code of Civil Procedure (CCP) § 527.6(s). On January 29, 2024, Petitioner filed a motion to set aside the ruling, arguing that, notwithstanding the proof of service filed by Respondent on October 27, 2023, she was never served with the motion for attorney's fees and therefore did not have an opportunity to respond.

The court, mindful of the strong public policy in favor of resolving cases on their merits, set aside the December 15, 2023, order. The court continued the matter to April 12, 2024, to resolve the attorney's fees motion, stating that if neither party filed any new pleadings, the court would rely on the pleadings already filed on this issue.

On April 2, 2024, Petitioner filed a supplemental Declaration of Lucinda Kent, dated April 2, 2024. That Declaration documents a new series of alleged events of harassment between January 29 and March 21, 2024, and requests the court to order Respondents to pay Petitioners costs in the amount of $931.08 for temporary fencing and court costs.

As to the request for costs by Petitioner, the court finds that such a request is beyond the jurisdiction of the court in this case, particularly since the underlying restraining order request

was denied. As to the concerns raised by Petitioner since the restraining order, the court finds that it must focus on the events leading up to and through the denial of the restraining order in determining what fees, if any, are appropriate to order.

Upon review of Petitioner's declaration, the court finds that its initial analysis remains largely unchanged. As a result of Petitioner's filing of her restraining order request, Respondent incurred substantial attorney's fees that should be borne by Petitioner. The court adopts the reasoning in its prior December 15, 2023 ruling with a modification to the number of hours the court deems to be reasonable. In re-reviewing the billing statement attached to Respondent's motion and based on this court's own experience and the level of complexity of this case, the court finds that its initial assessment slightly overstated the reasonable number of hours expended by Respondent's counsel in this matter. Rather than 8 hours for preparation, the court finds that 6 hours (for both cases) is the more reasonable amount. Finding the billing rate of $400 to be reasonable, the court finds that the reasonable total fees for both cases is $5,600, amounting to $2,800 per case. Therefore, for this case the court orders Petitioner to pay Respondent $2,800 in attorney's fees, payable to Respondent by May 10, 2024 or as otherwise agreed upon by the parties.

TENTATIVE RULING #6: PETITIONER IS ORDERED TO PAY $2,800 IN ATTORNEY'S FEES TO RESPONDENT.

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. PCL20190258 PEOPLE OF THE STATE OF CALIFORNIA v. CANALES

Trial Setting

At the hearing on March 11, 2024, the People requested a 30-day continuance. Proof of service of notice of this hearing was filed with the court on March 22, 2024.

TENTATIVE RULING #7: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, APRIL 12, 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.

8. 24CV0539 SIEMIETKOWSKI v. MCLEAN

Motion to Transfer Small Claims Action

This motion cites Code of Civil Procedure § 116.390 as authority to seek a transfer of Small Claims Case No. 24CV0004, that was initiated by Janine Marderian, a Defendant in this Superior Court action, against the Plaintiffs in this case.

The Small Claims action was filed by Marderian on January 3, 2024, and seeks recovery of the cost of a property survey and legal costs associated with the dispute. The instant case was filed on March 19, 2024, and names Marderian as one of several Defendants in the Superior Court action. The Superior Court Complaint in the instant case includes causes of action for prescriptive easement, trespass to land, quiet title/declaratory relief and injunctive relief.

Both actions relate to a dispute between several property owners with respect to an easement affecting their properties.

Trial in the Small Claims action is currently scheduled for April 19, 2024, in Department 10.

California Code, Code of Civil Procedure - CCP § 116.390 governs transfers from Small Claims to Superior Court:

> (a) If a defendant has a claim against a plaintiff that exceeds the jurisdictional limits stated in Sections 116.220, 116.221, and 116.231, and the claim relates to the contract, transaction, matter, or event which is the subject of the plaintiff's claim, the defendant may commence an action against the plaintiff in a court of competent jurisdiction and request the small claims court to transfer the small claims action to that court.
>
> (b) The defendant may make the request by filing with the small claims court in which the plaintiff commenced the action, at or before the time set for the hearing of that action, a declaration stating the facts concerning the defendant's action against the plaintiff with a true copy of the complaint so filed by the defendant against the plaintiff. The defendant shall cause a copy of the declaration and complaint to be personally delivered to the plaintiff at or before the time set for the hearing of the small claims action.
>
> (c) In ruling on a motion to transfer, the small claims court may do any of the following: (1) render judgment on the small claims case prior to the transfer; (2) not render judgment and transfer the small claims case; (3) refuse to transfer the small claims case on the grounds that the ends of justice would not be served. If the small claims action is transferred prior to judgment, both actions shall be tried together in the transferee court.

> (d) When the small claims court orders the action transferred, it shall transmit all files and papers to the transferee court.
>
> (e) The plaintiff in the small claims action shall not be required to pay to the clerk of the transferee court any transmittal, appearance, or filing fee unless the plaintiff appears in the transferee court, in which event the plaintiff shall be required to pay the filing fee and any other fee required of a defendant in the transferee court. However, if the transferee court rules against the plaintiff in the action filed in that court, the court may award to the defendant in that action the costs incurred as a consequence of the transfer, including attorney's fees and filing fees.

The statute requires to transfer motion to be filed in the Small Claims action, and it is the Small Claims court that is empowered to make the decision about transferring the case, including a decision about whether to render judgment in the Small Claims action prior to the transfer. The motion to transfer the Small Claims case is not properly filed in this Superior Court action.

TENTATIVE RULING #8: PLAINTIFF'S MOTION TO TRANSFER SMALL CLAIMS CASE NO. 24CV0004 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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9. 23CV0943 WELLS FARGO BANK v. DAVITT

OSC - Sanctions

Plaintiff served Requests for Admissions, Set One, on Defendant on October, 12, 2023, but has not received any response.

Code of Civil Procedure § 2033.280 addresses the failure to respond to requests for admissions:

> If a party to whom requests for admission are directed fails to serve a timely response, the following rules apply:
>
> (a) The party to whom the requests for admission are directed waives any objection to the requests, including one based on privilege or on the protection for work product under Chapter 4 (commencing with Section 2018.010). . . .
>
> (b) The requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for a monetary sanction under Chapter 7 (commencing with Section 2023.010).
>
> (c) The court shall make this order, unless it finds that the party to whom the requests for admission have been directed has served, before the hearing on the motion, a proposed response to the requests for admission that is in substantial compliance with Section 2033.220.

Although Plaintiff has not requested monetary sanctions, "[i]t is mandatory that the court impose a monetary sanction . . . on the party or attorney, or both, whose failure to serve a timely response to requests for admission necessitated this motion.

At the hearing on March 29, 2024, the court granted Plaintiff's Motion to Deem Requests for Admissions Admitted. The court determined that the Plaintiff should be awarded sanctions in the amount of $250 but continued the hearing on sanctions due to a clerical error in the Tentative Ruling.

TENTATIVE RULING #9: THE COURT ORDERS DEFENDANT TO PAY PLAINTIFF SANCTIONS IN THE AMOUNT OF $250 BY MAY 3, 2024.

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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10. 23CV1153 HIGH HILL RANCH, LLC v. ALTER

Demurrer to Cross-Defendant's Answer

Defendant and Cross-Complainant demurred to Plaintiff and Cross-Defendant's Answer on December 21, 2023. On April 5, 2024, Plaintiff filed an Amended Answer. While the Amended Answer was accepted for filing by the court, in the case of a pending demurrer the amended pleading must be filed within the time to file a responsive pleading to the demurrer, absent a stipulation of the parties. The court notes that the parties stipulated to an extension of time for the filing of Plaintiff's Amended Complaint due to the unexpected passing of the sole member of the Plaintiff corporation and individual Cross-Defendant. In the same spirit and given the Amended Answer has in fact been received for filing by the court and given the public policy of preferring substance over form, the court deems the pending demurrer mooted by the filing of the Amended Answer.

TENTATIVE RULING #10: THE DEMURRER IS DEEMED MOOTED BY THE AMENDED ANSWER AND THE MATTER IS DROPPED FROM CALENDAR.

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. PC20200162 POULTON v. COUNTY OF EL DORADO

Motion for Summary Judgment – County of Placer
Motion for Summary Judgment – California Department of Parks and Recreation

This case seeks damages for personal injuries resulting from a motor vehicle accident on State Route 49 in El Dorado County. (UMF No. 10.) The collision occurred when Defendant Stockton pulled off an "informal parking area" on the shoulder of the road into traffic and into Plaintiff's path.

The operative pleading is the Second Amended Complaint ("SAC"), filed on November 20, 2020. *See*, Declaration of Deputy Attorney General Colin D. Smithey, dated January 4, 2024 ("Smithey Declaration"), Exhibit A. Following a hearing on California Department of Parks and Recreation's demurrer, on April 7, 2021, the court sustained the demurrer as to the Second Cause of Action (negligence of public entity) without leave to amend. Smithey Declaration, Exhibit C.

Motion for Summary Judgment – County of Placer

In response to County of Placer's motion for summary judgment, which argues that the incidents at issue took place at a location that was not within the County's jurisdiction or control, Plaintiff filed a declaration of non-opposition on March 29, 2024. Accordingly, the County of Placer's motion is granted.

Motion for Summary Judgment – California Department of Parks and Recreation

Plaintiff alleges that the California Department of Parks and Recreation ("DPR") is liable for a dangerous condition of public property under Government Code § 835. DPR counters that 1) it did not own, operate, maintain or control the highway or the shoulder of the highway, 2) DPR is immune from liability for failure to provide police protection services or traffic controls, and 3) no dangerous condition of public property existed as to any property within DPR's management authority.

The location of the collision is within the Auburn State Recreation Area ("ASRA"), a 30,000-acre area owned by the United States Bureau of Reclamation ("USBR"). (UMF No. 18.) DPR manages the ASRA pursuant to a Managing Partner Agreement ("MPA") with the USBR. (UMF No. 19.) Under the terms of the MPA, DPR's management authority over the ASRA is subject to, and subordinate to any Use Authorization that the USBR has granted to any other entity. (UMF No. 20.) Although the parties have submitted Separate Statements listing more than 200 "undisputed" material facts, very few of those are in fact, undisputed.

Request for Judicial Notice

Defendants have filed a Request for the court to take judicial notice of various pleadings and orders in the court's file. 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, Defendants' request for judicial notice is granted.

Motion for Summary Judgment Standard of Review

> [S]ummary judgment or summary adjudication is to be granted when there is no triable issue of material fact and the moving party is entitled to judgment as a matter of law." (*Mills v. U.S. Bank* (2008) 166 Cal.App.4th 871, 894–895, 83 Cal.Rptr.3d 146.) The "party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 861–862, 107 Cal.Rptr.2d 841, 24 P.3d 493.)
>
> "A defendant seeking summary judgment bears the initial burden of proving the cause of action has no merit by showing that one or more of its elements cannot be established or there is a complete defense to it.... [Citations.]" (*Cucuzza v. City of Santa Clara* (2002) 104 Cal.App.4th 1031, 1037, 128 Cal.Rptr.2d 660.)

Alvarez v. Seaside Transportation Servs. LLC, 13 Cal. App. 5th 635, 641–42 (2017).

Statutory Immunity

A public entity is not liable for an injury arising out of the alleged act or omission of the entity except as provided by statute. Government Code § 815.

California Code, Government Code § 835 provides for public entity liability with respect to dangerous conditions on its property:

> Except as provided by statute, a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the

> dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either:
>
> (a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or
>
> (b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.

California Code, Government Code § 830 further provides:

> As used in this chapter:
>
> (a) "Dangerous condition" means a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property or adjacent property is used with due care in a manner in which it is reasonably foreseeable that it will be used.
>
> (b) "Protect against" includes repairing, remedying or correcting a dangerous condition, providing safeguards against a dangerous condition, or warning of a dangerous condition.
>
> (c) "Property of a public entity" and "public property" mean real or personal property owned or controlled by the public entity, but do not include easements, encroachments and other property that are located on the property of the public entity but are not owned or controlled by the public entity.

The elements of a cause of action against a public entity under section 835 are: (1) a dangerous condition existed on the public property at the time of the injury; (2) the condition proximately caused the injury; (3) the condition created a reasonably foreseeable risk of the kind of injury sustained; and (4) the public entity had actual or constructive notice of the dangerous condition of the property in sufficient time to have taken measures to protect against it. Vedder v. County of Imperial, 36 Cal.App.3d 654, 659, (1974).

Ownership or Control

DPR argues that as a matter of law, it did not own, operate, maintain or control the highway or the shoulder of the highway (the "informal parking area") where the incidents leading to the collision took place, citing Low v. City of Sacramento, 7 Cal. App. 3d 826 (1970). Both of those areas are within the CalTrans right-of-way and subject to CalTrans exclusive

control.[1] (UMF No. 23.) There is substantial case law addressing the question of a public agency's control over property that it does not own.

Chatman v. Alameda Cnty. Flood Control etc. Dist., 183 Cal. App. 3d 424 (1986) discussed a flood control district's responsibility for a culvert constructed on private property that drained a certain creek. The court held that a public agency's activities in conducting inspections of the condition of the culvert, including the culvert in a basin-wide channel clearing program, assumption of maintenance responsibility for other portions of the creek not including the culvert, and requiring agency approval for work done on the culvert did not amount to "ownership or control" sufficient to create liability for the facility located on private property.

Low v. City of Sacramento, 7 Cal. App. 3d 826 (1970) involved a case against a county government after the plaintiff was injured by falling because of a hole in the surface of a parking strip that was owned by the municipality. The county appealed a judgment of liability because, it argued, the parking strip was owned by the city. In its determination that the county did have legal responsibility for the parking strip based on its activities in mowing, watering, cleaning debris from the parking strip and periodically filling holes that developed in the dirt surface, the court interpreted the phrase "owned or controlled" as used in Government Code § 830(c):

> "The crucial element is control." [citation] . . . Where the public entity's relationship to the dangerous property is not clear, aid may be sought by inquiring whether the particular defendant had control, in the sense of power to prevent, remedy or guard against the dangerous condition; whether his ownership is a naked title or whether it is coupled with control; and whether a private defendant, having a similar relationship to the property, would be responsible for its safe condition.

Low v. City of Sacramento, 7 Cal. App. 3d 826, 831, 833–34 (1970).

In Low the county owned fee title to the property on which the parking strip was located. When the unincorporated area was annexed to the city the roadway on which the parking strip was located became a city street pursuant to a public street easement held by the municipality. DPR argues that this fact distinguishes the current case, where DPR does not hold the servient estate but only manages the federal ASRA according to the limited scope of a management agreement, which agreement is expressly made "subject to, and subordinate to any Use

[1] Streets and Highway Code § 90: The department shall have full possession and control of all state highways and all property and rights in property acquired for state highway purposes. The department is authorized and directed to lay out and construct all state highways between the termini designated by law and on the locations as determined by the commission.
Streets and Highway Code § 91: The department shall improve and maintain the state highways, including all traversable highways which have been adopted or designated as state highways by the commission, as provided in this code.
See also Government Code §§ 14030(d); 14520.3(b); Jamison v. Dep't of Transportation, 4 Cal. App. 5th 356 (2016).

Authorization that the USBR has granted to any other entity." (UMF No. 20.) The roadway and "informal parking area" along the shoulder of the roadway are within the CalTrans right-of-way and subject to CalTrans exclusive control. (UMF No. 23.)

In Tolan v. State of California ex rel. Dep't of Transportation, 100 Cal. App. 3d 980 (1979) the issue on appeal was whether control and ownership under Government Code Sections 830(c) and 835 must be at the time of the accident or only at the time of the design of the dangerous condition. Id., 100 Cal.App.3d at 983. The court held that the public entity must be the owner or in control of the property at the time of the injury. Id.

Avey v. Santa Clara Cnty., 257 Cal. App. 2d 708 (1968) also involved an action against local government entities with respect to a roadway owned, maintained and controlled by the state and a median strip that ran along the center of the roadway. The local agencies were aware that children who waited at a school bus stop habitually ran across the roadway to go to a store on the other side of the street. The median was planted with foliage that prevented traffic from seeing these children crossing the street, and plaintiff's child was fatally injured as a result. The city had notice of the danger because of previous incidents at the location. The court held that even though the local agencies had notice of the issue, "neither defendant had authority to remedy the alleged dangerous conditions of El Camino Real or the adjacent shrubbery covered island." Id., 257 Cal.App.2d at 712.

Durham v. City of Los Angeles, 91 Cal. App. 3d 567 (1979) involved a child injured on a railroad right-of-way that was adjacent to a city street. The plaintiff argued that the city had a duty to eliminate a crosswalk in the street that led to the railroad track as a safety measure to prevent known hazards in the contiguous railroad right-of-way. "The city's property in the case at bench was in no way defective and could not be considered dangerous except in relation to the railroad tracks. As in *Avey*, *supra.*, 257 Cal.App.2d at page 713, we find no duty on the political entity to erect some sort of barricade in order to maintain its street in a reasonably safe condition. Neither must the city provide supervision at that location." Durham, 91 Cal. App. 3d at 577.

In Aaitui v. Grande Properties, 29 Cal. App. 4th 1369 (1994) the court held that the municipality was not liable for hazardous conditions in a private swimming pool even though it exercised regulatory authority over the pool through inspections, issued citations for safety violations and a notice that the pool was to be closed until the safety violations were corrected, and had authority to abate the nuisance that its regulatory activities had identified. The court stated that: "plaintiff's . . . response to the summary judgment motion failed to establish that the city did any more than perform its traditional regulatory function. We will not impose liability by construing such as control, thus leaving municipalities with the Hobson's choice of regulating and accepting liability or abandoning regulation in order to keep budgets from being

busted by lawsuits arising out of accidents they realistically cannot prevent." Aaitui v. Grande Properties, 29 Cal. App. 4th 1369, 1377 (1994).

Similarly, in Pub. Utilities Com. v. Superior Ct., 181 Cal. App. 4th 364 (2010) the court held that "a public entity's ability to regulate property it neither owns nor possesses is not equivalent to a public entity having control of the property within the meaning of section 830." Pub. Utilities Com. v. Superior Ct., 181 Cal. App. 4th 364, 366 (2010). In that case, the Public Utilities Commission ("PUC") had observed a hazardous condition and recommended upgrading a railroad crossing warning device at the location where Plaintiff's spouse was killed on property that was regulated but not owned by the PUC. *See also* Goddard v. Dep't of Fish & Wildlife, 243 Cal. App. 4th 350, 366 (2015) (even though the state owns the riverbed, it does not own the dam remnant that created the dangerous condition, and despite its regulatory authority to require removal of the dam remnant "it did not have the power to repair the breach or repair the remnant.")

Plaintiff argues that DPR has sufficient authority to enforce parking and traffic laws in the ASRA to hold it responsible for injuries caused by motor vehicle collisions within the CalTrans right-of-way. However, the cases listed above clearly establish that regulatory authority in itself does not establish sufficient "ownership or control" upon which liability for a dangerous condition may be established. Nor does the authority to issue parking citations equate to the authority to design and locate parking facilities or traffic signage within the CalTrans right-of-way.

Plaintiff's argument that DPR controls an area that is owned by the federal government and that is subject to a right-of-way easement granted to CalTrans is not particularly persuasive given the applicable case law, but the court need not make any findings on that issue because there are other triable issues of material fact that prevent disposition on summary judgment.

Dangerous Condition on Adjacent Property

Even if the location where the incident occurred is not within the "ownership or control" of the public agency, Plaintiff argues that a public entity's property may still be considered dangerous "'if it creates a substantial risk of injury to adjacent property or to persons on adjacent property; . . .' (Cal. Law Revision Com. com., reprinted at 32 West's Ann. Gov. Code (1995 ed.) foll. § 830, p. 299.)" Bonanno v. Cent. Contra Costa Transit Auth., 30 Cal. 4th 139, 148. The Bonanno case held a public transit authority liable for the location of a bus stop.

The Bonanno court held that "hazards present on adjoining property may create a dangerous condition of public property when users of the public property are necessarily exposed to those risks." Id., 30 Cal.4th at 149. It referred to a case where a city street was determined to be a dangerous condition where it ran adjacent to railroad tracks and children attending a grammar school had to cross the railroad tracks on their way to and from school

(Holmes v. City of Oakland, 260 Cal.App.2d 378 (1968)), and another case where a public park designated for the use of model airplanes was adjacent to uninsulated electrical lines (Branzel v. City of Concord, 247 Cal.App.2d 68 (1966)). The court considered these situations to represent a dangerous condition of public property "because of the design or *location* of the improvement, the interrelationship of its structural or natural features, or the presence of latent hazards associated with its normal use." Bonanno, 30 Cal.4th at 149 (citations omitted, italics in original).

DPR argues that the Bonanno case is distinguishable from the present situation because here, there is nothing about DPR's property that creates a hazard. It has not placed any facility in a manner or location that requires people to use the CalTrans right-of-way unsafely.

Further, DPR argues that unlike Bonanno, DPR is prevented from altering existing parking conditions because any such change would require an encroachment permit from CalTrans. There is some dispute as to what extent DPR had previously attempted to engage CalTrans on addressing the parking situation through an encroachment permit, an issue which, in itself is a triable issue of material fact.

DPR also argues that, unlike the ability of a transit agency to move a bus stop, that the steep topography and the constraints of a state highway limit the options for redesigning parking facilities in the area.

DPR considers the case of Vasilnko v. Grace Family Church 3 Cal.5th 1077, 1082 (2017) to be factually analogous. In that case, the Plaintiff was struck by a car while crossing the street between the Defendant's church and the church's overflow parking area. The plaintiff argues that the church owed a duty to protect the plaintiff from the dangers of crossing the public street, and the church countered that it owed plaintiff no duty "under the principle that landowners have no duty to protect others from dangers on abutting streets unless the landowner created the dangers." Vasilenko, 3 Cal. 5th at 1081. The court noted that the Defendant, "by locating its parking lot on the other side of the street and directing Vasilenko to park there, foreseeably increased the likelihood that Vasilenko would cross the street at that location and thereby encounter harm. Thus the circumstances here are different from when a landowner merely owns property abutting a public street." Id. at 1081–82. Ultimately the court concluded that the "landowner does not have a duty to assist invitees in crossing a public street when the landowner does no more than site and maintain a parking lot that requires invitees to cross the street to access the landowner's premises, so long as the street's dangers are not obscured or magnified by some condition of the landowner's premises or by some action taken by the landowner. Id. at 1082. As part of that holding the court addressed the "the closeness of the connection between the defendant's conduct and the injury suffered", a factor which corresponds to Government Code § 835's requirement that a dangerous condition proximately caused a foreseeable injury, as follows:

> [T]he occurrence of injury results from the confluence of an invitee choosing to cross the street at a certain time and place and in a certain manner, and a driver approaching at that moment and failing to avoid a collision. . . . There is a foreseeable risk of collision whether or not the invitee or the driver is negligent. But unless the landowner impaired the driver's ability to see and react to crossing pedestrians, the driver's conduct is independent of the landowner's. Similarly, unless the landowner impaired the invitee's ability to see and react to passing motorists, the invitee's decision as to when, where, and how to cross is also independent of the landowner's. Because the landowner's conduct bears only an attenuated relationship to the invitee's injury, we conclude that the closeness factor tips against finding a duty.

Vasilenko v. Grace Fam. Church, 3 Cal. 5th at 1086.

A further factual issue is raised by DPR's citation to Government Code § 835.4(a):

> A public entity is not liable under subdivision (a) of Section 835 for injury caused by a condition of its property if the public entity establishes that the act or omission that created the condition was reasonable. The reasonableness of the act or omission that created the condition shall be determined by weighing the probability and gravity of potential injury to persons and property foreseeably exposed to the risk of injury against the practicability and cost of taking alternative action that would not create the risk of injury or of protecting against the risk of injury.

Placement of Warning Signs

The SAC alleges a design and construction dangerous condition and a dangerous condition under a concealed trap theory, which is an exception to the general immunity of a public agency for failure to provide traffic signs, signals, markings or devices.

This principal is expressed by Government Code § 830.8:

> Neither a public entity nor a public employee is liable under this chapter for an injury caused by the failure to provide traffic or warning signals, signs, markings or devices described in the Vehicle Code. Nothing in this section exonerates a public entity or public employee from liability for injury proximately caused by such failure if a signal, sign, marking or device (other than one described in Section 830.4) was necessary to warn of a dangerous condition which endangered the safe movement of traffic and which would not be reasonably apparent to, and would not have been anticipated by, a person exercising due care.

Where reasonable minds could draw but one conclusion or where the undisputed facts leave no room for a reasonable difference of opinion, the existence of a dangerous condition might be appropriately considered a question of law. Low v. City of Sacramento, 7 Cal. App. 3d

826, 834 (1970); Chatman v. Alameda Cnty. Flood Control etc. Dist., 183 Cal. App. 3d 424, 431 (1986); Bonanno v. Cent. Contra Costa Transit Auth., 30 Cal. 4th 139 (2003).

However, in this case, there are substantial disputes over material facts and the issue of DPR's potential liability cannot be determined as a matter of law. For example, whether the "design or location of" facilities within DPR's control, or the "improvement, the interrelationship of its structural or natural features, or the presence of latent hazards associated with its normal use" create a "dangerous condition of public property when users of the public property are necessarily exposed to those risks" is a triable issue of material fact. Bonanno, 30 Cal.4th at 149.

The reasonableness of DPR's conduct, as determined by "weighing the probability and gravity of potential injury to persons and property foreseeably exposed to the risk of injury against the practicability and cost of taking alternative action that would not create the risk of injury or of protecting against the risk of injury" is a triable issue of material fact. Government Code § 835.4(a).

Whether the conditions at the location of the collision amounted to a dangerous condition "which endangered the safe movement of traffic and which would not be reasonably apparent to, and would not have been anticipated by, a person exercising due care" is a triable issue of material fact. Government Code § 830.8.

TENTATIVE RULING #11:

1) **DEFENDANT COUNTY OF PLACER'S MOTION FOR SUMMARY JUDGMENT IS GRANTED.**
2) **DEFENDANT CALIFORNIA DEPARTMENT OF PARKS AND RECREATION'S MOTION FOR SUMMARY JUDGMENT 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.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT

REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. 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.

12. 23CV0339 MICKELSON v. BYERS

Motion for Judgment on the Pleadings

This dispute arises from the sale of a residential property to Plaintiff, following which Plaintiff discovered that the garage had not been constructed with the required permits. Resolving this matter with the City of Placerville required Plaintiff to pay for substantial additional improvements to the property.

Plaintiff's First Amended Complaint ("FAC") contains causes of action for (1) Failure to Disclose Material Facts in Violation of Civil Code section 1102 et seq.; (2) Fraud in the Purchase of Real Property; (3) Negligent Misrepresentation; and (4) Breach of Fiduciary Duty.

Defendants Byers and Christiansen were the sellers of the real property. These Defendants have filed this motion for judgment on the pleadings on the First and Third Causes of Action, arguing that the first and third causes of action are barred by a two-year statute of limitations.

In a prior motion for judgment on the pleadings filed by Defendant Side, Inc. and Davis, Plaintiffs conceded that the two-year statute of limitations bars the First and Third Causes of Action. *See* Plaintiff's Opposition to Side, Inc. and Davis' Motion for Judgment on the Pleadings, dated February 8, 2024. Plaintiff has filed no opposition to this motion.

Request for Judicial Notice

Defendants have filed a Request for the court to take judicial notice of the First Amended Complaint filed 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, Defendants' request for judicial notice is granted.

Standard of Review

When a motion for judgment on the pleadings is made by a defendant, the court must find that the complaint on its face does not state facts sufficient to constitute a cause of action against the defendant. Code of Civil Procedure § 438(c)(1)(B)(ii). The court may consider the allegations of the complaint and any matter of which the court is required to take judicial notice. "Where the motion is based on a matter of which the court may take judicial notice pursuant to

Section 452 or 453 of the Evidence Code, the matter shall be specified in the notice of motion, or in the supporting points and authorities, except as the court may otherwise permit." Code of Civil Procedure § 438(d).

In ruling on motions for judgment on the pleadings, the court need not treat as true contentions, deductions or conclusions of fact or law. (People ex rel. Harris v. Pac Anchor Transp., Inc. (2014) 59 Cal.4th 772, 777.)

A motion for judgment on the pleadings performs the same function as a general demurrer...." (Cloud v. Northrop Grumman Corp. (1998) 67 Cal.App.4th 995, 999, 79 Cal.Rptr.2d 544.) "It is axiomatic that a demurrer lies only for defects appearing on the face of the pleadings." (Harboring Villas Homeowners Assn. v. Superior Court (1998) 63 Cal.App.4th 426, 429, 73 Cal.Rptr.2d 646.) Consequently, when considering a motion for judgment on the pleadings, "[a]ll facts alleged in the complaint are deemed admitted...." (Lance Camper Manufacturing Corp. v. Republic Indemnity Co. (1996) 44 Cal.App.4th 194, 198, 51 Cal.Rptr.2d 622.) "Presentation of extrinsic evidence is therefore not proper on a motion for judgment on the pleadings." (Cloud, at p. 999, 79 Cal.Rptr.2d 544.)

Sykora v. State Department of State Hospitals (2014) 225 Cal.App.4th 1530, 1534.

As noted above, Plaintiff concedes that the First and Third Causes of Action are barred by the statute of limitations and has filed no opposition to this motion. As such, the court grants the motion for judgment on the pleadings as to these causes of actions without leave to amend.

TENTATIVE RULING #12:

1) **DEFENDANTS' MOTION FOR JUDICIAL NOTICE IS GRANTED.**
2) **DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS IS GRANTED WITHOUT LEAVE TO AMEND AS TO THE FIRST AND THIRD CAUSES OF ACTION.**

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.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. 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 IN FORMATION WILL BE PROVIDED.

13. 24CV0391 MATTER OF MICHAEL DOUGLAS MORENO

Request for Relief from Firearms Prohibition

Petitioner has filed a Petition for a hearing for relief from a firearms prohibition pursuant to Welfare and Institutions Code § 8103(f)(5). Pursuant to that statute, Petitioner has the right to request that the hearing be a confidential private hearing that is not open to the public.

Relevant portions of Welfare and Institutions Code § 8103(f) are set forth below:

(f)(1)(A) A person who has been (i) taken into custody as provided in Section 5150 because that person is a danger to himself, herself, or to others, (ii) assessed within the meaning of Section 5151, and (iii) admitted to a designated facility within the meaning of Sections 5151 and 5152 because that person is a danger to himself, herself, or others, shall not own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase, any firearm for a period of five years after the person is released from the facility.

(B) A person who has been taken into custody, assessed, and admitted as specified in subparagraph (A), and who was previously taken into custody, assessed, and admitted as specified in subparagraph (A) one or more times within a period of one year preceding the most recent admittance, shall not own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase, any firearm for the remainder of his or her life.

(C) A person described in this paragraph, however, may own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm if the superior court has, pursuant to paragraph (5), found that the people of the State of California have not met their burden pursuant to paragraph (6).

(2)(A)(i) For each person subject to this subdivision, the facility shall, within 24 hours of the time of admission, submit a report to the Department of Justice, on a form prescribed by the Department of Justice, containing information that includes, but is not limited to, the identity of the person and the legal grounds upon which the person was admitted to the facility.

(ii) Any report submitted pursuant to this paragraph shall be confidential, except for purposes of the court proceedings described in this subdivision and for determining the eligibility of the person to own, possess, control, receive, or purchase a firearm.

(B) Facilities shall submit reports pursuant to this paragraph exclusively by electronic means, in a manner prescribed by the Department of Justice.

(3) Prior to, or concurrent with, the discharge, the facility shall inform a person subject to this subdivision that he or she is prohibited from owning, possessing, controlling, receiving, or purchasing any firearm for a period of five years or, if the person was previously taken into custody, assessed, and admitted to custody for a 72-hour hold because he or she was a danger to himself, herself, or to others during the previous one-

year period, for life. Simultaneously, the facility shall inform the person that he or she may request a hearing from a court, as provided in this subdivision, for an order permitting the person to own, possess, control, receive, or purchase a firearm. The facility shall provide the person with a copy of the most recent "Patient Notification of Firearm Prohibition and Right to Hearing Form" prescribed by the Department of Justice. The Department of Justice shall update this form in accordance with the requirements of this section and distribute the updated form to facilities by January 1, 2020. The form shall include information regarding how the person was referred to the facility. The form shall include an authorization for the release of the person's mental health records, upon request, to the appropriate court, solely for use in the hearing conducted pursuant to paragraph (5). A request for the records may be made by mail to the custodian of records at the facility, and shall not require personal service. The facility shall not submit the form on behalf of the person subject to this subdivision.

(4) The Department of Justice shall provide the form upon request to any person described in paragraph (1). The Department of Justice shall also provide the form to the superior court in each county. A person described in paragraph (1) may make a single request for a hearing at any time during the five-year period or period of the lifetime prohibition. The request for hearing shall be made on the form prescribed by the department or in a document that includes equivalent language.

(5) A person who is subject to paragraph (1) who has requested a hearing from the superior court of his or her county of residence for an order that he or she may own, possess, control, receive, or purchase firearms shall be given a hearing. The clerk of the court shall set a hearing date and notify the person, the Department of Justice, and the district attorney. The people of the State of California shall be the plaintiff in the proceeding and shall be represented by the district attorney. Upon motion of the district attorney, or on its own motion, the superior court may transfer the hearing to the county in which the person resided at the time of his or her detention, the county in which the person was detained, or the county in which the person was evaluated or treated. Within seven days after the request for a hearing, the Department of Justice shall file copies of the reports described in this section with the superior court. The reports shall be disclosed upon request to the person and to the district attorney. The court shall set the hearing within 60 days of receipt of the request for a hearing. Upon showing good cause, the district attorney shall be entitled to a continuance not to exceed 30 days after the district attorney was notified of the hearing date by the clerk of the court. If additional continuances are granted, the total length of time for continuances shall not exceed 60 days. The district attorney may notify the county behavioral health director of the hearing who shall provide information about the detention of the person that may be relevant to the court and shall file that information with the superior court. That information shall be disclosed to the person and to the district attorney. The court, upon motion of the person subject to paragraph (1) establishing that confidential information is likely to be discussed during the hearing that would cause harm to the person, shall conduct the hearing in camera with only the relevant parties present, unless the court

finds that the public interest would be better served by conducting the hearing in public. Notwithstanding any other law, declarations, police reports, including criminal history information, and any other material and relevant evidence that is not excluded under Section 352 of the Evidence Code shall be admissible at the hearing under this section.

(6) The people shall bear the burden of showing by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner.

(7) If the court finds at the hearing set forth in paragraph (5) that the people have not met their burden as set forth in paragraph (6), the court shall order that the person shall not be subject to the five-year prohibition or lifetime prohibition, as appropriate, in this section on the ownership, control, receipt, possession, or purchase of firearms, and that person shall comply with the procedure described in Chapter 2 (commencing with Section 33850) of Division 11 of Title 4 of Part 6 of the Penal Code for the return of any firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall delete any reference to the prohibition against firearms from the person's state mental health firearms prohibition system information.

(8) If the district attorney declines or fails to go forward in the hearing, the court shall order that the person shall not be subject to the five-year prohibition or lifetime prohibition required by this subdivision on the ownership, control, receipt, possession, or purchase of firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall, within 15 days, delete any reference to the prohibition against firearms from the person's state mental health firearms prohibition system information, and that person shall comply with the procedure described in Chapter 2 (commencing with Section 33850) of Division 11 of Title 4 of Part 6 of the Penal Code for the return of any firearms.

(9) This subdivision does not prohibit the use of reports filed pursuant to this section to determine the eligibility of persons to own, possess, control, receive, or purchase a firearm if the person is the subject of a criminal investigation, a part of which involves the ownership, possession, control, receipt, or purchase of a firearm.

(10) If the court finds that the people have met their burden to show by a preponderance of the evidence that the person would not be likely to use firearms in a safe and lawful manner and the person is subject to a lifetime firearm prohibition because the person had been admitted as specified in subparagraph (A) of paragraph (1) more than once within the previous one-year period, the court shall inform the person of his or her right to file a subsequent petition no sooner than five years from the date of the hearing.

(11) A person subject to a lifetime firearm prohibition is entitled to bring subsequent petitions pursuant to this subdivision. A person shall not be entitled to file a subsequent petition, and shall not be entitled to a subsequent hearing, until five years have passed since the determination on the person's last petition. A hearing on subsequent petitions shall be conducted as described in this subdivision, with the exception that the burden of

proof shall be on the petitioner to establish by a preponderance of the evidence that the petitioner can use a firearm in a safe and lawful manner. Subsequent petitions shall be filed in the same court of jurisdiction as the initial petition regarding the lifetime firearm prohibition.

* * *

TENTATIVE RULING #13: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, APRIL 12, 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.

14. 24CV0258 NAME CHANGE OF SHEYKHANI

Petition for Name Change

Petitioner filed a Petition for Change of Name on February 7, 2024.

Proof of publication was filed on March 28, 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 #14: 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).

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.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. 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.

15. 24CV0080 NAME CHANGE OF WENGER

Petition for Name Change

Petitioner filed a Petition for Change of Name on January 10, 2024.

Proof of publication was filed on February 21, 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 #15: 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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LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. 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.

16. 23CV1878 NAME CHANGE OF GILES

Petition for Name Change

Petitioner filed a Petition for Change of Name for herself and a minor on October 30, 2023.

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

At the initial hearing on March 8, 2024, the court noted that proof of publication had not been filed as required by Code of Civil Procedure § 1277(a). The court required Petitioner to file the OSC in a newspaper of general circulation in El Dorado County for four consecutive weeks and file proof of publication with the court prior to the next hearing date.

The hearing on this matter was continued to allow Petitioner time to file proof of publication with the court. Proof of publication has not yet been filed with the court.

TENTATIVE RULING #16: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, MAY 24, 2024, IN DEPARTMENT NINE TO ALLOW PETITIONER AN OPPORTUNITY FILE PROOF OF PUBLICATION 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).

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.

LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. 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.

17. 23CV1856 NAME CHANGE OF RUBEN

Petition for Name Change

Petitioner filed a Petition for Change of Name on October 23, 2023.

At the hearings held on December 15, 2023, and February 2, 2024, the court noted that no proof of publication had been filed with the court as required by Code of Civil Procedure § 1277(a). Petitioner is ordered to file the OSC in a newspaper of general circulation in El Dorado County for four consecutive weeks. Proof of publication is to be filed with the court prior to the next hearing date.

The court further noted that the court has yet to receive the background check for petitioner, which is required under the law. Code of Civil Procedure §1279.5(f).

The hearing on this matter is continued to allow Petitioner time to file proof of publication/a background check with the court.

TENTATIVE RULING #17: THIS MATTER IS CONTINUED TO 8:30 A.M. ON FRIDAY, MAY 24, 2024, IN DEPARTMENT NINE TO ALLOW PETITIONER AN OPPORTUNITY FILE PROOF OF PUBLICATION AND 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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LONG CAUSE HEARINGS MUST BE REQUESTED BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED AND THE PARTIES ARE TO PROVIDE THE COURT WITH THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. LONG CAUSE ORAL ARGUMENT REQUESTS WILL BE SET FOR HEARING ON ONE OF THE THREE MUTUALLY AGREEABLE DATES ON FRIDAY AFTERNOONS AT 2:30 P.M. THE COURT WILL ADVISE THE PARTIES OF THE LONG CAUSE HEARING DATE AND TIME BY 5:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. 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.

18. 24CV0321 NAME CHANGE OF CHENG

Petition for Name Change

Petitioner filed a Petition for Change of Name on February 20, 2024.

Proof of publication was filed on March 18, 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 #18: 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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19. 23CV1220 ORION 50 OUTDOOR, LLC ET AL v. SUREWAY PAVING, INC.

Order of Examination Hearing

At the hearing held on April 5, 2024, the Defendant did not appear and the court issued a bench warrant in the amount of $500, with the bench warrant to be held for one week. The court then continued the matter to April 12, 2024.

TENTATIVE RULING #19: APPEARANCES ARE REQUIRED AT 8:30 A.M. ON FRIDAY, APRIL 12, 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.